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COMPILED STATUTES
OF WASHINGTON

ANNOTATED

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SHOWING ALL

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FULLY ANNOTATED TO THE DECISIONS IN THREE TERRITORIAL
AND ONE HUNDRED AND THIRTEEN VOLUMES OF WASHING-
TON STATE REPORTS AND TO THE NOTES IN THE
PRINCIPAL SERIES OF ANNOTATED REPORTS

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BY

HON. ARTHUR REMINGTON,

Reporter of the Supreme Court, Author of "Notes on Washington Reports," "Remington's Washington Digest," "Remington & Ballinger's Annotated Codes and Statutes," "Remington's 1915 Washington Code," etc.

IN THREE VOLUMES

VOLUME II

[AGRICULTURE—IRRIGATION.]

GENERAL STATUTES

SAN FRANCISCO

BANCROFT-WHITNEY COMPANY

1922

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TYPOGRAPHERS AND STEREOTYPERS

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CHAPTER I.

DEPARTMENT OF AGRICULTURE.

§ 2723. [3000-1.] Creation of Department.

There shall be a department of the state government known as the Department of Agriculture, which shall be charged with the administration of the laws relating to agriculture, agricultural resources and products, horticulture, livestock, food, drugs and oils, and such other subjects as the legislature may provide. [L. '13, p. 196, § 1.]

See *infra*, § 10760, department created.

See *infra*, § 10841, divisions of department created.

See *infra*, § 10893, old department abolished.

Cited in 81 Wash. 604; 82 Wash. 646; 94 Wash. 293, 295.

This act repealed Rem. & Bal. Code, § 3133, providing for the levy of a tax by county commissioners for horticultural purposes: *Maxwell v. Lancaster*, 81 Wash. 602, 143 Pac. 157.

The title to this act did not violate Constitution, article II, section 19, providing that no bill shall embrace more than one subject, expressed in its title: *Carstens v. De Sellem*, 82 Wash. 643, 144 Pac. 934.

§ 2724. [3000-6.*] Powers of Commissioner.

The commissioner shall have power and it shall be his duty:

(1) To exercise all the powers and perform all the duties now vested in and required to be performed by the state veterinarian.

(2) To exercise all the powers and perform all the duties now vested in and required to be performed by the state dairy and food commissioner.

(3) To exercise all the powers and perform all the duties now vested in and required to be performed by the state commissioner of horticulture and the district horticultural inspectors appointed by such commissioner.

(4) To exercise all the powers and perform all the duties now vested in and required to be performed by the state oil inspector.

(5) To exercise all the powers and perform all the duties now vested in and required to be performed by the state fair commission.

(6) To exercise all the powers and perform all the duties now vested in and required to be performed by the state commissioner of labor so far as they concern the inspection and supervision of bakeries and bake-shops.

(7) To exercise all the powers and perform all the duties now vested in and required to be performed by the department of animal husbandry in the State College of Washington in respect to the registry and licensing of stallions and jacks.

(8) To exercise all the powers and perform all the duties now vested in and required to be performed by the director of the Washington agricultural experiment station in respect to concentrated commercial feeding stuffs.

(9) To exercise all the powers and perform all the duties now vested in and required to be performed by the director and chemist at the Washington agricultural experiment station, or either of them, in respect to commercial fertilizers used for manurial purposes.

(10) To publish and distribute bulletins and reports embodying information upon the subjects of agriculture, horticulture, livestock, dairying, foods and drugs and other matters pertaining to his department.

(11) To cause surveys and classifications to be made of such lands as shall come within any project of the state for reclamation, drainage or utilization of logged-off lands, or other similar enterprises.

(12) To make a report to the governor, at least thirty days before the commencement of each biennial session of the legislature, containing an account of all matters pertaining to his department and its administration, which shall be printed and published in the manner provided by law.

(13) To declare, promulgate and enforce quarantine measures for the protection of any agricultural crop, forest trees, forest products or other products not otherwise protected by law against the ravages of destructive or injurious insects or diseases. To adopt, promulgate and enforce rules and regulations for the inspection, grading and certification of growing crops of agricultural or vegetable seed grown in this state and to inspect, grade and certify the same at the request of the grower and to fix and collect fees for such inspection, grading and certification and

to pay the fees so collected into the state treasury. [L. '19, p. 295, § 1. Cf. L. '13, p. 197, § 6.]

See *infra*, § 2738, duty as to state fair.

See *infra*, § 2771, duty as to weed districts.

See *infra*, § 2824, duty as to seeds.

See *infra*, § 2840, duties as to horticulture.

See *infra*, § 2876, duty as to farm marketing.

See *infra*, §§ 3110, 3114, duty as to infected animals.

See *infra*, § 6137, duty as to pure food standards.

See *infra*, §§ 10847—10851, duties of, devolve upon director of agriculture.

See *infra*, § 10893, commissioner of agriculture abolished.

Cited in 111 Wash. 127—130.

This section did not impliedly repeal the earlier enactment defining the powers of the state fair commission, but transfers

the control exactly as it was under the original act: *State ex rel. Sherman v. Benson*, 111 Wash. 124, 189 Pac. 1000.

§ 2725. [3000-7.] Assistants.

The commissioner of agriculture may appoint such assistants, inspectors, experts and other employees as may be necessary for the administration of the affairs of the department, at such rates of compensation as the advisory board may determine upon. The commissioner may require any assistant, inspector or other employee to give a surety bond to the state of Washington in such sum and with such conditions as he shall determine, the premium on such bond to be paid by the state. He shall before appointing any assistant or inspector require him to take an examination on such subject or subjects as shall pertain to the performance of his duties; but he may appoint without examination any person who is a graduate of the State College of Washington in such subject, or who is a graduate of any recognized school maintaining a course of instruction in such subject equivalent to the course prescribed at the State College of Washington therein. [L. '13, p. 199, § 7.]

See *infra*, § 10876, assistant director.

§ 2726. [3000-8.] Assignment of Assistants.

The commissioner of agriculture shall designate the division of the department to which any assistant or inspector appointed by him shall be assigned. An assistant or inspector may be assigned to more than one division. Any assistant or inspector assigned to any division shall, subject to the supervisory control of the commissioner, possess and exercise the same powers and perform the same duties as the commissioner of agriculture, with respect to all matters within such division. [L. '13, p. 199, § 8.]

See *infra*, § 10841, divisions created.

See *infra*, § 10842, supervisor of division.

Cited in 82 Wash. 652.

Agricultural Boards and Officers: This section is substantially complied with where an inspector's commission was general, certifying that he is a duly appointed, qualified and acting inspector of

the department of agriculture of the state of Washington and as such vested with full authority to enforce all statutes and regulations relating to the department: *Carstens v. De Sellem*, 82 Wash. 643, 144 Pac. 934.

§ 2727. [3000-9.] Appeals to Commission.

Any person aggrieved by any finding, order or act of any assistant or inspector in the Department of Agriculture may appeal from such finding,

order or act to the commissioner, who shall forthwith proceed to hear and determine such appeal, render his decision therein, and report the same to the appellant and to such assistant or inspector. Such decision shall specify the further proceedings to be had in the premises. Such decision shall not, however, preclude an appeal or proper action in the courts in cases where such rights would otherwise exist. [L. '13, p. 199, § 9].

Cited in 82 Wash. 648.

§ 2728. [3000-10.] Officer not Interested in Contracts.

It shall be unlawful for the commissioner, or any assistant, inspector, or other employee, to be interested, directly or indirectly, either as owner, agent or solicitor, in the sale or purchase of any article, commodity or product used or produced by any person with whom he may come in contact in his official capacity. Any person violating the provisions of this section shall be guilty of a gross misdemeanor. [L. '13, p. 200, § 10.]

§ 2729. [3000-11.] Chemists of Department.

The chemists of the Washington agricultural experiment station and the dean of the department of chemistry of the University of Washington shall be the chemists of the Department of Agriculture, and it shall be the duty of such chemists or either of them, without compensation other than their expenses necessarily incurred in the performance of such work, to analyze any and all substances that the commissioner of agriculture, his deputies or inspectors may send to them, and report to the commissioner, without unnecessary delay, the result of any analysis so made, and when called upon by said commissioner any such chemist shall assist, as an expert or otherwise, in any prosecution for the violation of any law pertaining to the department. [L. '13, p. 200, § 11.]

See *infra*, § 2836, duty as to fertilizers.

Cited in 111 Wash. 125—128.

§ 2730. [3000-12.] Fees and Expenses.

All moneys collected as fees or otherwise by the Department of Agriculture shall be paid into the state general fund. All expenses incurred under the provisions of this act shall be paid out of the general fund, and shall be audited by the state auditor upon proper vouchers approved by the commissioner of agriculture; and the state auditor shall draw warrants upon the state treasurer for the amounts thus audited, in the manner provided by law. [L. '13, p. 200, § 12.]

Cited in 111 Wash. 127—130.

§ 2731. [3000-13.] Horticultural Fund Reverts to General Fund.

Upon the taking effect of this act all moneys in the state horticultural fund shall be transferred to the state general fund, and all moneys thereafter collected which shall be payable into the state horticultural fund shall be paid into the state general fund. [L. '13, p. 200, § 13.]

Cited in 111 Wash. 127—130.

CHAPTER II.

BUREAU OF FARM DEVELOPMENT.

§ 2732. [3000-16.*] Agricultural Experts—Appointment—Compensation.

The board of county commissioners of any county may by request in writing apply to the director of the bureau of farm development for either the appointment of an agricultural expert, home economics expert, or a club work expert, or other agricultural or home economics expert or all of them, and they shall have the power to enter into agreement with the State College of Washington according to agreement forms which shall be approved by the attorney general of the state of Washington, making provision for employing such experts and for paying their expenses incurred in performing their official duties. The director shall appoint and assign to such county the expert or experts applied for: Provided, that the expert or experts so appointed and assigned shall be satisfactory to the board of county commissioners applying therefor. The board of county commissioners shall have the power to determine the period during which any such expert or experts shall be employed and to fix the compensation of such expert or experts at not to exceed two hundred and fifty dollars (\$250) per month for any one expert and not to exceed for salaries the sum of five hundred dollars (\$500) per month, and in their discretion necessary traveling expenses: Provided further, that each such agreement relating to agricultural, home economics, or club work experts shall continue in full force until either the board of county commissioners or the State College of Washington shall terminate the agreement by giving notice to the other part[y] or parties, this notice to be delivered in writing at least three (3) months prior to the date on which the agreement shall expire. [L. '19, p. 654, § 2. Cf. L. '13, p. 48, § 2.]

§ 2733. [3000-17.*] Assistants.

Any such expert or experts shall during the period of his or her employment reside and maintain an office within the county for which he or she is appointed, and with the consent of the board of county commissioners of such county he or she may employ such assistance as may be required and purchase such books, equipment, apparatus, and material as may be required, which books, equipment, apparatus, and material purchased with county funds shall become and remain the property of the county: Provided, that the expenses which may be incurred by the authority of this section shall never exceed the sum of two thousand dollars (\$2000) during the calendar year. [L. '19, p. 655, § 3. Cf. L. '13, p. 48, § 3.]

§ 2734. [3000-18.*] Duties of Experts.

Such agricultural, home economics or club work experts shall give individual instruction and conduct demonstration work with the object of improving the agricultural methods and conditions and home conditions of their counties, and shall perform such other duties as may be required to carry out the purposes of this act, subject to the general super-

vision and control of the director of the bureau of farm development. Such home economics experts shall give individual instruction and conduct demonstration work in the buying, preserving and preparation of food, the purchase of material and the making of clothing, and in home sanitation and nursing and in home arrangement and housekeeping: Provided that the boards of county commissioners shall always have the right to co-operate with the Department of Agriculture in the United States in the appointment, maintenance and work of such experts; and in such event, the director of the bureau of farm development shall appoint for the county exercising the privilege herein granted, such person or persons as are mutually agreeable to the board of county commissioners, the United States Department of Agriculture and the director of the bureau of farm development, and said experts shall then be subject to the joint supervision and control of said director of the bureau of farm development and the United States Department of Agriculture, and said Department of Agriculture shall defray such portion as may be agreed upon of the salary, office expenses, and other expenses incurred by such experts. [L. '19, p. 655, § 4. Cf. L. '13, p. 49, § 4.]

§ 2735. [3000-19.*] Tax Levy for Bureau Work.

For the purpose of fully and effectively carrying out the object and provisions of this act, the boards of county commissioners of the counties participating herein are hereby empowered to levy, appropriate, and set aside such sum of money as may be necessary and in the event of failure from any cause to levy and appropriate such fund, and until the next annual tax levy, said boards of county commissioners are empowered to pay such salaries and expenses from the county current expense fund. [L. '19, p. 656, § 5. Cf. L. '13, p. 49, § 5.]

CHAPTER III.

STATE FAIR.

§ 2736. [3001.] Establishment.

The public good requires [that] there be and hereby is established a state institution by the name of "The State Fair of Washington." [L. '93, p. 445, § 1.]

§ 2737. [3002.] Objects.

It is the object and purpose of this institution to promote and further the advancement of all agricultural, stockraising, horticultural, mining, mechanical and industrial pursuits in this state, and for the carrying out of this object, the management shall provide for an annual fair or exhibition by the institution upon the fair grounds owned by this state near the city of North Yakima, of all the industrial products of this state; said annual fair to be held upon such dates as may be fixed by the state fair commission, not earlier than the third Monday of September nor later than the second Monday of October of each year, and which fair shall continue for at least six days. [L. '93, p. 445, § 2; L. '03, p. 66, § 1.]

§ 2738. [3005.*] Powers of State Fair Commission.

Immediately after their organization the state fair commission shall take and have full control and management of the state fair as a state institution, and shall have care of its property and be intrusted with the entire direction of its business and financial affairs; shall, in conformity with the provisions of this chapter, prepare, adopt, publish and enforce all necessary rules for the management of the state fair, its meetings and exhibitions or the guidance of its officers or employees; shall determine the duties, responsibilities, compensation and tenure of office of all officers or other employees, as may be deemed necessary, and may remove from office any person appointed by it to any office for any inefficiency, neglect of duty or malfeasance in office; shall have power to appoint all necessary marshals to keep order on the grounds and in the buildings of the state fair during all annual exhibitions, and the marshals so appointed shall be vested with the same authority, for such purposes, as executive peace officers are vested by law; shall have power to charge entrance fees, gate money, lease stalls, stands, restaurant sites, give prizes and premiums and do all things which by said commission may be considered proper to conduct in connection with a state fair not otherwise prohibited by law. And while said state fair is not in annual session, the commissioner of agriculture shall have power and authority to lease and let said premises to any firm, person or corporation for picnics, Grand Army meetings, Spanish War Veteran meetings, veterans of the war with Germany and her allies, fraternal organization meetings and for any other purpose in the discretion of said commissioner of agriculture. [L. '19, p. 132, § 1. Cf. L. 93, p. 447, § 5.]

See *supra*, § 2724, duties devolve upon commissioner of agriculture.

See *infra*, §§ 2754, 2755, power to appoint marshals, oath, bond and fees.

See *infra*, § 10847, duties devolve upon director of agriculture.

§ 2739. [3006.] Location of Buildings, Track, etc.

The state fair association shall locate the buildings, track, etc., for state fair purposes upon a tract of land containing not less than one hundred and twenty acres, to be in one solid block, of good soil, with ample water, as level and conveniently located near the railroad shipping point at North Yakima; Provided, that said tract of land is donated to the state of Washington by good and sufficient warranty deed, to be approved by the attorney general. The attorney general of the state shall, on demand, examine and approve the title to said lands and pass upon the sufficiency of all conveyances before acceptance of the same by the state fair commission. [L. '93, p. 447, § 6.]

§ 2740. [3007.] Construction of Buildings, etc.

The land thus acquired by the state shall be forever set apart for the use and benefit of the state fair of the state of Washington; and immediately thereon the state fair commission shall cause to be constructed all necessary buildings, pavilions, exhibition halls, stalls, stands, a mile speeding track of most approved pattern, driveways, sidewalks and fences, and cause the same to be kept in complete and continual repair: Provided always, that no lien or encumbrance of any kind shall ever be created on

said premises without the consent of the state: It being also provided, that no member of the state fair commission shall ever be personally interested in any purchase made or contract entered into by said commission for the use and benefit of the state fair. [L. '93, p. 447, § 7.]

§ 2741. [3008.] Time and Place of Meetings—Salary of Secretary.

The regular and called meetings of the state fair commission shall be held at the office of the secretary in the city of North Yakima, and the regular annual meeting shall be held thereat on the first Monday in April of each year, at which meeting the president shall be elected by the commissioners from their own number and a secretary and treasurer shall also be elected either from the membership of the board or otherwise as the board may deem proper; and such other business shall be transacted as the interests of the state fair shall require. On the last Monday of October of each year the state fair commission shall prepare and transmit to the governor of the state a full financial statement, signed by the president and treasurer and attested by the secretary, of all funds received and disbursed and also a report signed by the president and secretary of all the assets and liabilities of the state fair, a full and detailed account of all its transactions, statistics and information gained, and for this purpose the commission shall cause the secretary to constantly collect all kinds of information calculated to instruct the agricultural and industrial classes, and have the same embodied in such report. The secretary shall receive a salary of twelve hundred dollars per annum, to be paid monthly out of any funds appropriated for the maintenance of the state fair. [L. '93, p. 448, § 8; L. '03, p. 66, § 2.]

§ 2742. [3009.] Vouchers for Expenditures.

All vouchers for the expenditures of money under the provisions of this chapter must be signed by the president and at least two other members of the state fair commission and attested by the secretary; and the state auditor shall, upon presentation of such voucher[s], draw his warrant upon the state treasurer for the payment of the same, and the state treasurer shall pay such warrant out of any money on hand appropriated for the purposes herein set forth: Provided, that every voucher must set forth the purpose for which the money, material or labor represented was used: It being also provided, that all moneys remaining in the hands of the treasurer of the commission on the last Monday of October of each year shall be paid in to the state treasurer to the credit of the state fair fund, to be subsequently drawn out, if required, as hereinbefore provided: Provided further, that no part of the money donated by this state shall be used as payment of purses in trial of speed between man or beast. [L. '93, p. 448, § 9.]

This section was not impliedly repealed by section 5501, requiring each state officer to transmit money collected to the state treasurer each day: State ex rel. Sherman v. Benson, 111 Wash. 124, 189 Pac. 1000.

§ 2743. [3010.] Report of Organization—Compensation and Mileage of Members.

When said state fair commission shall be organized as herein provided, the secretary of the commission shall report such organization to

the governor and the auditor of the state. He shall also report to the governor any vacancy that may at any time occur in said commission. The members of the state fair commission shall be repaid their mileage actually paid out while actually engaged on the business of the state fair, and no other compensation: Provided, however, that the members of said commission shall each, in addition to their expenses, receive four dollars per day whilst actually engaged in locating and selecting the grounds for the state fair, and in superintending the construction of the buildings and other structures but not after September 3d in the year 1893; said compensation in every case to be paid in vouchers as hereinbefore provided. [L. '93, p. 448, § 10.]

§ 2744. [3011.] Limit of Expenditure.

No expenditure shall be made or indebtedness contracted by the commissioners in excess of the amount herein appropriated and any indebtedness so contracted shall be void. [L. '93, p. 449, § 11.]

CHAPTER IV.

SOUTHWEST WASHINGTON FAIR.

§ 2745. [3012-1.] Transfer to Lewis County.

The Southwest Washington Fair Association, as organized and existing at the time of the taking effect of this act, shall turn over and deliver to the county of Lewis all the lands, buildings, books, records, and other property belonging to the state as a member of the Southwest Washington Fair Association. [L. '13, p. 126, § 1.]

§ 2746. [3012-2.] Property—Control.

The property herein granted, including the buildings and structures, thereon as now constructed or as may be built or constructed from time to time, or any alterations or additions thereto, shall be under the jurisdiction and control of the board of county commissioners of Lewis County at all times except during the month or months in which the Southwest Washington Fair Commission shall desire to use such property for the purpose of holding a fair or exposition in conformity with the objects of such association as defined in section 2 of chapter 237, Laws of 1909, and for the two months immediately preceding the month or months fixed for the holding of such fair or exhibition, and such other or further time or times as the boards of county commissioners of Lewis County may authorize the Southwest Washington Fair Commission to use the same. [L. '13, p. 126, § 2.]

§ 2747. [3012-3.] Management—Fairs—Commissioners—Powers.

For the purpose of holding fairs or expositions in conformity with the provisions named in section 2 of chapter 237, Laws of 1909, a new commission is hereby created, which, however, shall be known as the Southwest Washington Fair Commission, to have all the power and authority granted to the Southwest Washington Fair Association in the above-named act subject to the modifications of its powers and duties as

provided herein. Such commission shall be composed of, as ex-officio members thereof, by virtue of their office, the members of the board of county commissioners of Lewis County and the chairman of the board of county commissioners of each of the other counties composing the Southwest Washington Fair Association, or so many of said counties as evidenced by formal resolution of the respective boards of county commissioners thereof, as shall desire to participate in such fair or exhibition or other event held on such grounds. [L. '13, p. 126, § 3.]

§ 2748. [3012-4.] Officers of Commission—Funds.

Within thirty days after the taking effect of this act, the board of county commissioners in the county of Lewis shall notify the board of county commissioners of each of the other counties comprising the Southwest Washington Fair Association of the time and place of the first meeting of the Southwest Washington Fair Commission, as herein defined, which meeting shall be called for a time not less than thirty days from the giving of such notice. The first meeting of such commission shall be held at the courthouse of Lewis County, at which time and place the commission shall proceed to organize. The chairman of the board of county commissioners of Lewis County shall be chairman of the commission. The commission shall proceed to elect a president and secretary and define their duties and fix their compensation, and provide for the keeping of the records of the commission. The commission shall also select some person to act as treasurer, and for this purpose may designate the treasurer of Lewis County as treasurer of the commission. The funds of the commission, however, shall be kept separate and apart from the funds of Lewis County, but shall be deposited in the regular depositories of Lewis County and all interest earned thereby be added and become a part of such fund. The treasurer shall give such bond as the commission may determine for the safekeeping of such funds. The commission shall also provide for an auditing committee of three members to audit all accounts against the commission, and no funds shall be paid out of the treasury of the commission except upon warrants signed by the chairman of the commission, attested by the secretary, after the approval of the claim therefor by such auditing committee. [L. '13, p. 127, § 4.]

§ 2749. [3012-5.] Support of Fair.

Each county belonging to the Southwest Washington Fair Association may make donations or appropriations to the funds of the commission, and may take any other part in the commission as may be deemed advisable by the board of county commissioners of such county, and may exhibit the products or resources of such county in the manner deemed to the best interests of such county. [L. '13, p. 128, § 5.]

Rem. Code, § 3024, authorizing county aid to fair associations is to be strictly construed, and a county has no power to appropriate money in aid of the Southwest Washington Fair Association: Moses

v. Summersett, 58 Wash. 403, 108 Pac. 943.

Validity of statute appropriating public funds for fairs. 9 Ann. Cas. 52.

CHAPTER V. COUNTY FAIRS.

§ 2750. County Fairs—Declared County Purpose.

The holding of "county fairs" and agricultural exhibitions of stock, cereals and agricultural produce of all kinds, including dairy produce, as well as arts and manufactures, by any county in the state is hereby declared to be in the interest of public good and a strictly county purpose. [L. '17, p. 103, § 1.]

See note to last preceding section.

Rem. Code, § 3024, authorizing county fairs: *Johns v. Wadsworth*, 80 Wash. 352, 141 Pac. 892.

§ 2751. Acquisition of Real and Personal Property.

The board of county commissioners of any county in the state may acquire by gift, devise, purchase, condemnation and purchase, or otherwise, lands, property rights, leases or easements and all kinds of personal property and own and hold the same and construct and maintain temporary or permanent improvements suitable and necessary for the purpose of holding and maintaining county fairs for the exhibition of county resources and products: Provided, that only one such fair may be established in any county. [L. '17, p. 103, § 2.]

§ 2752. Supervision by County Commissioners.

The board of county commissioners shall have power to employ persons to assist in the management of such fairs and make rules and regulations as to time and places for holding fairs, exhibits therein, fees to be charged, prizes to be awarded, and otherwise as to the general management of such fairs. The expenses shall be audited and paid in the manner provided by law from the general fund of the county and receipts and donations shall be credited to said fund and such fairs shall be made as near self-supporting as possible. [L. '17, p. 103, § 3.]

§ 2753. Limit of Appropriations.

Appropriations in any one year by boards of county commissioners for the purpose of acquisition of property and the maintenance of such fairs shall be limited according to the following schedule:

Counties of more than 100,000 population.....	\$10,000
Counties of between 100,000 and 50,000.....	\$7,500
Counties of between 50,000 and 25,000.....	\$5,000
Counties under 25,000.....	\$2,500

[L. '17, p. 103, § 4.]

CHAPTER VI. MARSHALS OF FAIRS.

§ 2754. [3030.] Fair Marshal, Appointment and Powers.

The president and managers of agricultural and mechanical fairs in this state shall have the authority to appoint one or more marshals for the purpose of preserving order on the fair grounds during the continu-

ance of the fairs; and such marshals so appointed shall have all the powers now conferred by law on sheriffs and constables. [L. '69, p. 328, § 1; 1 H. C., § 2370.]

See *supra*, § 2738, marshals of state fair.

§ 2755. [3031.] Oath and Bond of Marshal—Fees.

Before the marshals thus appointed shall proceed to act, they shall execute a bond, not to exceed three hundred dollars, and file the same in the county auditor's office in the county in which said fair is to be held, the said bond to be approved by the said county auditor. They shall likewise take the oath sheriffs or constables are required by law to take, and be subject to the laws now in force relating to sheriffs and constables, and shall be entitled to the same fees sheriffs and constables now are for similar services. [L. '69, p. 328, § 2; 1 H. C., § 2371.]

CHAPTER VII.

NOXIOUS WEEDS.

See *infra*, § 10848, powers of director of agriculture.

§ 2756. [3032.] State Botanists.

For the purpose of this act the botanist of the state university of Washington, and the botanist at the State College of Washington, at Pullman, are hereby made ex-officio state botanists, to act without additional compensation. [L. '07, p. 159, § 1.]

See *infra*, § 2771, act applicable to weed districts.

See *infra*, § 2780, protection from weed pests.

"Act" in this section refers to §§ 2756—2759, 2763—2765, 2769 and 6405.

Cited in 78 Wash. 54.

This act is not obnoxious to the due process clause of the federal and state constitutions by reason of want of notice and opportunity to contest the claim: *Wedemeyer v. Crouch*, 68 Wash. 14, 122 Pac. 366, 43 L. R. A. (N. S.) 1090.

This act contemplates that the cost of cutting weeds to the center of the high-

way shall be taxed to the abutting land, and section 2763, providing that failure to cut weeds on the highway shall constitute a misdemeanor, merely furnishes a cumulative remedy: *Northern Pac. R. Co. v. Adams County*, 78 Wash. 53, 138 Pac. 307, 51 L. R. A. (N. S.) 274.

Constitutionality of statutes requiring destruction of noxious weeds. 12 A. L. R. 1143.

§ 2757. [3033.] Noxious Weeds, Defined.

Canada thistle (*chicus arvensis*), Russian thistle (*Salsola Kali tragus*), tumbling mustard, the so-called "Jim Hill" mustard (*Sisymbrium altissimum*), cocklebur, and all other weeds liable to become a pest and detrimental to the agricultural interests of any county in this state, are hereby declared to be noxious weeds. [L. '07, p. 159, § 2.]

Cited in 68 Wash. 16.

§ 2758. [3034.] Other Weeds Which may Become Noxious.

When the state botanists are or either of them is of the opinion that any weed is, or may become noxious as herein defined other than those specifically mentioned, he or they shall notify the auditor of the county in which such weeds are, and the clerk of each incorporated city or town in such county, giving a description of such weed, and he or they shall also accompany such description with a specimen of the same, and shall at the

same time, send to each road supervisor of such county a description and specimen of such weed. [L. '07, p. 159, § 3.]

§ 2759. [3035.] Publication of Description.

The county auditor and the city or town clerk, upon receipt of said description and specimen shall have said description published weekly in the newspaper doing the county or city printing for four successive weeks, and he shall retain said specimen in his office for the inspection of the public. [L. '07, p. 159, § 4.]

§ 2760. [3036.] Suffering Growth of Thistles is Unlawful.

If any person or persons owning, possessing, or having care or charge of any land or lands, improved or unimproved, inclosed or uninclosed, in this state, shall knowingly, willfully, or willingly permit or suffer any Chinese or Canada thistles to grow up thereon, and suffer the same to stand until its seeds get ripe, such person or persons shall be guilty of a misdemeanor, and upon conviction thereof shall, for the first offense, be fined in the sum of ten dollars, and for the second offense not less than twenty-five nor more than fifty dollars, to be recovered, with costs, in any action to be brought in the name of the state of Washington, for the use and benefit of the public school fund in the county where the offense is committed; or action therefor may be brought before any court of competent jurisdiction in the county. [Cd. '81, § 2238; 1 H. C., § 2424.]

Subsequent laws superseding parts of this section have no repealing clause, and do not cover persons "having care or charge of any land." This section is accordingly retained.

§ 2761. [3037.] Owner of Canals and Ditches must Suppress Weeds.

If any person or persons, company or corporation, owning, maintaining or operating, any canal or ditch for irrigation, drainage or power purposes shall permit or suffer any weed, weeds or other noxious growths to grow upon the banks of such ditch or canal and suffer the same to stand until the seeds thereof get ripe, such person or persons, company or corporation shall be guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined in the sum of ten dollars; and for the second and each subsequent offense not less than twenty-five nor more than one hundred dollars; to be recovered with costs in an action to be brought in the name of the state of Washington for the use and benefit of the public school fund of the state. [L. '07, p. 45, § 1.]

§ 2762. [3038.] Thistles must be Cut Down.

It shall be the duty of every owner, lessee, occupant or agent thereof, or of any person having the care and charge of any land or lands, improved or unimproved, inclosed or uninclosed, in this state, to cut down or otherwise destroy all noxious weeds growing thereon or on any road, street or highway to the center thereof bordering on any such land or lands, so often in each and every year as shall be certain to prevent them from going to seed: Provided, that this shall not apply to timber lands, brush lands or logged-off lands. [L. '11, p. 327, § 1; L. '13, p. 305, § 1.]

Cited in 68 Wash. 16; 78 Wash. 55.

Duty of land owner to destroy nox-
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ious weeds. Ann. Cas. 1913D, 432,
Ann. Cas. 1917A, 183.

§ 2763. [3039.] Penalty for Permitting Growth of Thistles.

If any owner, lessee, occupant, agent or person having the care or charge of any such land or lands shall knowingly suffer any noxious weeds to grow thereon, and shall permit the seeds of any such noxious weeds to ripen, he shall be guilty of a misdemeanor: Provided, that this section shall not apply to what is commonly known as "bull thistle," on lands known as "logged-off, or cut over lands" outside of cities and towns. [L. '07, p. 160, § 5; L. '11, p. 327, § 1; L. '13, p. 306, § 2.]

Cited in 78 Wash. 54, 55.

Construing together all of the provisions of this act, this section furnishes

a cumulative remedy: Northern Pac. R. Co. v. Adams County, 78 Wash. 53, 138 Pac. 307, 51 L. R. A. (N. S.) 274.

§ 2764. [3040.] Notice to Remove.

It shall be the duty of each road supervisor in each road district in this state to see that the provisions of this act are carried out within his district, and he shall file with the prosecuting attorney of the county lists of lands within his district upon which any noxious weeds may be growing, giving a description of the kinds and character of weeds growing thereon, together with a statement of the approximate time within which said weeds must be destroyed in order to prevent their going to seed.

Upon receipt of such lists it shall be the duty of the prosecuting attorney to demand from the county auditor and county treasurer lists giving the names of any and all owners, lessees, mortgagees and occupants of the lands to be affected, together with their places of residence or address so far as may be shown by the public records of said county or of said offices or be known to said officers, and it shall be the duty of said auditor and said treasurer to furnish such information.

It shall be the duty of such prosecuting attorney to issue and subscribe notices directed to each and all of said owners, lessees, mortgagees and occupants which said notices shall require the persons therein named to cause said noxious weeds to be cut down and destroyed within ten days from the time of serving, mailing or posting said notices as in this act provided and said notices shall be served or given in the following manner: On all residents of the county within which the lands affected are situated, by serving the same personally in the same manner as provided by law for the service of a summons in the superior court; on all nonresidents of the county whose address or place of residence is shown by the records or is known, by mailing a copy of said notice by registered mail; and in all cases where the address or place of residence is unknown, by posting a copy of said notice in a conspicuous place on the land in full view of the traveling public. In case of a return of not found as to any of such persons whose address or place of residence is unknown, posting of the notices as herein provided shall be a sufficient service thereof.

It shall be the duty of the county auditor to keep a record book in which he shall cause to be entered the names, addresses or places of residence of any person, firm or corporation who may notify such officer of their desire to be registered therein and of their desire to be notified by registered mail at the place of residence or address given of any pro-

ceedings had under this act affecting any lands of which they may be the owners, lessees, mortgagees or occupants; and the sending by registered mail of any notice or statement provided for under this act to said person or persons, firm or corporation at the place of residence or address given shall constitute a sufficient service under this act.

All returns of not found shall be made by the sheriff of the county or his deputies, and all returns not found, proofs of service, mailing or posting shall be filed forthwith in the office of the auditor of the county where the land is situated.

Where noxious weeds are growing on the right of way of any railroad within any road district, said notice may be served on the foreman in charge of that portion of the right of way passing through such district, or such notice may be served on such railway corporation by delivering a copy thereof to any agent of said corporation within the state personally.

In case the persons named in said notice fail, refuse or neglect to cut down and destroy said noxious weeds within ten days after the date of serving, mailing or posting said notices as in this act provided, then such road supervisor shall take the necessary assistance and enter upon said lands and cause said noxious weeds to be destroyed with as little damage to growing crops as may be.

If any such road supervisor shall fail or refuse to perform or cause to be performed any of the duties or services enumerated in this act, he shall be deemed guilty of a misdemeanor. [L. '07, p. 160, § 6; L. '11, p. 327, § 1; L. '13, p. 306, § 3.]

See *infra*, § 2779, act applicable to weed districts.

Cited in 68 Wash. 16; 78 Wash. 54, 55; 81 Wash. 311, 312.

This section implies a personal service of notice on resident owners, and county officers acquire no jurisdiction to levy a tax upon land of a resident owner for the

cost of cutting weeds, under notice posted on the land after failure to learn the place of his residence: *North Coast Fire Ins. Co. v. Lincoln County*, 81 Wash. 311, 142 Pac. 661.

§ 2765. [3041.] Expense of Removal—Payment.

Each road supervisor shall keep an accurate account of the expenses incurred by him in carrying out the provisions of this act with respect to each parcel of land entered upon therefor and the prosecuting attorney of the county shall cause to be served, mailed or posted in the same manner as is provided in this act for giving notice to destroy noxious weeds a statement of such expense, including description of the land verified by oath of the road supervisor, to the owner, lessee, mortgagee, occupant or agent or person having charge of said land, and coupled with such statement shall be a notice subscribed by said prosecuting attorney and naming a time and place when and where said matter will be brought before the board of county commissioners for hearing and determination, said statement and notice to be served, mailed or posted, as the case may be, at least ten days before the time for such hearing. At the time of such hearing or at such other time to which the same may be continued or adjourned by said county commissioners, the board shall proceed to examine said claim, hear testimony if offered and shall make and enter an order upon the minutes of said meeting that said claim, or so much

thereof as shall be deemed just and proper, shall be paid out of the road and bridge fund of said county. Costs of serving, mailing and posting shall be added to any amount so found to be due and shall be collected at the same time and in the same manner as other charges under this act. [L. '07, p. 160, § 7; L. '11, p. 327, § 1; L. '13, p. 308, § 4.]

Cited in 68 Wash. 17; 78 Wash. 55.

§ 2766. [3042.] Collection.

At the time when the board of county commissioners pays the claim for cutting said weeds as in section 2765 provided it shall make an order that the amount paid be a tax on the land on which said work was done after the expiration of ten days from the date of the entry of said order, unless an appeal be taken as in this act provided, in which even the same shall become a tax at the time the amount to be paid shall be determined by the court, and the county treasurer shall enter the same on the tax-rolls against the land for the current year and collect it together with penalty and interest as other taxes are collected, and when so collected, the same shall be credited to the county road and bridge fund: Provided, that a failure to serve, mail or post any of the notices or statements provided for in this act shall not invalidate said tax but in case of such failure, the lien of such tax shall be subordinate and inferior to the interests of any mortgagee to whom notice has not been given in accordance with the provisions of this act. [L. '07, p. 161, § 8; L. '13, p. 309, § 5.]

Cited in '78 Wash. 55.

§ 2767. [3042-1.] Appeals to Superior Court.

Any interested party may appeal from the decision and order of said county commissioners to the superior court of said county by serving written notice of appeal on the county auditor and by filing in the office of the clerk of the superior court a copy of said notice of appeal with proof of service attached, together with a good and sufficient cost bond in the sum of two hundred dollars, said cost bond to run to the county and in all other respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice of appeal must be served and filed within ten days from the date of the decision and order of the county commissioners and said cost bond must be filed within five days from the filing of said notice of appeal.

Whenever notice of appeal and cost bond shall have been filed with the clerk of the superior court, that officer shall notify the county auditor thereof forthwith and the auditor shall certify immediately to said court all notices and records in said matter, together with proofs of service, and a true copy of the order and decision pertaining thereto made by the county commissioners. If no appeal be perfected within ten days from the decision and order of the county commissioners the same shall be deemed confirmed and the auditor shall certify the amount of such charges to the county treasurer who shall enter the same on the tax-rolls against the land; when an appeal is perfected the matter shall be heard in the superior court de novo and the court's decision shall be conclusive on all persons properly served under this act: Provided, that an appeal

may be taken to the supreme court from the order or decision of the superior court in the manner provided by existing laws, and upon the conclusion of such appeals the amount of charges and costs adjudged to be paid shall be certified by the clerk of the superior court to the county treasurer and said treasurer shall proceed to enter the same on his rolls against the land affected. [L. '13, p. 309, § 6.]

§ 2768. [3042-2.] Exemptions—Petition—Notice—Hearing.

The board of county commissioners of any county in this state shall have the power to designate by an order, to be made and entered in the manner hereinafter, certain territory which may be excepted from the provisions of this act. Whenever a petition signed by ten or more residents of any road district shall be filed with the county auditor praying that certain contiguous territory therein bounded and described and lying wholly within said road district be excepted from the provisions of this act for the reasons set forth in said petition, said auditor shall cause a notice to be published for two successive weeks in the newspaper doing the county printing, which said notice shall set forth the boundaries of the tracts to be excepted and shall name the time and place for a hearing by the board of county commissioners on said petition, the first publication of said notice to be at least fifteen days prior to the time of said hearing: Provided, that the person or persons filing said petition shall pay in advance to the county auditor the costs of the publication of such notice.

At the time of said hearing the board of county commissioners shall hear all persons interested in the matter presented by said petition and, by an order made and entered in the record of their proceedings, shall determine whether said territory shall be excepted from the provisions of this act, giving the reasons for their decision, and in case the prayer of such petition is granted such order shall describe the boundaries of the territory within said road district to which such exception shall be applied: Provided, that any order thus made excepting any territory from the provisions of this act shall not be in force for a longer period than twelve months from the date of the entry of such order, unless a new petition be filed, new notice given and another hearing be had as in this act provided. [L. '13, p. 310, § 7.]

§ 2769. [3043.] Act Applicable to Cities.

The provisions of this act shall be applicable to all cities and towns in this state; the duty herein prescribed for the road supervisors shall be performed by the marshal or supervisor of streets in such city or town, and the duty of the board of county commissioners shall be performed by the council, and the county treasurer shall enter on the tax-roll the amount paid by the council of said town or city, when certified to him under the hand of the mayor and city clerk and the seal of such city or town. [L. '07, p. 161, § 10. Cf. L. '99, p. 75, § 6.]

“Act” in this section refers to §§ 2756—2759, 2763—2765, 2769 and 6405.

§ 2770. [3044.] Nonenforcement by Supervisor—Penalty.

Any citizen may notify the road supervisor or county commissioners of the presence of Canadian thistles or Russian thistles who, upon receiv-

ing such notice, shall enforce the provisions of this act; and failure upon the part of the road supervisor to act after notice from the county commissioners within ten days of such notice shall subject him to a fine of not more than ten dollars for the first offense and not less than ten dollars or more than twenty dollars for each succeeding offense; and continued refusal or neglect shall subject him to removal from office. [L. '99, p. 76, § 8.]

This section may be superseded by the Act of 1907, which, however, had no repealing clause.

§ 2771. Weed Districts—Establishment.

For the purpose of preventing, destroying or exterminating any and all weeds or plants including Scotch Broom now classed, or hereafter to be classed by the Department of Agriculture or the director of business control of this state, as noxious weeds or plants detrimental to or destructive of crops, fruit trees, shrubs, valuable plants, forage or other agricultural plants or products, and to prevent the introduction, propagation, cultivation or increase in number of any of the above described weeds or plants, the board of county commissioners of any county may create a weed district or districts within such county, and may enlarge any district or territory contained in a larger territory within the whole county, or reduce any district, or create or combine or consolidate districts, or divide or create new districts, from time to time in the manner hereinafter set forth. [L. '21, p. 563, § 1.]

§ 2772. Petition for Inclusion—Notice.

Whenever one or more freeholders, owning more than fifty per cent of the acreage desired to be included in a proposed weed district, shall petition that their land be included, either separately or with other lands designated in the petition, in a district to be formed for the purpose of preventing, destroying or exterminating any and all weeds as described in section 2771, or that such lands be included within a district already formed by the enlargement of such district, or a new district or districts to be formed out of a district or districts then in existence or out of territory partly in districts already formed and not included in any district, and such petition states the boundaries of such districts, which shall include not less than four sections of land, the board shall fix a time for the hearing of such petition and shall give at least thirty days' notice of the time and place of such hearing by posting copies of such notice in three conspicuous places within the proposed district and posting one copy of such notice at the courthouse or place of business of the board, and by mailing copies of such notice to each of the land owners in the petition to the addresses named therein and a copy to the state land commissioner, provided the state owns land in the district. [L. '21, p. 564, § 2.]

§ 2773. Hearing and Order.

Upon the hearing of such petition the board shall determine whether such district shall be created and, if so, shall fix the boundaries thereof, but shall not enlarge the boundaries of proposed districts, or enlarge or

change the boundary or boundaries of any district or districts already formed without first giving notice to all parties interested, as provided in section 2772: Provided, however, that the boundary of such district shall be along an established road or along scab, uncleared, or grazing land except lands in Western Washington infested in Scotch Broom: Provided also, that no scab, uncleared, or grazing land shall be included in such district, except such as shall lie wholly within the cultivated or farming lands in the district petitioned for. Any quarter-section of land seventy-five per cent of which is cultivated for farming shall be considered cultivated and farming land for the purposes of this act. [L. '21, p. 565, § 3.]

§ 2774. Designation of District.

If the board shall find that the lands to be included will be benefited by the creation of such a district or districts, or the changing thereof, it shall designate the territory included therein as weed district No. — for — county. [L. '21, p. 565, § 4.]

§ 2775. Collection of Tax Levies.

The county treasurer shall be ex-officio treasurer for each of such districts so formed and the county assessor and other county officers shall take notice of the formation of such district or districts and shall be governed thereby according to the provisions of this act. The tax levies as hereinafter provided for shall be extended on the tax rolls against the property liable therefor the same as other taxes are extended, and shall become a part of the general tax against such property and be collected and accounted for the same as other taxes are, with the terms and penalties attached thereto. The moneys so collected shall be held and disbursed as a special fund for such district and shall be paid out only on warrants issued by the county auditor upon voucher approved by the board of county commissioners. [L. '21, p. 565, § 5.]

§ 2776. Supervision.

The board of county commissioners shall have general supervision of the methods and means of preventing, destroying and exterminating any noxious weeds as in this act defined, and of the expenditure of the funds of such district to accomplish the purposes for which such funds were raised. Any member of the board of county commissioners engaged in the administration of this act shall be entitled to his actual expenses and his per diem as county commissioner the same as if he were doing other county business. [L. '21, p. 566, § 6.]

§ 2777. Inclusion of County or State Lands.

Whenever there shall be included within any weed district lands belonging to the county, the board of county commissioners shall determine the amount of the tax for which such lands would be liable if the same were in private ownership for each subdivision of forty acres or fraction thereof. The assessor shall transmit to the county commissioners a statement of the amounts so due from county lands and the county commissioners shall appropriate from the current expense fund of the county

sufficient money to pay such amounts. Whenever any state, granted, school or other public lands of the state shall be situated within any weed district organized under the provisions of this act, the county treasurer shall certify annually and forward to the commissioner of public lands or to the state board of control (or director of business control) (if such lands are occupied by or used in connection with any state institution) a statement of the amounts assessed against said lands under the provisions of this act separately describing each such lot or parcel of the state's lands and the commissioner of public lands shall then certify said statement to the state auditor and the state board of control (or director of business control) shall cause a proper record to be made in its office of such charges against the lands occupied by the state institutions or used in connection therewith and shall certify said statement to the state auditor and the state auditor at the next session of the legislature shall certify to the legislature the amount of such charges against the lands of the state and the legislature shall provide for the payment of the same with interest, by appropriation out of the general fund of the state, provided that no penalty shall be provided or enforced against the state and no interest on the assessments levied greater than six per cent per annum shall be attached to or allowed by the state on the charges so certified under the provisions of this act. [L. '21, p. 566, § 7.]

§ 2778. Contractual Limitations.

No district shall be permitted to contract obligations in excess of the estimated revenues for the two years next succeeding the incurring of such indebtedness and it shall be unlawful for the county commissioners to approve of any bills which will exceed the revenue to any district which shall be estimated to be received by such district during the next two years. [L. '21, p. 567, § 8.]

§ 2779. Complaints.

Upon complaint of any freeholder or lessee of said district the county commissioners shall investigate and determine whether on any tract or tracts of land within the district the weeds are being properly destroyed or exterminated according to law. If they determine that such weeds are not being so destroyed or exterminated, they shall order them exterminated in the manner provided in sections 2764 to 2768 inclusive, except that for the purposes of this act the term "road supervisor" as used in sections 2764 to 2768 inclusive, shall be held and construed to mean and include any person designated by the county commissioners to report, investigate or exterminate such noxious weeds: Provided, that this section shall not apply to such weeds growing among growing grain. [L. '21, p. 567, § 9.]

CHAPTER VIII.

PROTECTION OF TREES AND PLANTS.

§ 2780. Protection Authorized.

The forest, agricultural, horticultural, ornamental and floral trees, shrubs, and plants in the state of Washington, and the products thereof

shall be preserved and protected from the ravages of diseases, insects, and animal and weed pests injurious thereto and destructive thereof. [L. '21, p. 308, § 1.]

See *infra*, § 2842, pests and diseases of horticultural stock.

§ 2781. Quarantine Regulations.

The director of agriculture shall have the power and it shall be his duty by and with the approval of the governor to establish and the director shall thereupon maintain and enforce such obligatory quarantine regulations as may be deemed necessary to protect the forest, agricultural, horticultural, ornamental and floral trees, shrubs and plants, and the products thereof in the state of Washington, against contagion or infestation by injurious plant disease, insects, or animal or weed pests, by establishing such quarantine at the boundaries of this state or elsewhere within the state, and he may make and enforce, any and all such obligatory rules and regulations as may be deemed necessary to prevent any infected or infested forest, agricultural, horticultural, ornamental and floral trees, shrubs, and plants, and the products thereof in the state of Washington from passing over any quarantine line established and proclaimed pursuant to this act, and all such articles shall, during the maintenance of such quarantine, be inspected by such director or by horticultural or other inspectors thereto appointed, and he and the inspectors so conducting such inspection shall not permit any such article to pass over such quarantine line during such quarantine, except upon a certificate of inspection, signed by such director or in his name by such inspector who has made such inspection. All approvals by the governor given or made pursuant to this act shall be in writing and signed by the governor in duplicate, and one copy thereof shall be filed in the office of the secretary of state and the other in the office of said director before such approval shall take effect. [L. '21, p. 308, § 2.]

§ 2782. Investigations and Enforcement of Quarantines.

Upon information received by such director of the existence of any infectious plant disease, insect or other animal or weed pest, new to or not generally distributed within this state, dangerous to any plant or commodity or to the interests of the plant industry of this state, or that there is a probability of the introduction of any such infectious plant disease, insect or other animal or weed pests into this state or across the boundaries thereof, he shall proceed to thoroughly investigate same and may establish, maintain and enforce quarantine as hereinbefore provided, and may make and enforce such regulations as are in his opinion, necessary to circumscribe and exterminate such infectious plant diseases, insect or other animal or weed pests and prevent the spread thereof. Such director may disinfect, or take such other action with reference to any trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit-pits, fruit, seeds, vegetables or any crops or crop products, and any containers thereof, and any packing material used therewith infested or infected with, or which, in his opinion may have been exposed to infection or infestation by, any such infectious plant diseases, insect or other animal or

weed pests, as in his discretion shall seem necessary to carry out and give effect to the provisions of this act. Such director, his deputies and inspectors are hereby authorized to enter upon any ground or premises to inspect the same or to inspect any tree, shrub, plant, vine, cutting, graft, scion, bud, fruit-pit, fruit, seed, vegetable or other article of horticulture or implement thereof or box or package or packing material pertaining thereto, or connected therewith or that has been used in packing, shipping or handling the same, and to open any such package, and generally to do, with the least injury possible under the conditions to property or business all acts and things necessary to carry out the provisions of this act. The said director shall at once notify the governor of all quarantine lines established under or pursuant to this act, and if the governor approve or shall have approved of the same or any portion thereof, the same shall be in effect and the governor may issue his proclamation proclaiming the boundaries of such quarantine and the nature thereof, and the order, rules or regulations prescribed for the maintenance and enforcement of the same, and may publish said proclamation in such manner as he may deem expedient to give proper notice thereof.

All orders, rules and regulations issued by the director of agriculture pursuant to this act shall have the force and effect of law. [L. '21, p. 309, § 3.]

§ 2783. Regulations on Importation.

Each carload, case, box, package, crate, bale or bundle of trees, shrubs, plants, vines, cutting, grafts, scions, buds, fruit-pits, or fruit or vegetables or seed, imported or brought into this state, shall have plainly and legibly marked thereon in a conspicuous manner and place the name and address of the shipper, owner or owners or person forwarding or shipping the same, and also the name of the person, firm, or corporation to whom the same is forwarded or shipped, or his or its responsible agents, also the name of the country, state or territory where the contents were grown, and a statement of the contents therein. [L. '21, p. 310, § 4.]

§ 2784. Regulations on Shipments Through State.

When any shipment of nursery stock, trees, vines, plants, shrubs, cuttings, grafts, scions, fruit, fruit-pits, vegetables or seed, or any other horticultural or agricultural product passing through any portion of the state of Washington in transit, is infested or infected with any species of injurious insects, their eggs, larvae, pupae or animal or plant disease, which would cause damage, or be liable to cause damage to the forests, orchards, vineyards, gardens, or farms of the state of Washington, or which would be, or liable to be, detrimental thereto or to any portion of said state, or to any of the forests, orchards, vineyards, gardens or farms within said state, and there exists danger of dissemination of such insects or disease while such shipment is in transit in the state of Washington, then such shipment shall be placed within sealed containers, composed of metallic or other material, so that the same cannot be broken or opened, or be liable to be broken, or opened, so as to permit any of the said shipment, insects, their eggs, larvae, or pupae or animal or plant disease to

escape from such sealed containers and the said containers shall not be opened while within the state of Washington. [L. '21, p. 311, § 5.]

§ 2785. Regulations Covering Inspections in Transit.

Whenever the director of agriculture declares, promulgates and issues quarantine measures, orders or regulations against any part or portion of this state or any other state or country or section thereof, for the protection of any forest, agricultural, horticultural, ornamental or floral trees, shrubs or plants, and there shall be received in this state, any forest, agricultural, horticultural, ornamental or floral trees, shrubs, or plants, or the raw products thereof, from any part or portion of this state or any other state or country or section thereof, against which the quarantine has been issued as to such commodity, it shall be the duty of the person, or the official of the carrier having such shipment in charge for delivery, unless the same is accompanied by a certificate of inspection and approval by a horticultural inspector of this state, showing that the same was inspected and approved at the initial point of shipment, to notify the horticultural inspector stationed nearest to the point where said shipment is received, of the receipt of such shipment giving the name of the consignor and consignee and stating that such shipment is ready for inspection and delivery. Said notification shall be either by telephone or telegraph, and conformed by written notice delivered personally to said inspector or to some person of suitable age and discretion at his residence or office, or by mail addressed to said inspector at his place of residence or at his office; and it shall be unlawful for any such agent or person having such shipment in charge to deliver the same to the consignee or to any other person until the same shall have been inspected by a horticultural inspector: Provided, however, that such agent shall not be required to hold such shipment more than forty-eight hours after notifying the inspector as aforesaid, except in case the notice is given by mail, in which event, such shipment shall be held for such period beyond said forty-eight hours as is ordinarily required for delivery of mail to the address of the inspector. Upon the delivery to the consignee of a shipment accompanied by a certificate of inspection as aforesaid, the agent or person making the delivery shall retain the certificate of inspection showing his authority for releasing the same. [L. '21, p. 311, § 6.]

See *infra*, § 2847, inspection of horticultural trees.

§ 2786. Violations and Penalty.

Every person who shall violate or fail to comply with any rule or regulation adopted and promulgated by the director of agriculture in accordance with and under the provision of this act shall be guilty of a misdemeanor, and for a second and each subsequent violation or failure to comply with the same rule or regulation, shall be punished by imprisonment in the county jail for not less than thirty days or more than one year, or by a fine of not less than \$100, or more than \$1,000, or by both such fine and imprisonment. [L. '21, p. 313, § 7.]

§ 2787. Scope of Act.

This act shall not be construed as repealing or limiting any of the provisions of existing laws touching on any of the matters herein referred to, but shall be deemed to be supplemental thereto. [L. '21, p. 313, § 8.]

CHAPTER IX.**EXTERMINATION OF RODENTS.****§ 2788. "Rodent" Defined.**

The term "rodent" wherever used in this act shall be held and construed to mean and include ground squirrels, pocket gophers, rabbits, and such other rodents as the State College of Washington shall designate as injurious to the agricultural interests of the state. [L. '21, p. 502, § 1.]

§ 2789. Owner of Land to Destroy.

It shall be the duty of every person, firm or corporation owning, possessing or having the care or charge of any land or lands in the state to destroy and exterminate any and all such rodents thereon. [L. '21, p. 502, § 2.]

§ 2790. Administration of Act.

The administration of this act shall be under the supervision and control of the state of Washington by and through the extension service of the State College of Washington, in co-operation with the board of county commissioners in the various counties of the state and the bureau of biological survey of the United States Department of Agriculture. [L. '21, p. 502, § 3.]

§ 2791. Supervision.

The State College of Washington is hereby empowered and it shall be its duty to employ persons as it may deem necessary to inspect rodent conditions and to supervise the destruction and extermination of injurious rodents in such counties as shall co-operate with said State College in such work: Provided, that nothing herein contained shall authorize said State College to contract for or expend a greater sum of money during the next biennium, for the purposes of this act, than that provided for by the appropriation contained herein. [L. '21, p. 502, § 4.]

§ 2792. Co-operation With Federal Department.

The State College of Washington is hereby authorized to co-operate with the bureau of biological survey of the United States Department of Agriculture, and to make such arrangements as it may deem advisable to join with said bureau in the employment of persons to inspect rodent conditions and to supervise the destruction and extermination of injurious rodents. [L. '21, p. 503, § 5.]

§ 2793. Poison—Authority to Purchase and Distribute—Tax Levy.

The board of county commissioners of any county in the state desiring to co-operate with the State College of Washington in the extermina-

tion of rodents is hereby authorized to purchase poisons, grain and other supplies, or to prepare poisoned grain or other baits, and to furnish the same at cost to owners, occupants, agents in charge, or lessees of land infested with rodents, and for that purpose shall levy a tax of not to exceed one-half of one mill on all the taxable property within the county. The proceeds from the collection of such taxes shall be placed in a special rotating fund, which fund is hereby created. The purchases of all poisons, grain and other supplies shall be made from said rotating fund and the proceeds of the sale of such poisons, grain and supplies shall be placed therein. The balance in such fund on December 31st of each year shall be transferred to the county current expense fund: Provided, that in the year 1921 the board shall be authorized, by resolution to that end, to purchase said poisons, grain and supplies with any moneys in the hands of the county treasurer, and the fund or funds from which said purchases have been made shall be reimbursed from said rotating fund from time to time as moneys are paid therein. [L. '21, p. 503, § 6.]

§ 2794. Powers and Duties of State College.

The State College of Washington shall be authorized and directed to supervise the extermination of rodents by any land owner, occupant, agent in charge, or lessee, to prepare poisons and baits for that purpose, and to enter upon any farm, rights of way, grounds, or premises for the purpose of ascertaining rodent conditions or for the purpose of exterminating the same as in this act provided. [L. '21, p. 503, § 7.]

§ 2795. Notice to Exterminate.

Whenever the person or persons designated and employed by the State College of Washington for that purpose shall, upon inspection and investigation, determine that the owner, occupant, agent in charge, or lessee of any land has failed or neglected to exterminate the rodents on said land, and that such land is infested with such rodents, it shall notify said owner, occupant, agent in charge or lessee to that effect. Said notice shall describe the land involved, contain a finding that said land is infested with rodents, naming the kind, direct what steps shall be taken to exterminate said rodents, and inform the owner, occupant, agent in charge, or lessee that, unless such steps are begun within a period of ten (10) days after service of said notice (exclusive of the day of service), said land will be entered upon and the rodents exterminated and the expense of such extermination will be charged as a tax against said land, and collected as general taxes are collected. A copy of said notice shall be served personally upon the owner, occupant, agent in charge or lessee if the same is found in the county in which such land is situated. If said owner, occupant, agent in charge, or lessee cannot with reasonable diligence be found in the county, a certificate to that effect, together with said notice, shall be mailed to the person appearing on the records of the county treasurer's office as last paying general taxes on said land, and a copy of said notice shall be posted in a conspicuous place on said land. After the expiration of ten days from the date of service, or mailing and posting, as the case may be, of said notice as herein provided,

the State College of Washington shall enter said land and exterminate the rodents thereon. [L. '21, p. 504, § 8.]

§ 2796. Notice of Time for Consideration of Expenses.

An itemized account shall be kept of the expenses of exterminating the rodents on said land and, upon the conclusion of such work, a sworn itemized statement of such expense, together with the description of the land and a return of the service, or mailing and posting, of the notice to the owner, occupant, agent in charge, or lessee shall be filed with the board of county commissioners of the county in which said land is situated. The board shall thereupon fix a time and place when and where such statement of expense will be considered, and shall give notice of same. Said notice shall be signed by the clerk of the board, shall be served in the same manner, by the same agency, and shall be given for the same length of time and to the same parties as the notice provided for in section 2795 herein. [L. '21, p. 505, § 9.]

§ 2797. Expense Made a Tax.

The board of county commissioners shall meet at the time and place fixed in said notice, and shall examine said statement of expenses, hear testimony if offered, and shall determine that said statement, or so much thereof as is just and correct, shall be established as a tax against the land involved. Said board shall also make an order that the total amount of such expenses so approved shall be a tax on the land on which said work was done after the expiration of ten days from the date of the entry of said order on the minutes of the board, unless sooner paid or unless an appeal be taken as in this act provided, in which event the same shall become a tax at the time the amount charged shall be determined by the court: Provided, that in no case shall the total expense for the extermination of rodents for any one year charged against any tract of land exceed a sum which in the aggregate shall amount to more than twenty cents per acre or fraction thereof included in the tract. [L. '21, p. 505, § 10.]

§ 2798. Tax-rolls Against Land.

The county treasurer shall enter the amount of such expense according to the order of the board, on the tax-rolls against the land for the current year, and the same shall become a part of the general taxes for that year to be collected at the same time and with the same interest and penalties and when so collected the same shall be credited to the rotating fund herein provided for. [L. '21, p. 506, § 11.]

§ 2799. Appeals—Notice.

Any person feeling himself aggrieved at the decision and order of the board of county commissioners approving the amount of such expenses and establishing the same as a tax against the land involved may appeal therefrom to the superior court of the county, by serving a written notice of appeal on the board and by filing a copy of same with proof of service attached, together with a good and sufficient cost bond to be approved by the county clerk in the sum of two hundred dollars (\$200), said cost

bond to run to the county and in all other respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice of appeal must be served and filed within ten days from the date of the decision and order of the board approving the amount of said expense and establishing the same as a tax against the land involved, and said appeal must be brought on for hearing upon a certified copy of the records in the matter without further pleadings, at the next term of court thereafter. An appeal from the judgment of the superior court in the matter may be taken to the supreme court of the state as in other cases of appeal to that tribunal. Upon the final conclusion of any appeal so taken, the county clerk shall certify to the county treasurer the result of such appeal. [L. '21, p. 506, § 12.]

§ 2800. Distribution of Poisons.

No baits containing phosphorus or phosphorus compounds shall be employed in the extermination of rodents. All poisons and poisoned baits prepared and distributed under authority of the board of county commissioners shall be placed in containers plainly labeled to show the character and purpose of the contents thereof. [L. '21, p. 507, § 13.]

§ 2801. Agricultural Pest Districts.

For the purpose of destroying or exterminating squirrels, prairie dogs, gophers, moles or other rodents, or of rabbits or any predatory animals that destroy or interfere with the crops, fruit trees, shrubs, valuable plants, fodder, seeds or other agricultural plants or products, thing or pest injurious to any agricultural plant or product, or to prevent the introduction, propagation, growth or increase in number of any of the above-described animals, or rodents, the board of county commissioners of any county may create a pest district or pest districts within such county and may enlarge any district containing a lesser territory than the whole county, or reduce any district already created, or combine or consolidate districts or divide, or create new districts from time to time in the manner hereinafter set forth. [L. '19, p. 425, § 1.]

§ 2802. Formation and Alteration of Pest Districts—Hearing—Notice.

Whenever ten or more resident freeholders in any county petition the board of county commissioners, asking that their lands be included, either separately or with other lands designated in the petition in a district to be formed for the purpose of preventing, destroying, or exterminating any of the animals, rodents or other such things described in section 2801, or that such lands be included within a district already formed by the enlargement of such district, or a new district or districts be formed out of a district or districts then in existence or out of territory partly in districts already formed and not included in any district, and such petition indicating the boundaries of such proposed district, whether all or any part of such county, and stating the purpose of such district, the board shall fix a time for the hearing of such petition and shall give at least thirty days' notice of the time and place of such hearing by posting copies of such notice of the time and place of such hearing in three

conspicuous places within the proposed district and posting one copy of such notice at the courthouse or place of business of the board, and also by mailing to each freeholder within the proposed district a copy of such notice, to his last known residence, if known, and if not known to the clerk of such board, then and in that event the posting shall be deemed sufficient: Provided, however, if the board shall deem it impractical to mail notices to each freeholder, within the proposed district, or if the post-office address[es] of all the freeholders are not known, then in that event when recited in a resolution adopted by the board, the notice in addition to posting, shall be published once a week for three successive weeks in the county official paper if there is such, and if there be no official paper, then in some paper published in said county, and if there be no paper published in said county, then in some paper of general circulation within the proposed district. The persons in whose name the property is assessed shall be deemed the owners thereof for the purpose of notice as herein required: Provided, however, that for lands belonging to the state, the commissioner of public lands shall be notified, and for lands belonging to the county, the county auditor shall be notified, and if such lands are under lease or conditional sale the lessee or purchaser shall also be notified in the manner above provided. Any person interested may appear at the time of such hearing and may under such rules and regulations as the board may prescribe give his or her reasons for or objections to the creation of such a district. [L. '19, p. 426, § 2.]

§ 2803. Determination by County Board.

Upon the hearing of such petition the board shall determine whether such a district shall be created and shall fix the boundaries thereof, but shall not enlarge the boundaries of proposed districts or enlarge or change the boundary or boundaries of any district or districts already formed without first giving the notice to all parties interested as provided in section 2802. [L. '19, p. 427, § 3.]

§ 2804. Record and Designation of District.

If the board shall deem the interests of the county or of any particular section thereof will be benefited by the creation of such a district or districts, or the changing thereof, it shall make a record thereof upon the minutes of the board and shall designate such territory in each such district as "Pest District — for — County." [L. '19, p. 427, § 4.]

§ 2805. Duties of County Officers—Assessment for Taxation.

The county treasurer shall be ex-officio treasurer for each of such districts so formed and the county assessor and other county officers shall take notice of the formation of such district or districts and shall be governed thereby according to the provisions of this act. The assessment or the tax levies as hereinafter provided for shall be extended on the tax-rolls against the property liable therefor the same as other assessments or taxes are extended, and shall become a part of the general tax against such property and be collected and accounted for the same as other taxes are, with the terms and penalties attached thereto. The moneys so col-

lected shall be held and disbursed as a special fund for such district and shall be paid out only on warrant issued by the county auditor upon voucher approved by the board of county commissioners. [L. '19, p. 428. § 5.]

This "act" refers to §§ 2801 to 2809.

§ 2806. Supervisors—Agricultural Expert or County Commissioner.

The agricultural expert in counties having an agricultural expert, shall under the direction of the State College of Washington have general supervision of the methods and means of preventing, destroying or exterminating any animals or rodents as herein mentioned within his county, and of how the funds of any pest districts shall be expended to best accomplish the purposes for which such funds were raised; in counties having no such agricultural expert each county commissioner shall be within his respective commissioner district, ex-officio supervisor, or the board may designate some such person to so act, and shall fix his compensation therefor. Whenever any member of the board shall act as supervisor he shall be entitled to his actual expenses and his per diem as county commissioner the same as if he were doing other county business. [L. '19, p. 428, § 6.]

§ 2807. Tax Levy—Local Assessment for Special Benefits.

For the purposes herein specified the board of county commissioners shall annually levy on all the taxable property within any district a tax for such district not to exceed five mills on the dollar to be levied and collected as in this act prescribed.

If, however, they shall deem that the prevention, destruction or extermination of any such animals, or other pests shall be of special benefit to the lands within any such district they may in lieu of a tax, levy an assessment against the lands therein at not to exceed ten cents per acre. For this purpose they may classify the lands into tillable, grazing, and waste lands and fix the assessment for each class in such amount as shall seem just, but which shall be uniform per acre in its respective class. The finding by the board of such special benefits, when so declared by resolution and spread upon the minutes of the board shall be conclusive that the same is of special benefit to the lands within the district. [L. '19, p. 429, § 7.]

§ 2808. Assessments for State and County Lands.

Whenever there shall be included within any pest district lands belonging to the state or to the county the board of county commissioners shall determine the amount of the tax or assessment for which such land would be liable if the same were in private ownership for each subdivision of forty acres or fraction thereof. The assessor shall transmit to the county commissioners a statement of the amounts so due from county lands and the county commissioners shall appropriate from the current expense fund of the county sufficient money to pay such amounts. A statement of the amounts due from state lands within each county shall be annually forwarded to the commissioner of public lands who shall ex-

amine the same and if he finds the same correct and that the determination was made according to law, he shall certify the same to the state auditor who shall issue a warrant for the payment of same against any funds in the state treasury appropriated for such purposes.

The commissioner of public lands shall keep a record of the amounts so paid on account of any state lands which are under lease or contract of sale and such amounts shall be added to and become a part of the annual rental or purchase price of the land, and shall be paid annually at the time of payment of rent or payment of interest or purchase price of such land. When such amounts shall be collected by the commissioner of public lands it shall be paid into the general fund in the state treasury. [L. '19, p. 429, § 8.]

§ 2809. Obligations in Excess of Revenues Prohibited.

No district shall be permitted to contract obligations in excess of the estimated revenues for the two years next succeeding the incoming of such indebtedness and it shall be unlawful for the county commissioners to approve of any bills which will exceed the revenue to any district which shall be estimated to be received by such district during the next two years. [L. '19, p. 430, § 9.]

CHAPTER X.

AGRICULTURAL AND VEGETABLE SEEDS.

§ 2810. Classification of Seeds.

That the term "agricultural seed" as used in this act shall include the seeds of all domesticated grasses, cereals, legumes such as alfalfa, alsike clover, crimson clover, red clover, sweet clover, white clover, field peas, horse beans, and vetches, and the seeds of all other crops that are, or may be commercially grown on a field scale in the state of Washington; while the term "vegetable seeds" shall include the seeds of those crops which are successfully grown in Washington on a garden scale and are generally known or sold under the name of "vegetable seeds." [L. '19, p. 557, § 1. Cf. L. '15, p. 298, § 1; L. '01, p. 325, § 1.]

Liability of vendor of seeds. 37 L. R. A. (N. S.) 79.

Validity of statute regulating sale of seed. Ann. Cas. 1917E, 167.

Validity of statute providing for supply of seed grain by government. 7 L. R. A. (N. S.) 1196.

§ 2811. Sale Below Legal Standard.

Any person, firm or corporation who shall sell or offer for sale within this state any vegetable seed the germinable viability of which shall be less than two-thirds of the percentage standard of germination for such seed as herein provided shall be guilty of a misdemeanor. [L. '19, p. 558, § 2.]

§ 2812. False Labeling.

Any person or persons who shall, with intention to deceive, wrongly mark or label any package or bag containing garden or vegetable seed, shall be guilty of a misdemeanor. [L. '19, p. 558, § 3.]

§ 2813. Germination Standards.

The percentage standard of germination of vegetable seed for this state shall be as follows: Beans, peas, beets, turnips, rutabaga, cabbage, cauliflower, onion, leek, tomato, lettuce, raddish and cucumber, melon, squash and other cucurbits, ninety per cent; celery, carrot, parsley, parsnip and all other vegetable seeds, seventy-five per cent. [L. '19, p. 558, § 4.]

§ 2814. Packages, How Marked.

No person shall sell, offer or expose for sale or distribution for the purposes of seeding, in packages of one pound or more, any seeds of clovers (*trifolium*), alfalfa (*medicago sativa*), wheat (*triticum*), barley (*hordeum*), rye (*secale cereale*), oats (*avena sativa*), bromo grass (*bromus inermis*), meadow fescue (*festuca pratensis*), tall oat grass (*arrhenatherum avenae*), orchard grass (*dactylis glomerata*), perennial rye grass (*lolium perenne*), Italian rye grass (*lolium italicum*), timothy (*phleum pratense*), red top (*agrostis alba*), in or from any receptacle unless such receptacle, package, sack or bag, or a label securely attached thereto, be marked in plain legible type or script with:

- (a) The commonly accepted name of the seed.
- (b) The approximate percentage by weight of purity and the germination and date of test.
- (c) If grown in this state the words "grown in Washington." If imported into this state the name of such state or country in which it was grown.
- (d) The name and address of seedsman.

Wheat (*triticum*), barley (*hordeum*), rye (*secale cereale*), oats (*avena sativa*) or other agricultural seeds, when designated by variety name, or as spring, fall or winter seeds, shall be construed as coming under the provisions of this act. [L. '21, p. 573, § 1. Cf. L. '19, p. 558, § 5.]

This "act" refers to this chapter.

§ 2815. Labeling Required for Agricultural Seed.

Every lot of agricultural seed which does not consist of vegetable seed, or which is not intended to be sold, offered or exposed for sale as a mixture of the seeds of two or more species of grasses or of clovers or of both, or which is offered or exposed for sale or had in possession with the intent to sell within this state in lots of one pound or more, shall have affixed thereto in a conspicuous place on the exterior of the container of such agricultural seeds a written or printed label in the English language in plain legible type or script a statement specifying:

- (a) The commonly accepted name of such agricultural seed.
- (b) The percentage by weight of purity.
- (c) The percentage of germination of such agricultural seed as named together with the month and year when such germination test was made.
- (d) The full name and address in legible type or script of the seedsman, importer, dealer, agent or other person or persons, firm or corpora-

tion selling, offering or exposing for sale the said agricultural seed within the state. [L. '19, p. 559, § 6.]

§ 2816. Seed Mixtures, How Labeled.

Every lot of agricultural seeds which is a mixture of the seed of two or more species of grasses, or of clovers, or of both and which is sold, offered or exposed for sale, or had in possession with intent to sell within this state as a mixture of the seeds of two or more species of grasses, or of clovers, or of both, shall have affixed thereto in a conspicuous place on the exterior of the container of such mixtures of seeds, a written or printed label in the English language in a plain legible type or script containing a statement specifying:

(a) That the agricultural seed contained therein is a mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in such mixture in excess of two (2) per cent by weight of total mixture.

(c) The approximate percentage by weight of weed seeds contained in such mixtures when in excess of one (1) per cent.

(d) The percentage by weight of inert matter in such mixture: Provided, that the term "inert matter" shall include within its meaning all materials which are not of plant origin, all portions of plant tissue which do not inclose seed or seeds, and all fragments of seeds which do not contain the essential elements of the embryo or germ of such seed.

(e) The full name and address of the seedsman, importer, dealer, or agent, or other person or persons, firm or corporation, selling, offering or exposing the said mixture for sale within the state. [L. '21, p. 574, § 2; L. '19, p. 559, § 7.]

§ 2817. Application of Act.

The provisions shall not be construed as applying to:

(1) Any person growing, possessing for sale, or selling seeds for food purposes only.

(2) Persons selling or offering for sale to a seed dealer uncleaned seeds to be recleaned and tested by him before being exposed for sale upon the general market.

(3) Seed that is in store for the purpose of recleaning and which is not possessed, sold or offered for sale for seed purposes: Provided, that such seeds shall be labeled "not for sale."

(4) Seed marked "Not clean" and held or sold for export outside the state only. [L. '19, p. 560, § 8.]

§ 2818. Sale of Impure Seeds Prohibited.

No person shall sell, offer or expose for sale or distribution for the purpose of seeding, any agricultural seeds as herein defined, unless such agricultural seeds contain less than one (1) to twenty thousand (20,000) of the following weeds:

Quack grass (*agropyron repons*)

Canada thistle (*Cnieus arvensis*)

Dodder (*Cuscuta specuas*)

Corn cocle (*Lychnis githago*)

Fan weed (*Thlaspi arvenso*) [L. '21, p. 575, § 3. Cf. L. '19, p. 561, § 9.]

§ 2819. Sale of Impure Seeds Prohibited.

(a) No person shall sell, offer or expose for sale or distribution for the purpose of seeding any agricultural seeds as herein defined which shall contain more than (1) to twenty-five hundred (2,500) of the seeds under examination of the following weeds:

Russian thistle (*Salsola postifer*)

Charlock (*Brassica arvensis*)

Jim Hill mustard (*Sysmbrium albissimum*)

Plant in buckhorn (*Plantago lanceolata*)

Bindwood (*Convolvulus sepium*)

or more than one (1) to one thousand (1,000) under examination of the seeds of wild oats (*Avena fatua*).

(b) Weed seeds of any other kind than those mentioned in section 2818 and section 2819, paragraph (a), when found in any sample of agricultural seed shall be classed as impurities therein and when presented in quantities exceeding two per cent of the sample, either singly or in combination, the approximate percentage of each shall be stated on the label attached to the container or stamped on the container itself.

The director of agriculture may make regulations determining the species of noxious weeds which shall be included with those mentioned in section 2818 or section 2819, paragraph (a). [L. '21, p. 575, § 4. Cf. L. '19, p. 561, § 10.]

§ 2820. Dirt and Foreign Substances.

Sand, dirt, chaff and foreign substances, broken seed and seed not capable of germinating, shall be considered impurities when present in agricultural seeds sold, offered or exposed for sale for the purpose of seeding, and when such impurities or any of them are present in quantity exceeding the standards of purity and germination authorized by this act, the name and approximate percentage of each shall be plainly indicated in the statement. [L. '19, p. 562, § 11.]

§ 2821. Percentage of Germination.

Seeds, except the seeds of medicinal herbs, and except the seeds of plants grown for flowers only, shall have a germination of not less than sixty per cent. [L. '19, p. 562, § 12.]

§ 2822. Misbranding, What Constitutes.

For the purposes of this act, seed shall be deemed to be misbranded:

(1) When meadow fescue (*festuca olatior pratensis*), English rye grass (*lolium perenne*) or Italian rye grass (*lolium italicum*) is labeled or sold under the name of orchard grass (*dactylis glomerata*) seed.

(2) When Canadian blue grass (*poa compressa*) seed, red top (*agrostis alba*) seed, or any other seed not blue grass seed, is sold under the name of Kentucky blue grass (*pop pratensis*) seed.

(3) When yellow trefoil (*medicago lupulina*), burr clover (*medicago denticulate*), or sweet clover (*molilotus alba*) is sold under the name of clover, June clover, red clover (*trifolium pratense*), medium red clover, small red clover, mammoth red clover, sappling clover, peavine clover (*T. pratense* var) or alfalfa (*medicago sativa*) seed.

(4) When seeds are not true to the name under which they are sold. [L. '21, p. 576, § 5. Cf. L. '19, p. 562, § 13.]

§ 2823. Analyses and Tests.

(a) The director of agriculture shall maintain a laboratory with proper equipment for the analysis, grading and making of other tests under this act.

(b) Any citizen of this state shall have the privilege of submitting to the director of agriculture, samples of agricultural and vegetable seeds for test and analysis subject to such rules and regulations as may be adopted by said director of agriculture, provided that the director of agriculture may by such regulations fix the maximum number of samples that may be tested free of charge for any one citizen in any one period of time and fix charges for tests or samples submitted in excess of those tested free of charge. [L. '21, p. 577, § 6. Cf. L. '19, p. 563, § 14.]

This "act" refers to this chapter.

§ 2824. Duties of Commissioner of Agriculture.

The duty of enforcing this act and carrying out its provisions and requirements shall be vested in the commissioner of agriculture of the state of Washington. The said commissioner of agriculture through publication in bulletins of the Department of Agriculture, shall be empowered to adopt such "rules and regulations" as may be deemed necessary in order to secure the efficient enforcement of this act: Provided, that said commissioner shall appoint such inspectors and assistants as may be necessary for the proper enforcement and carrying out of the provisions of this act. [L. '19, p. 563, § 15.]

This "act" refers to this chapter.

§ 2825. Inspection—Powers and Duties of Officers—Fines and Penalties.

It shall be the duty of the said director of agriculture, either by himself or his inspectors or assistants, to inspect, examine, and take samples of any agricultural seeds stored, sold, offered or exposed for sale or distribution within this state for seeding purposes, at such time, and place, and to such extent as he may determine.

The director, supervisor, inspectors, or assistants shall have free access at all reasonable hours upon and into any vessels, ferries, premises or structures, to make examination of any agricultural seeds whether such seeds are upon the premises of the owner or consignee of such seeds or on the premises or in possession of any warehouse, elevator, railway or steamship company; and he is hereby given authority in person or by his inspectors or assistants upon notice to the dealer, his agent or representative of any warehouse, elevator, railway or steamship company, if present, to take for analysis a sample of such agricultural seeds from a parcel,

package, lot or other container or number of parcels, packages, lots, or other containers; said sample shall be thoroughly mixed and divided into two samples of at least two ounces each and securely sealed. One of said samples shall be left with, or on the premises of the vendor or party in interest, and the other retained by said director of agriculture or his agent for analysis.

The said director, supervisor, inspectors, and assistants shall be vested with all necessary powers for the proper execution of their duties, including all actions or procedure needful to secure evidence of fraud and dishonest dealing in or the fraudulent advertising of seed.

Prosecution for violation of this act shall be brought in the proper court by the prosecuting attorney of the county in which said violation occurred, upon complaint of the director, supervisor, inspectors or assistants.

All moneys received from license fees, fines, costs imposed and recovered under the provisions of this act shall be paid to the director of agriculture, or his agents, and by him paid into the state treasury to the credit of the seed fund to be used to assist in defraying costs of inspection and analysis and grading of agricultural and vegetable seeds under the provisions of this act.

The director, supervisor, or inspectors shall have the power whenever he shall deem it necessary to call upon the attorney general for aid in the prosecution of all cases arising under the provisions of this act.

Whoever violates any of the provisions named in this act, or who shall attempt to interfere with the inspectors or assistants in the discharge of the duties named therein, shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars (\$25) and costs for the first offense and not less than one hundred dollars (\$100) and costs for the second or any subsequent offense. [L. '21, p. 577, § 7. Cf. L. '19, p. 563, § 16.]

This "act" refers to this chapter.

See *infra*, § 6975, revolving fund.

§ 2826. Basis Adopted.

The enforcement of the seed law shall be based upon analyses made in accordance with the rules and regulations adopted by the Association of Official Analysts of North America. [L. '19, p. 565, § 17.]

§ 2827. License Required.

It shall be unlawful for any person, firm, or corporation to engage in, conduct, or carry on the business of selling, dealing in or importing into this state for sale or distribution any agricultural or vegetable seed, without first having obtained from the director of agriculture and having in force a license so to do. The license fee shall be ten (10) dollars for those engaged in a regular seed business offering or exposing for sale or distribution for the purposes of seeding agricultural or vegetable seeds. All licenses shall bear the date of issue and shall expire on the first day of July next following the date of issue. The director of agriculture may publish from time to time, in bulletins or reports, a list of those licensed under this act. [L. '21, p. 579, § 8.]

§ 2828. Rules and Regulations.

The director of agriculture shall have the power to adopt, promulgate, and enforce rules and regulations for the grading of alfalfa, alsike clover, red clover, white clover, timothy or other agricultural seeds sold for seeding purposes. [L. '21, p. 579, § 9.]

See *infra*, § 6976, regulations.

CHAPTER XI.**FERTILIZERS.****§ 2829. [3045.] Ingredients on Label—Bulk Sales, Report of to State Chemist.**

Every lot or parcel of commercial fertilizers or material used for manurial purposes sold, offered or exposed for sale within this state, the retail price of which is ten dollars or more per ton, shall be accompanied by a plainly printed label, stating clearly and truly the number of ten pounds of fertilizer in the package, the name, brand or trademark under which the fertilizer is sold, the name and address of the manufacturer or importer, the place of manufacture and a chemical analysis stating the percentage of nitrogen, of potash soluble in water and of soluble reverted and insoluble phosphoric acid. Whenever any fertilizer or fertilizing ingredients are shipped or sold in bulk for use by farmers in this state a statement must be sent to the chemist of the Washington state agricultural experiment station at Pullman, who is hereby created state chemist, *ex officio*, giving the name of the goods so shipped and accompanied by an affidavit from the seller, giving the percentage of the several fertilizing ingredients guaranteed. All fertilizers sold, offered or exposed for sale shall be accompanied by a label giving a correct general statement of the composition and ingredients of the same. [L. '99, p. 80, § 1.]

Invalidity of sale of fertilizer in violation of law. 12 L. R. A. (N. S.) 596.

§ 2830. [3046.] Report and Sample to State Chemist Before Offering for Sale.

Before any commercial fertilizer, the retail price of which is ten dollars or more per ton, is sold, offered or exposed for sale, the importer, manufacturer or party who causes it to be sold or offered for sale within this state shall file with the chemist of the Washington state agricultural experiment station a certified copy of the statement named in section 2829 and a list of the names and addresses of his agents in this state; and shall also deposit with said chemist, at his request, a sealed glass jar or bottle containing not less than one pound of the fertilizer, accompanied by an affidavit that it is a fair, average sample thereof. [L. '99, p. 80, § 2.]

§ 2831. [3047.] Analysis Fee.

The manufacturer, importer, agent or seller of any brand of commercial fertilizer or material used for manurial purposes, the retail price of which is ten dollars or more per ton, shall pay on or before the first day of April annually to the treasurer of the Washington state agricultural experiment station an analysis fee of six dollars for each of the fertilizing

ingredients contained, or claimed to exist in, said fertilizer to be sold, offered or exposed for sale within this state as aforesaid: Provided, however, that whenever the manufacturer or importer shall have paid the fee herein required for any person acting as agent or seller for such manufacturer or importer, such agent or seller, shall not be required to pay the fee named in this section; and on receipt of said analysis fees the treasurer of the Washington state agricultural experiment station shall issue certificates of compliance with this chapter. [L. '99, p. 81, § 3.]

§ 2832. [3048.] Certificate in Case Leather is Used.

No person shall sell, offer or expose for sale in this state any pulverized leather, raw, steamed, roasted, or in any form, as fertilizer or manure without an explicit printed certificate of the fact, to be conspicuously affixed to every package of such fertilizer or manure, and to accompany or go with every lot or parcel of the same. [L. '99, p. 81, § 4.]

§ 2833. [3049.] Penalty.

Any person selling, offering or exposing for sale any commercial fertilizer without the statement as required by section 2829, or with a label stating that said fertilizer contains a larger percentage of any one or more of the constituents mentioned in said section than is contained therein, or respecting the sale of which all the provisions of the foregoing sections have not been fully complied with, shall pay a fine of fifty dollars for the first offense and one hundred dollars for each subsequent offense. [L. '99, p. 81, § 5.]

§ 2834. [3050.] Exceptions.

This chapter shall not affect parties manufacturing, importing or purchasing fertilizers for their own use and not selling in this state. [L. '99, p. 82, § 6.]

§ 2835. [3051.] Publication of Analysis of Fertilizers.

The director of the Washington state agricultural experiment station shall cause to be collected and analyzed by the chemist of the Washington state agricultural experiment station, or deputy, samples of such fertilizing materials as are subject to the conditions of this chapter, which may from time to time be sold, offered or exposed for sale in this state; and the director of the Washington state agricultural experiment station shall cause the results of the analysis of fertilizers collected under this chapter to be published, and issue the results to the farmers of the state as rapidly as the progress of the work will allow, together with the comparative commercial value per ton, and such other information as circumstances may advise. The chemist shall compile the results of the analysis of the fertilizers collected under this chapter and furnish a copy of the same to the director of the Washington state agricultural experiment station for publication. [L. '99, p. 82, § 7.]

§ 2836. [3052.] Duty of State Chemist.

The chemist of the Washington state agricultural experiment station is hereby authorized, in person or by deputy, to take a sample not exceed-

ing two pounds in weight for analysis from any lot or package of fertilizer, or any material used for manurial purposes which may be in the possession of any manufacturer, importer, agent or dealer, but the said samples shall be taken in the presence of said party or parties in interest or their representatives, and taken from a parcel or number of packages which shall be not less than ten per cent of the whole lot inspected, and shall be thoroughly mixed, divided into two samples, placed in glass vessels, carefully sealed, and a label placed on each stating the name or brand of the fertilizer or material sampled, the name of the party from whose stock the sample was taken, and the time and place of taking the same, and said label shall also be signed by the chemist or his deputy and by the party or parties in interest or their representatives present at the taking and sealing of said sample. One of said samples shall be retained by the chemist or deputy and the other by the party whose stock was sampled. Every person violating this chapter shall be prosecuted by the prosecuting attorney of the county in which the violation occurs, upon complaint of the director and chemist of the Washington state agricultural experiment station. [L. '99, p. 82, § 8.]

§ 2837. [3053.] Distinct Brands, When.

For all the purposes of this chapter fertilizers shall be considered as distinct brands when differing either in guaranteed composition, trademark, name or in any other characteristic method of marking of whatever nature. [L. '99, p. 83, § 9.]

§ 2838. [3054.] Expenses.

The expenses of collection, analysis, printing and distribution authorized by this chapter shall be paid from and out of the moneys received by the treasurer of the Washington state agricultural experiment station under the provisions of section 2831. [L. '99, p. 83, § 10.]

CHAPTER XII.

HORTICULTURE.

§ 2839. [3082-1.*] Definition of Terms.

That the term "commissioner" whenever used in this act shall be held and construed to mean the commissioner of agriculture of the state of Washington, and the term "assistant commissioner" and "assistant" shall be held and construed to mean the assistant commissioner of agriculture for the division of horticulture; the term "horticultural inspector" and the term "inspector" wherever used in this act shall be held and construed to mean an inspector of the Department of Agriculture, assigned to the division of horticulture; the term "nursery stock" wherever used in this act shall be held and construed to mean and include fruit trees, fruit tree stock, nut trees, grape vines, fruit bushes, rose bushes, rose stock, forest and ornamental trees and shrubs (both deciduous and evergreen), field grown, florists stock, and cuttings, scions and seedlings of fruit or ornamental trees or shrubs, and all other fruit bearing plants and parts thereof and plant products for propagation or plant-

ing; the term "infect" and its derivatives "infecting," "infected" and "infection," wherever used in this act shall be held and construed to mean and include being affected by or infested with the disease or insect pests to which horticultural plants and products are subject and which are required to be guarded against, controlled, cured, removed, and eradicated as in this act provided; the terms "disinfect" and its derivatives shall be held and construed to mean and include the cure, removal or eradication of such diseases or pests by cutting and destroying the infected parts, or the application of fungicides or insecticides specified in this act or such other effective solutions or emulsions as may be discovered by science and specified and described in the bulletins issued by the commissioner of agriculture, and the term "person" wherever used in this act, shall be held and construed to mean and include individuals, partnerships, associations, joint stock companies and corporations. [L. '21, p. 507, § 1. Cf. L. '15, p. 494, § 1.]

See supra, §§ 2780—2787, protection of trees and plants.

See infra, § 10841, division of horticulture created.

§ 2840. [3082-2.*] Commissioner of Agriculture and Inspectors—Powers and Duties.

The commissioner of agriculture shall have the power and it shall be his duty:

(a) To exercise a general supervisory and directory control over the horticultural interests of the state;

(b) To arrange for and hold meetings for the discussion and dissemination of information as to horticultural subjects and for the demonstration of methods of preventing diseases of and pests injurious to horticultural plants, fruits and vegetables, and of curing and removing the same;

(c) To publish and distribute circulars and reports upon horticultural subjects, the pests affecting and the diseases of fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, fruits, vegetables and nursery stock, and the means and methods of controlling, curing, removing, eradicating, and disinfecting for such diseases and pests;

(d) To issue licenses to nurserymen and dealers in nursery stock and their agents, salesmen and solicitors and revoke the same for violation of or failure to comply with this act, and to keep in his office a record of all licenses issued, showing the character of the license, name and address of the holder, the date of issue and the date of expiration or revocation;

(e) To furnish to the board of county commissioners of each county, annually, on or before September 1, an estimate of the expenses for the ensuing year of inspecting and disinfecting orchards, vineyards, berry farms, vegetable farms and nurseries, fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, fruit, fruit products, vegetables, and packing houses, warehouses, dry-houses, storerooms, depots, docks and other places where fruits, vegetables or nursery stock are grown, packed, stored, shipped or held for shipment or delivery or offered for sale within said county;

(f) To appoint inspectors to enforce and carry out the provisions of this act, which inspectors may be of two classes, inspectors at large and

local inspectors: Provided, that not more than twenty inspectors at large shall be appointed;

(g) The commissioner may also in his discretion appoint any officer or member of any local fruit protective association to act as inspector, vested with power only to enter premises and inspect orchards and report to the inspector-at-large. Such inspectors shall receive no compensation for services and shall not be required to take the regular examination required of inspectors-at-large and local inspectors;

(h) To make, adopt, issue and publish from time to time, and enforce general rules and regulations governing the grading, packing, and the size and dimensions of commercial containers of apples and other fruit.

(i) To formulate, promulgate and enforce regulations fixing commercial grades of vegetables, and providing for the inspection of the same for either market or seed purposes, and furnishing of certificates of inspection;

(j) To declare, promulgate and enforce quarantine measures for the protection of any agricultural crop, forest trees, forest products or other products not otherwise protected by law against the ravages of destructive or injurious insects or diseases. To adopt, promulgate and enforce rules and regulations for the inspection, grading and certification of growing crops of agricultural or vegetable seed grown in this state and to inspect, grade and certify the same at the request of the grower and to fix and collect fees for such inspection, grading and certification and to pay the fees so collected into the state treasury;

The commissioner of agriculture, and under his direction and control the assistant commissioner and the horticultural inspectors, shall have the power and it shall be their duty:

(a) To enforce the provisions of this act and all laws relating to horticultural interests.

(b) To inspect orchards, vineyards, berry farms, vegetable farms, nurseries, fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, fruits, vegetables, nursery stock and horticultural supplies, and packing houses, dry-houses, warehouses, storerooms, depots, docks, cars, vessels and other places where fruits, vegetables or nursery stock are packed, stored, shipped, or held for shipment or delivery or offered for sale, and other property liable to be infected with any disease or pest injurious to horticulture, and to require the disinfection of all such property and premises found to be infected and for that purpose shall have free access to such property and premises at all times.

(c) To inspect and examine orchards, vineyards, nurseries, berry farms, vegetable farms, fruits, vegetables, nursery stock and all other horticultural plants and products, at the request of the owner thereof for the purpose of discovering the existence of any disease or pest, and to report to the applicant the result of such investigation and prescribe proper remedies;

(d) To disinfect orchards, vineyards, berry farms, nurseries, fruit trees, vines and bushes, ornamental trees and shrubbery, horticultural plants, fruits, vegetables and nursery stock and packing houses, dry-houses, warehouses, storerooms, depots, docks, cars, vessels and other places where

nursery stock, fruits, or vegetables are packed, stored or shipped or held for shipment or delivery, or offered for sale, in case the owner or person having the same in charge shall neglect or refuse so to do, after notice; and in case any infected fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, fruits, vegetables or nursery stock cannot be successfully disinfected to condemn and destroy the same or cause the same to be destroyed.

(e) To require all partially infected fruit, vegetable and nursery stock shipments to be sorted and repacked and, in case the owner or person having charge of the same shall neglect or refuse so to do after notice, to condemn and destroy the same, together with all dead nursery stock: Provided, that no inspector shall destroy more than ten per cent of any variety of nursery stock in any lot or shipment of fifty or more trees, vines or shrubs without five days' notice to the shipper, during which time the owner or shipper shall have the right to apply to the chief officer of the division of horticulture.

(f) To issue certificates of inspection to license nurserymen and dealers in nursery stock, on stock inspected and approved. [L. '21, p. 509, § 2. Cf. L. '19, p. 659, § 1; L. '15, p. 495, § 2.]

See *infra*, § 10841, duties of division of horticulture.

See *infra*, § 10843, supervisor of division of horticulture.

See *infra*, § 10847, duties devolve upon director of agriculture.

§ 2841. [3082-3.*] Inspectors — Assignment — Appointment — Salary and Expenses.

Inspectors-at-large may be assigned to duty in one or more counties and transferred from one county to another in the discretion of the commissioner, and their salaries, compensation and actual and necessary traveling expenses shall be paid by warrants drawn upon the state treasurer by the state auditor upon vouchers signed and verified under oath by such inspectors and countersigned by the commissioner or the assistant commissioner. In addition to inspectors-at-large the commissioner shall, whenever the board of county commissioners of any county by resolution request it, appoint such number of local inspectors and for such length of time as such resolution shall specify and assign them to duty in such county. The salaries as fixed by the county commissioners and actual and necessary traveling expenses, within the county, of all local inspectors shall be paid out of the current expense fund of their respective counties upon vouchers signed and verified under oath by such inspectors and approved by the commissioner or the assistant commissioner, and ordered paid by the county commissioners, and the county auditor shall issue warrants therefor upon the said county fund. All local inspectors shall be under the direction and control of the commissioner of agriculture and the assistant commissioner. In case any inspector is dismissed from the service or transferred to another place, or to other duties, any qualified inspector or officer of the agricultural department may continue or complete any work or perform any duty initiated by such dismissed or transferred officer. [L. '21, p. 512, § 3. Cf. L. '15, p. 498, § 3.]

See *infra*, § 10843, appointment of inspectors by supervisor.

§ 2842. [3082-4.] Pests and Diseases—Disinfection.

It shall be the duty of every person owning, leasing or occupying any land or premises on which there is or shall be growing, grown or situate any nursery stock, fruit trees, vines or bushes, shade trees, ornamental trees or shrubbery, or any horticultural plants, and of the owner or lessee of any such nursery stock, trees, fruit trees, vines, bushes, shrubbery or plants growing or situate on premises leased or occupied by him, and of the owner of any such nursery stock, trees, fruit trees, vines, bushes, shrubbery or plants growing, situate or being at any place within the state of Washington, for sale or delivery, and of every grower, shipper, commission merchant, consignee, dealer in and person in charge of any nursery stock, fruit or vegetables about to be shipped, or shipped, or held for delivery or offered for sale, to take and use sufficient methods and means for the prevention of infection by all pests and diseases to which such nursery stock, trees, fruit trees, vines, bushes, shrubbery, plants, fruits or vegetables may be subject, and to keep the same from disease and pests, and, in event it is found that any such nursery stock, trees, fruit trees, vines, bushes, shrubbery, plants, fruits or vegetables are infected with any disease or pest, to promptly take and use effective means to control, cure, remove, eradicate and disinfect for the same, and in case such nursery stock, trees, fruit trees, vines, bushes, shrubbery, plants, fruits or vegetables cannot be successfully disinfected, to promptly destroy the same, and it shall be the duty of every owner and of the lessee of any premises upon which there are growing any infected fruit, fruit trees, shade or ornamental trees, vines or bushes, to thoroughly spray the same with a proper solution or emulsion or otherwise disinfect the same for the control, cure or removal of such infection. [L. '15, p. 499, § 4.]

See supra, §§ 2780—2787, pests and diseases of trees and plants and quarantine against infected stock.

Validity of statute providing for destruction of diseased fruit trees, fruit or vegetables. **Ann. Cas.** 1917E, 220.

Validity of statute providing for extermination of insect pests. **Ann. Cas.** 1913A, 412.

§ 2843. [3082-5.*] Pests Specified—Method of Eradication.

The pests injurious to and diseases of nursery stock, fruit trees, shade trees, ornamental trees and shrubbery, horticultural plants, fruit and vegetables to be guarded against, controlled, treated, removed, eradicated and disinfected for, as in the next preceding section provided, shall be all bacterial diseases, including fire blight of apple, pear and quince, crown gall or root gall, and hairy root; all fungus diseases, including black spot canker, pear scab, apple scab, apple powdery mildew, peach leaf curl, peach mildew, brown rot of peach, cherry and prune, chestnut blight, potato wart, powdery scab of potato and peach twig blight; all insect pests, including chewing insects, such as bud moth, peach twig borer, caterpillars, pear slug, flat headed borer, round headed borer, imported cabbage worm, potato tuber moth, potato nematode or eel worm, Mediterranean fruit fly, lesser apple worm, tussock moth, gypsy moth, brown tail moth, codling moth, fruit tree leaf roller, and the larva of any thereof, and sucking insects, such as San Jose scale, scurfy scale,

oyster-shell bark louse, aphids, pear leaf blistermites and red spider; and such other bacterial and fungus diseases and insects pests as may be identified by science and specified and described as injurious to horticulture in the circulars to be issued from time to time by the commissioner of agriculture.

The methods and means required to be used for the prevention, control, removal, eradication and cure of the diseases and pests above specified, shall be as follows: For bacterial diseases, eradication by the removal and destruction of the infected plant or part thereof, care being taken to disinfect all tools used in such removal to prevent the spread of the infection or by any other methods that shall have been approved by the insecticide and fungicide board; for fungus diseases, control or cure by spraying with effective fungicides, such as bordeaux solution, lime-sulphur solution, sulphide of iron or other effective fungicides; for chewing insect pests, control or removal by spraying with effective insecticides, such as arsenate of lead solution and arsenite of zinc solution; for sucking insect pests, control or removal by spraying with effective insecticides, such as lime-sulphur solution, crude oil emulsion, tobacco solution, distillate oil emulsion, kerosene emulsion, soap solution, and sulphur solution, or combinations thereof; and for fungus and insect pests, control, cure or removal by spraying with such other effective solutions and emulsions as may be discovered by science and specified and described in the circulars issued by the commissioner of agriculture. [L. '21, p. 513, § 4. Cf. L. '15, p. 499, § 5.]

§ 2844. [3082-6.] Insecticide and Fungicide Board—Duties.

There is hereby created a board to be known as the state insecticide and fungicide board, which board shall consist of the commissioner of agriculture or the assistant commissioner, the director of the agricultural experiment station at Pullman and three members of the agricultural experiment station to be appointed by the director, one of whom shall be an entomologist, one a plant pathologist and one a chemist. It shall be the duty of the said board to analyze and report upon any insecticides and fungicides offered for sale to be used in the control and removal of insect pests and fungus and bacterial diseases to which horticultural plants are subject. It shall be the duty of all horticultural inspectors to from time to time procure and submit to such board samples of such insecticides and fungicides offered for sale. [L. '15, p. 501, § 6.]

§ 2845. [3082-7.*] Insecticides and Fungicides, Adulteration Prohibited—Labels.

It shall be unlawful for any person to offer for sale in the state of Washington any horticultural insecticide or fungicide which is adulterated or misbranded within the meaning of this act. The term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any insects which may infest vegetation. The term "paris green" as used in this act shall include the product sold in commerce as paris green and chemically known as the aceto-arsenite of copper. The term

“lead arsenate” as used in this act shall include the product or products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. That the term “fungicide” as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infect vegetation or be present in any environment whatsoever.

It shall be unlawful for any manufacturer, firm, corporation or person to sell, offer or expose for sale in this state, any insecticide, fungicide, or any materials to be used for preventing, destroying, repelling or mitigating insects, fungi, bacteria or other plant pests, unless such material shall have affixed to each and every package or container, in a conspicuous place on the outside thereof, a plainly printed statement as follows:

- (1) The name, brand or trademark under which it is sold.
- (2) The purpose for which it is to be used.
- (3) Direction for its application.
- (4) The name and principal address of the manufacturer or person responsible for placing the commodity on the market.
- (5) The net weight of the contents of the package.
- (6) The correct statement of the character and name of each insecticidal or fungicidal ingredient used and the minimum per centum of such active ingredients and the maximum per centum of the inert ingredients contained in the package. [L. '19, p. 662, § 2. Cf. L. '15, p. 501, § 7.]

§ 2846. [3082-8.] Adulterations—Misbranding.

That for the purpose of this act an article shall be deemed to be adulterated—

In the case of paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble form equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxid (As_2O_5); third, if it contains arsenic in water-soluble form equivalent to more than seventy-five one-hundredths per centum or arsenic oxid (As_2O_5); fourth, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength; Provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

In the case of insecticides or fungicides, other than paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects, shall be injurious to such vegetation when used.

That the term "misbranded" as used herein shall apply to all insecticides, paris green, lead arsenates, or fungicides, or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design, or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to all insecticides, paris greens, lead arsenates, or fungicides which are falsely branded as to the state, territory, or country in which they are manufactured or produced.

That for the purpose of this act an article shall be deemed to be misbranded—

In the case of insecticides, paris greens, lead arsenates, and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure they are not plainly and correctly stated on the outside of the package.

In the case of insecticides (other than paris greens and lead arsenates) and fungicides: First, if it contains arsenic in any of its combinations or in the elemental form and the total amount or arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel, or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label: Provided, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient the producer may at his discretion state plainly upon the label the correct names and percentage amounts of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present. [L. '15, p. 502, § 8.]

"Act" refers to this chapter.

§ 2847. [3082-9.] Right of Inspection.

The commissioner of agriculture, the assistant commissioner and all horticultural inspectors are authorized and empowered to at any time enter upon any premises where any nursery, orchard, vineyard, berry farm or vegetable farm is situate or whereon any nursery stock, fruit trees, shade trees, ornamental trees or shrubbery or horticultural plants are growing, or upon any premises or into any building, packing house, dry-house, warehouses, storeroom, depot, dock, car, vessel, or other place wherein any nursery stock, fruits, vegetables, or horticultural products are situate, being prepared or packed for shipment, stored, shipped, held for shipment or for delivery upon any shipment or sale, or offered for sale

for the purpose of examining and inspecting such premises or property to ascertain whether the same or any thereof are infected, and it shall be unlawful for any person to hinder or prevent or to attempt to hinder or prevent any such officer from entering such premises or inspecting such premises or property or performing any duty required by this act. [L. '15, p. 504, § 9.]

§ 2848. [3082-10.*] Infected Premises—Notice—Shipments—Manufacture.

In case the officer making the inspection provided for in the preceding section shall find that the premises or property inspected is infected, he shall condemn the same and serve upon the owner or upon the person having possession or charge of said premises or of said property a notice in writing that the same is condemned and ordering the disinfection of any and all thereof which is capable of disinfection and the destruction of such property as is incapable of disinfection, which notice shall describe the premises or property ordered to be disinfected or destroyed with reasonable certainty and shall specify the time within which the same shall be so disinfected or destroyed; and shall give notice that unless the premises or property ordered disinfected or destroyed is disinfected or destroyed as directed, in the manner and within the time specified in said notice, the same will be done by the officer giving the notice and the expense thereof charged against the premises and the owner of said premises or property. In case said premises or property is in the possession or charge of any person upon whom service can be made, the officer making the inspection shall serve a copy of such notice upon such person and, in case the premises or property is in possession or charge of any other person than the owner thereof, or service cannot be had upon any person in possession or charge thereof, the officer shall serve said notice upon the owner of said premises or property by mailing or telegraphing him a copy thereof, if his home or postoffice address are known to the officer or can with reasonable diligence be ascertained. In case personal service of said notice cannot be had upon any person in possession or charge of said premises or property and the name and address of the owner of such premises or property are not known and cannot with reasonable diligence be ascertained, said notice shall be served by posting the same in a conspicuous place upon the premises where the property to be disinfected or destroyed is situated, as the case may be. In case the name and postoffice address of the owner are not known and cannot with reasonable diligence be ascertained and in the absence of fraud and gross neglect, service of such notice upon the person in possession or charge of said premises or property shall be construed to be substituted personal service upon the owner, and, in case service of such notice upon a person in possession or charge of such premises or property cannot be had and the name and postoffice address of the owner is not known and cannot with reasonable diligence be ascertained and in the absence of fraud and gross neglect, such posting of the notice upon the premises shall be construed to be constructive personal service upon the owner of such premises or property. Upon the giving of such notice as hereinabove provided it shall become and be the duty of the owner and person having possession or charge of

the premises or property described in the notice to, within the time specified in said notice, disinfect said premises or disinfect or destroy said property, as the case may be: Provided, that in the case of nursery stock, fruit or vegetables about to be shipped or any shipment thereof, or which is offered for sale, or held for the purpose of delivery upon any shipment or sale thereof, if the officer making the inspection shall find that only a part thereof is so affected that it cannot be successfully disinfected, he shall state in such notice that the owner or person in charge thereof has the privilege of separating the same into two or more of the following classes, to wit, such as does not need disinfection, such as can be successfully disinfected, and such as cannot be successfully disinfected, and in such cases it shall be the duty of the owner and person in charge of such property to, within the time specified in said notice, disinfect such nursery stock, fruit or vegetables as can be successfully disinfected and destroy such as cannot be successfully disinfected: And provided, further, that in the case of fruit or vegetables that cannot be successfully disinfected the inspector may grant the owner or person in charge thereof the privilege of manufacturing the same into by-products or of shipping the same to a by-product factory and issue a permit in writing so to do, and in such case it shall be unlawful for the person receiving such permit to sell or dispose of such infected fruit without having first manufactured the same into a by-product or shipped the same to a by-product factory, or to divert any such shipment when made, and it shall be unlawful for the consignee of any fruit or vegetables shipped to a by-product factory, to sell or dispose of the same without first manufacturing it into a by-product. It shall be unlawful for any person to ship, deliver, sell, barter, give away or otherwise dispose of or part with the possession of, or for any common carrier to transport, any nursery stock, fruit or vegetable which has been found infected and condemned until all of the requirements of said notice and order have been complied with, and permission given in writing so to do by an inspector. [L. '19, p. 663, § 21½. Cf. L. '15, p. 504, § 10.]

See *supra*, §§ 2781, 2782, quarantine as to trees and plants.

§ 2849. [3082-11.] Disinfection or Destruction by Inspector.

In case the owner or person in charge of any premises or property required to be disinfected or destroyed as in the previous section provided, shall fail or neglect to comply with the notice within the time specified therein, the officer giving the notice shall have the right and it shall be his duty to enter upon the premises to be disinfected or where the personal property required to be disinfected or destroyed is situated and perform the acts required in such notice, or cause the same to be performed at the cost and expense of the owner of such premises or property as the case may be. The officer shall keep an accurate account of such cost and expense and the same shall be a lien upon the premises or personal property so disinfected, which lien may be enforced by the methods hereinafter provided. The liens in this section provided for shall in the case of personal property have precedence over all other liens. [L. '15, p. 506, § 11.]

§ 2850. [3082-12.] Impounding for Expenses—Notice and Sale—Actions—Records.

The officer disinfecting any personal property may, in case the owner or person in charge shall not pay such cost and expense, impound and sell such property to enforce the lien of the state and collect such cost and expense. The officer impounding personal property as above provided shall give notice in writing that the property is impounded which notice shall describe the property with reasonable certainty, state where the same is impounded, specify the amount of costs and expense charged against it and state that unless the charges are paid within a time specified in said notice the property will be sold to satisfy the charges against it and the transportation and storage charges accrued, if any, and the cost of making the sale. The officer giving such notice shall post it in a conspicuous place upon the premises where such property is impounded and serve the same upon the owner or upon the person in possession or charge of such impounded property in like manner with like effect as hereinabove in this act provided for service of notice to disinfect. The time within which a sale shall be had after the giving of the notice shall not be less than ten days, provided that in the case of perishable fruits or vegetables, the same may be had immediately. Sales may be either at public auction or private sale as in the sound discretion of the officer may be for the best interest of the state and the owner of the property to be sold. The proceeds of any such sale shall be applied first to the payment of the cost of making the sale, second to the payment of the cost and expense of disinfection and third to the payment of accrued transportation and storage charges, if any, and the balance, if any, shall be paid the owner or person in charge of the property sold, upon demand. In case the proceeds of such sale be not sufficient to pay the cost of making the sale, and the cost and expense of disinfection, the deficiency may be recovered from the owner of the property disinfected in an action at law in the name of the state on the relation of the commissioner of agriculture, and the prosecuting attorney of the county where the property was disinfected shall, when directed so to do by the attorney general, bring such action for the recovery of such deficiency. The officer making such sale shall make and keep a full and detailed record of all acts done by him with reference to such property, stating the name of the owner or reputed owner of such property when known, the location thereof, the date of inspection, the facts found upon inspection, the date and manner of giving the notice to disinfect, the failure of the owner or person in charge to disinfect, the disinfection by or under the direction of the officer, the cost and expense thereof in detail, the date and manner of giving the notice of impounding and sale, the date, place and manner of sale, the name of the person to whom the property was sold, the amount of the proceeds of the same and the disposition made thereof, which record shall be signed by the officer making the same. Upon demand of the owner or person in charge of such property, the officer making the sale shall furnish him with a copy of such record verified under oath, and shall tender him the balance of said proceeds. If no demand is made upon the officer making such sale within thirty days from the date of sale, or in case the

balance of said proceeds is not accepted when tendered, the officer shall file a verified copy of such record with and remit the balance of the proceeds of such sale to the commissioner of agriculture, who shall retain the same for a period of six months subject to the order of the owner of the property sold, and if at the end of six months such proceeds be not claimed and accepted by the owner or his order, the same shall be turned into the state treasury. The record required to be kept as hereinabove provided and the verified copy thereof shall be prima facie proof of the truth of the facts therein stated in any court in any action or proceeding where proof of such facts is competent. [L. '15, p. 507, § 12.]

§ 2851. [3082-13.*] Levy of Horticultural Tax—Collection.

It shall be the duty of the board of county commissioners of each county at the time of making the regular annual tax levy in each year to include a tax upon the taxable property of such county in such an amount as they shall find will produce funds sufficient to meet the expense of inspecting and disinfecting orchards, vineyards, berry farms, vegetable farms, nurseries, fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, and packing houses, warehouses, dry-houses, storerooms, depots, docks and other places where fruits, vegetables or nursery stock are packed, stored, shipped or held for shipment or delivery or offered for sale within said county, which shall be inspected or disinfected by or under the direction of an inspector, which tax shall be known as the "Horticultural tax." In estimating the amount to be levied for such horticultural tax, the county commissioners shall take into consideration the expense of inspecting and disinfecting the above mentioned property within said county for the ensuing year and the amount that will be collected from levies on property disinfected as in this act provided. The horticultural tax shall be levied and collected in the same manner as other general taxes and when collected shall, together with all sums collected by local inspectors for inspecting, and inspecting and disinfecting, such property within the county, be placed in the current expense fund of said county. Until the collection by any county of the taxes to be levied under the provisions of this section at the next annual tax levy after the taking effect of this act, the county commissioners of such county are authorized and empowered to cause to be paid, by warrants drawn upon the current expense fund of such county, all expenses for inspecting and disinfecting premises or property within said county properly chargeable to such county under the provisions of this act, and all expenditures made from and warrants drawn upon the current expense fund of any county by order of the board of county commissioners of such county, subsequent to the repeal of section 3133 of Rem. & Bal. Code and prior to the passage of this act for the purpose of paying the cost and expenses of inspecting or disinfecting the premises or property in such county as provided in this act, are hereby validated. [L. '19, p. 666, § 3. Cf. L. '15, p. 509, § 13.]

This "act" refers to this chapter.

The remedy of the state against a county which made no levy or assessment is by mandamus to compel the levy of the tax and not by action to recover a

money judgment for the amount charged to and due from the county: *State v. Asotin County*, 79 Wash. 634, 140 Pac. 914.

§ 2852. [3082-14.*] Recovery of Disinfection Expenses—Lien for Costs—Notice—Enforcement.

The cost and expense of disinfecting any nursery, orchard, berry farm, vineyard or vegetable farm, or any nursery stock fruit trees, vines or bushes, shade trees, ornamental trees or shrubbery or horticultural plants growing on any premises, or any packing-houses, warehouses, dry-houses, storerooms, depots, or other premises where nursery stock, fruits, vegetables or horticultural products are stored, situated or being prepared or packed for shipment or offered for sale or held for the purpose of delivery upon any shipment or sale, may be recovered as in this section provided. The officer disinfecting any premises or property growing upon any premises or causing the same to be disinfected as in this act provided shall make and keep a full and detailed record of all acts done by him with reference to such property or premises, stating the legal description of premises upon which property disinfected was growing, the name of the owner or reputed owner, the date of inspection, the facts found upon inspection, the date and manner of giving of notice to disinfect, the failure of the owner or person in charge to disinfect, the disinfection by or under the direction of the officer, and the cost and expense thereof in detail, which record shall be signed by the officer making the same. In case the cost and expense of disinfecting any premises, or the property growing thereon, are not paid within five days after the completion of the work of disinfecting, the officer making such record shall make and file with the county auditor of the county where such premises are situated two verified copies of the records of his acts with reference to such premises and the charge against the same, and shall also file a claim of lien against said premises for the amount of such charges and expenses, which said claim shall refer to said record. Upon the filing of such verified record and claim of lien the county auditor shall record the said claim of lien as other lien claims are recorded. The county auditor shall also, at the time when said record and claim are filed, forthwith issue proper warrants in payment for labor of men employed in the work and fix a day for a hearing upon the report before the board of county commissioners, which date shall not be less than twenty days from the date of said filing and shall prepare a notice of the filing of such record and claim and of the date of hearing upon the same and in all proceedings the county shall be deemed substituted to all the rights of laborers paid as herein provided. Said notice shall be directed to the owner, or reputed owner, and shall give notice of the filing of said record and claim and of the amount thereof and shall also give notice of the time and place when and where the board of county commissioners will hear and determine the same. The county auditor shall deliver said notice, together with a copy thereof, to the sheriff of the county in which said claim is filed and the sheriff shall make service thereof in like manner and with like effect as herein provided for the service of notice to disinfect and shall make return of such service upon the original notice and file the same with the county auditor before the time of hearing of the same, and he shall also certify with said return the amount of his fees for such service, which shall be the same as is provided for service of summons in civil proceedings. In

case the amount of said claim, together with the amount of sheriff's fees and auditor's fees, which shall be the same as is charged for the filing and recording of other liens, is paid to the county treasurer on or before the date of said hearing before said board of county commissioners, the auditor shall, upon the presentation to him of a duplicate receipt of said treasurer for the amount above specified, cancel the said lien in the records of his office and notify the board of county commissioners of his action in the premises. The county treasurer shall disburse the fund received by him as above provided to the parties entitled to receive the same according to the record as shown in the office of the county auditor. In case the amount of said claim, together with costs as above provided, is not paid at or before the time of the hearing before the board of county commissioners, the county auditor shall present a verified copy of said claim and record to the said board, which shall proceed with the hearing upon the same and shall, if offered, hear sworn testimony concerning the matter set forth in said record and claim. The record required to be kept by the officer disinfecting, as hereinabove provided, and the verified copy thereof filed with the county auditor, shall be prima facie proof of the facts therein stated in any proceedings before the board of county commissioners and in any court in any action or proceeding where proof of such facts is competent or the validity of such charges or any tax levied therefor is questioned. After the hearing as herein provided for, the county commissioners shall make an order fixing the amount of such claim and costs and shall order the amount so fixed paid out of the current expense fund of said county, and the auditor shall draw warrants for the payment of such claim as fixed by the county commissioners. The said order of said board fixing the amount of said claim and costs shall be recorded by the county auditor as are other lien claims and shall stand as a lien in favor of said county against the premises therein described until canceled as herein provided. In case the amount of said lien, together with interest thereon at the rate of six per cent per annum from the date of said order of said board of county commissioners, is paid to the county treasurer of said county on or before the first Monday in October following the date of said order and a duplicate receipt therefor of said treasurer is presented to said county auditor, the county auditor shall cancel said claim of lien in the records of his office. Payment to the county treasurer as above set forth shall be made by presenting to said treasurer a statement over the signature of the county auditor of the amount due upon said claim together with the amount of money shown by said statement to be due. Upon said payment being so made the treasurer shall stamp said statement as paid, showing the date of said payment, and shall file said statement so stamped in the records of his office; he shall also issue a duplicate receipt for said payment and shall deliver one of said receipts to the party making payment and immediately transmit one of said receipts to the county auditor. In case the amount of said claim and costs, together with interest at the rate of six per cent per annum from the date of said order of said board of county commissioners, is not paid as hereinabove provided, on or before the first Monday in October following the date of said order, the board of county commis-

sioners shall, at the regular meeting for the levy of taxes in the month of October following the date of said order, make an order that the amount of such claim, costs and interests, together with a penalty of six per cent thereon, shall be a tax on the premises described in said claim and collected as other taxes are collected and said last named amount shall be added to the amount of taxes levied against said premises for current expenses. Upon the making of said order the county auditor shall mark the recorded order of said board fixing the amount of said claim of lien "canceled and amount hereof charged as taxes against the property." Upon the collection of said tax by the county treasurer the same shall be credited to the current expense fund of the county, to be used for the expenses of horticultural inspection. [L. '21, p. 515, § 5. Cf. L. '15, p. 510, § 14.]

This "act" refers to this chapter.

§ 2853. [3082-15.] Importation of Infected Fruit.

It shall be unlawful for any person to import into this state, sell, barter, or otherwise dispose of or offer for sale or have in his possession for the purpose of sale or barter any fruit which is or has been infected with peach mildew, peach-twigg borer, San Jose scale or other insect pests or the larvae of the codling moth or peach-twigg borer, and the fact that any fruit bears the mark of any such scale insect or is worm eaten by any such larvae, shall be conclusive evidence that the fruit is infected, within the meaning of this section: Provided, that nothing in this section shall be construed to prevent the grower of such infected fruit grown within the state of Washington from manufacturing the same into a by-product or selling and shipping the same to a by-product factory. [L. '15, p. 513, § 15.]

§ 2854. [3082-16.*] Fruit Boxes, How Marked—Misuse of Labels.

It shall be the duty of every person growing or packing and selling, offering for sale or shipping in closed boxes or packages, any fruit grown in this state, to plainly mark the same on the outside of the box or package with the name of the variety contained therein or with the words "variety unknown," the name of the place of locality where grown and the name of the grower, or in case of sale or shipment through an association or organization of growers, the name of such association or organization and the lot number of the grower, and, in case of apples, pears or peaches, the net weight or the number contained in the package, and the grade of apples or pears, and it shall be unlawful for any person to mark or place upon any such package the name of any other place or locality than the place where such fruit was grown, except the place to which shipped or to falsely mark any such package as to variety, name of grower, association or organization or place where grown, or to obliterate or change the original marks on any such package or to re-mark the same with the name of any other grower or of any other place than that by or in which the contents were grown, or in case such package is marked with the name of an association or organization of growers to re-mark the same with the name of any other association or organization,

and it shall be unlawful for any person having in his possession for sale or offering for sale or selling any fruit grown in this state and shipped in closed packages, to repack the same in the boxes or packages of any other grower or shipper or from any other place, or to sell or offer for sale in closed packages, or to pack in or offer for sale any marked box or package any fruit other than that originally contained or shipped therein.

In addition to the marks required to be placed upon any closed package of fruit grown in this state, as hereinabove provided, the grower thereof or association or organization of growers packing the same may mark upon the outside of such package the grade of the fruit contained therein, either as "First Grade," "Grade No. 1," or "Extra Fancy"; "Second Grade," "Grade No. 2," or "Fancy"; "Third Grade," "Grade No. 3," or "C-Grade"; and "Orchard Run," or such other designation as will indicate first, second or third quality of fruit and "Washington Standard Pack," according to the obligatory grading rules and regulations, issued, published and adopted by the commissioner of agriculture, and it shall be unlawful for any other person to re-mark any such closed package to a higher or superior grade than that originally marked by the grower thereof or association or organization packing the same, or for any person other than the grower or association or organization packing such fruit grown in this state to place upon any such closed package not marked with the grade of the contents thereof any mark or brand indicating the grade of such contents: Provided, that nothing in this section shall be construed to apply to canned or dried fruit. [L. '21, p. 519, § 6. Cf. L. '15, p. 514, § 16.]

§ 2855. [3082-17.*] Grades and Marks — Unlawful Sales — Publication of Regulations.

It shall be unlawful for any grower thereof or association or organization of growers packing apples, or other fruit to mark the package with the grade of the contents, or for any person to ship, sell, barter, or otherwise dispose of or offer for sale, or have in his possession for the purpose of sale, any package of apples, or other fruit, grown and packed within the state of Washington unless such contents shall comply with the general obligatory rules and regulations made, adopted and published from time to time by the commissioner of agriculture, which general obligatory rules and regulations shall define and establish the standard for the grades.

It shall be unlawful (1) to mark or place upon any package of vegetables the name of any other place or locality than the place where the same were grown, except the place to which shipped; or to falsely mark any such package as to variety, name of grower, or place where grown, or to represent for purposes of sale that said vegetables were grown in any locality other than that in which they were actually grown, or by any other person than the person by whom they were actually grown; (2) to mark, brand, advertise, offer for sale, or sell, any vegetables as graded according to, or by the name of any of the grades promulgated by the commissioner of agriculture unless they conform to such grades; (3) to mark, brand, advertise, offer for sale or sell any vegetables by the name of any grade that imitates or ap-

proaches the name of any of the grades promulgated by the commissioner of agriculture; or (4) to have in his possession any packages or vegetables thus misbranded;

But it shall not be unlawful to sell vegetables as ungraded, or as graded according to other standards than those adopted by the commissioner of agriculture, provided the name of such other grades or standards does not closely resemble or imitate the name of any of the said official grades.

The general obligatory rules and regulations shall be adopted, issued and published within thirty days after the taking effect of this act and the commissioner of agriculture is authorized and directed to in the month of December of each year, make, adopt, issue and publish general obligatory rules and regulations governing the packing of apples, other fruit or vegetables and establishing and defining the grades thereof for the ensuing calendar year and in adopting the same the commissioner is authorized to consult and advise with fruit or vegetable growers, the officers of associations or organizations of apple, other fruit or vegetable growers or distributors or dealers in apples, other fruit or vegetables. Before making the obligatory rules and regulations for which provision is made in this section, the commissioner of agriculture shall provide for a public hearing of horticulturalists, or vegetable growers, thereon, notice of which shall be given by mail to every horticultural society, growers' association or marketing organization which shall have filed with him a notice of its existence thirty days before the date of any such hearing, and which shall be a resident of the state of Washington. For the conducting of such hearing the commissioner of agriculture may prescribe all necessary reasonable rules, but said rules must be such as to insure a fair, full and impartial opportunity for all interested districts to be heard. In establishing the grading obligatory rules herein mentioned the commissioner of agriculture shall base them on the necessities and properties as shown in said hearing, taking into consideration the tonnage of commercial fruit in each district of the state affected by the grading obligatory rules to be established; said rules and regulations so established to become obligatory rules and regulations and be given the same force and effect as though enacted by the legislature of the state of Washington, said obligatory rules and regulations to become effective upon being adopted and promulgated by the commissioner of agriculture. [L. '21, p. 521, § 7. Cf. L. '15, p. 515, § 17.]

§ 2856. [3082-18.*] Destruction of Infected Parts of Trees, etc.

It shall be the duty of every person within forty-eight hours after removing any cuttings or prunings from bacterially infected trees or plants infected with fruit tree leaf-roller egg clusters to destroy or disinfect the same by burning or scorching. [L. '21, p. 523, § 8. Cf. L. '15, p. 516, § 18.]

§ 2857. [3082-19.] Disinfection of Trees, etc., on Public Property.

It shall be the duty of the proper state officials, of the board of county commissioners of each county, of the mayor and council or other governing officials of each city and town and of the officers of each

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irrigation district and school district to, in compliance with the provisions of this act, cause the disinfecting of all infected trees and shrubbery growing upon the public highways, grounds, canals or other public property of such state, county, city, town or district, and such county commissioners and municipal officers are hereby authorized to expend the funds of such county or municipal corporation in carrying out the provisions of this section, and in case of the failure or neglect of any of the aforesaid officers to comply with this section, compliance therewith may be compelled by writ of mandate sued out in a superior court of competent jurisdiction in an action begun in the name of the state upon the relation of the commissioner of agriculture. [L. '15, p. 516, § 19.]

§ 2858. [3082-20.] Nursery Stock—Dealer's Licenses—Fees.

It shall be unlawful for any person, firm or corporation to engage in, conduct or carry on the business of selling, dealing in or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman or solicitor for any nurseryman or dealer in nursery stock or to solicit orders for the purchase of nursery stock, without first having obtained from the commissioner of agriculture and having in force a license so to do, and it shall be unlawful for any person to falsely represent that he is the agent, salesman, solicitor or representative of any nurseryman or dealer in nursery stock. No license shall issue until the applicant therefor shall have paid the fee and furnished the bond, as in this act required. The license fee shall be five dollars for nurserymen and dealers in nursery stock and one dollar for agents, salesmen and solicitors. All licenses shall be in the name of the person, firm or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by the agent, salesman or solicitor licensed, and no license shall be issued to any agent, salesman or solicitor unless the nurseryman or dealer represented shall be licensed. All licenses shall bear the date of issue and shall expire on the first day of July next following the date of issue: Provided, that all licenses in force at the time of the taking effect of this act shall continue in force during the term for which they were issued, unless sooner revoked, and any holder of such license applying for a license under this act prior to the first day of July next following the expiration of his former license, shall be required to pay therefor only the proportional part of the fee required for an annual license for the remaining portion of the year until the first day of July next following. [L. '15, p. 517, § 20.]

§ 2859. [3082-21.] Dealer's Bond—Renewal of Licenses—Suspension.

Every nurseryman or dealer in nursery stock, applying for a license under this act shall make, execute and file with the commissioner of agriculture a bond running to the state of Washington, in the sum of one thousand dollars with surety or sureties to be approved by the commissioner, conditioned for the faithful compliance by the applicant with all of the provisions of this act and the laws of the state of Washington relating to the sale, disposition, delivery, inspection and disinfect-

tion of nursery stock grown, dealt in, imported, sold, handled or delivered by him during the term of the license applied for and the term or terms of any renewal of the same, and conditioned further that all nursery stock sold or delivered by him during said term or terms shall be true to name, age, and variety as represented, and free from the diseases and pests required to be guarded against by this act.

Every licensed nurseryman or dealer in nursery stock who shall have complied with the provisions of this section shall be entitled, upon the expiration of his license or any renewal thereof, by the payment of the fee of five dollars on or before the date of the expiration of his license or any renewal thereof, to have his license renewed for the ensuing year ending July 1st, by the giving of a bond as herein specified.

The cancellation or revocation of, or the withdrawal of the sureties from, any bond filed in accordance with the provisions of this section, shall ipso facto work a suspension of the license of the principal of said bond and the license of all agents, salesmen and solicitors employed by and representing him, until such time as such principal shall furnish a new bond to be approved by the commissioner of agriculture. [L. '15, p. 518, § 21.]

§ 2860. [3082-22.] Complaints Against Licensees—Notice — Hearings — Appeals.

Upon complaint in writing, verified under oath by the complainant, being made to the commissioner of agriculture, that the holder of any license in this act provided for has violated or failed to comply with the provisions of this act or the laws of the state of Washington relating to horticulture, the commissioner, if in his judgment the complaint justifies a hearing thereon, shall serve upon the holder of such license by registered mail, a copy of such complaint and a notice of the time and place of hearing the same, which hearing shall not be less than ten nor more than thirty days from the date of mailing said notice, and shall be at such place to be determined by the commissioner, as shall be most convenient to all the parties to the hearing: Provided, in case the nursery and principal place of business is within this state then hearing shall take place in the county where the nursery or principal place of business is located for the attendance of witnesses.

The complainant and the person complained of shall have compulsory process to compel the attendance of witnesses at such hearing, to be issued by the commissioner. Hearings may be held by the commissioner in person or by the assistant who shall report in writing a synopsis of the testimony taken and his findings thereon to the commissioner for his decision. If upon such hearing or report it shall appear to the satisfaction of the commissioner that the person complained of has violated or is violating or failing to comply with the provisions of this act or the laws of the state of Washington relating to horticulture, he may revoke the license of such person, and no new license shall issue to such person until it shall be made to appear to the satisfaction of the commissioner that the cause of the complaint has been removed.

From the decision of the commissioner revoking a license, or refusing to issue a new license, an appeal shall lie to the superior court of the county where the hearing shall have been held. [L. '15, p. 518, § 22.]

§ 2861. [3082-23.] Sales—Fraud—Liability on Bond.

It shall be unlawful for any person to deceive or defraud any person on the sale of any nursery stock by substituting inferior or different varieties from those ordered, or to willfully or intentionally bring into this state or to offer for sale or distribution within this state or to ship, sell or deliver upon any sale any nursery stock that is infected, and in case of any such deceit, fraud or substitution, the person, firm or corporation damaged or injured thereby shall have recourse against the bond filed by the licensed nurseryman or dealer from whom such stock has been purchased, for all damages sustained, which damages may be recovered at the suit of the party injured against the nurseryman or dealer causing the damage and the sureties on such bond in any court of competent jurisdiction. [L. '15, p. 519, § 23.]

Implied warranty on sale of nursery stock. *Ann. Cas.* 1913E, 93; 49 *L. R. A.* (N. S.) 1151.

§ 2862. [3082-24.] Sales—Duplicate Orders.

It shall be the duty of all nurserymen and dealers in nursery stock and all salesmen, solicitors and agents therefor to give to every person ordering any nursery stock a duplicate copy of such order which shall show: (a) the name of the nurseryman from whom ordered and the name of the solicitor, salesman or agent taking such order: (b) the season of the order and the date when delivery is to be made: and, (c) the number, name and price of each variety of tree or plant ordered. [L. '15, p. 520, § 24.]

§ 2863. [3082-25.] Shipments of Nursery Stock—Notice.

It shall be the duty of every person growing or dealing in nursery stock to notify the commissioner of agriculture of his, their or its intention to ship any nursery stock from one point in this state to another or from any point without the state to a point within the state for sale or delivery or for planting or propagation. Such notice shall be made in writing and in duplicate and signed by the person giving the notice and shall show the name and address of both the consignor and consignee, and the name of the person or transportation company from whom the consignee is to receive such goods and whether such nursery stock has been inspected and approved at the initial point of shipment within this state by a horticultural inspector. Said notice shall be mailed not later than the date of shipment and the duplicate thereof shall be mailed to the horticultural inspector stationed nearest to the point of consignment and all such shipments of nursery stock shall be plainly marked on the outside of the package with the words "nursery stock." A descriptive invoice of all goods shipped during the season shall be mailed to the commissioner of agriculture before the first of July following shipment. [L. '15, p. 520, § 25.]

§ 2864. [3082-26.] Inspection of Imported Stock.

In the event of the shipment into this state from any point without this state of any nursery stock by a person, firm or corporation not licensed to do business in this state as in this act provided, it shall be the duty of the purchaser or person receiving such nursery stock to have the same inspected by a horticultural inspector in the same manner as is required upon the delivery of nursery stock sold and delivered by a licensed nurseryman or dealer in nursery stock within this state and to pay an inspector's fee of ten per cent of the invoice price of such shipment, provided that the minimum fee for such inspection shall be fifty cents and the actual and necessary traveling expense of the inspector making the inspection: And provided further, that for the inspection of shipments of nursery stock shipped to nurserymen or dealers in nursery stock licensed under the provisions of this act to do business in this state, no fee shall be required. [L. '15, p. 521, § 26.]

§ 2865. [3082-27.*] Importations—Notice by Transportation Company—Demand for Inspection.

Upon the arrival at its point of destination of any nursery stock shipped into this state from another state or county or shipped from one point within this state to another, it shall be the duty of the freight agent, express agent or the agent of the persons or transportation company having such shipment in charge for delivery, unless the same is accompanied by a certificate of inspection and approval by a horticultural inspector of this state showing that the same was inspected and approved at the initial point of shipment within this state, to notify the horticultural inspector stationed nearest to the point where said shipment is received, of the receipt of such shipment, giving the names of the consignor and consignee and stating that such shipment is ready for inspection and delivery. Said notification may be by telephone or telegraph, or by written notice delivered personally to said inspector or to some person of suitable age and discretion at his residence or office, or by mail addressed to said inspector at his place of residence or at his office; and it shall be unlawful for any such agent or person having such shipment in charge to deliver the same to the consignee or to any other person until the same shall have been inspected by a horticultural inspector: Provided, however, that such agent shall not be required to hold such shipment more than forty-eight hours after notifying the inspector as aforesaid, except in case the notice is given by mail, in which event such shipment shall be held for such period beyond said forty-eight hours as is ordinarily required for the delivery of mail to the address of said inspector: And provided further, that no inspection at the point of delivery shall be necessary if the shipment is accompanied by a certificate of a horticultural inspector of this state showing inspection and approval at the initial point of shipment within this state as aforesaid, and upon the delivery of such shipment to the consignee, the agent or person making the delivery shall deliver such certificate of inspection to the consignee and retain the duplicate to show his authority for making delivery without inspection. Any nurseryman or dealer in nursery stock within this

state may demand the services of an inspector at his place of business or point of shipment during the shipping season by paying such fees as agreed upon by the commissioner of agriculture.

Upon the arrival at its point of destination of any shipment of fruit or vegetables shipped into this state from another state or country, it shall be the duty of the freight agent, express agent or agent or persons or transportation company having such shipment in charge for delivery, to notify the horticultural inspector stationed nearest to the point where said shipment is received, of the receipt of such shipment giving the names of the consignor and consignee, and upon the delivery of such shipment to the consignee or his order, the agent or person making such delivery shall demand and receive from the person to whom such shipment is delivered a receipt therefor showing the name and address of the consignee or his order and the place to which said shipment is to be removed, and shall thereupon mail said receipt to the horticultural inspector stationed nearest to the point where said shipment is received. [L. '21, p. 523, § 9. Cf. L. '15, p. 521, § 27.]

§ 2866. [3082-28.] Payment of Shipping Charges.

No inspection of shipments of nursery stock as provided in the last preceding section shall be made until all transportation charges thereon have been paid: Provided, however, that the agent or person having such shipment in charge for delivery may waive in writing the payment of such transportation charges prior to inspection, and in case the transportation charges are not paid or waived such shipment shall be held until the same are paid and inspection had. [L. '15, p. 523, § 28.]

§ 2867. [3082-29.*] Certificate of Inspection.

It shall be the duty of every horticultural inspector upon the inspection of any nursery stock, fruit or vegetables found free from disease and pests, to deliver to the owner or person in charge thereof a certificate of inspection over his signature, showing the date of inspection and stating that such nursery stock, fruit or vegetables were not infected, which certificate in case inspection be made at the initial point of shipment or at such place within a reasonable distance as requested by the shipper shall be in triplicate form and it shall be unlawful for any person to substitute for any such nursery stock, fruit or vegetables covered by said certificate, or to ship, sell or dispose of any other nursery stock, fruit or vegetables than that actually inspected and approved under such certificate of inspection; fees as fixed by the commissioner of agriculture may be charged for this inspection, the same to be collected at the time of the inspection and paid to the county treasurer of the county in which the services are rendered, and by him placed in the current expense fund of such county to be used to assist in defraying the expenses of horticultural inspection: Provided, that the inspector may issue certificates of general inspection for shipment to points within this state in addition to the regular certificate of inspection. [L. '21, p. 525, § 10. Cf. L. '15, p. 523, § 29; L. '19, p. 667, § 4.]

§ 2868. [3082-30.*] Penalty—Disposition of Fines.

Every person violating or failing to comply with the provisions of this act or any obligatory rule or regulation shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than \$50, nor more than \$500. All fines imposed under the provisions of this act shall, when collected, be paid to the treasurer of the county where imposed to be placed in the current expense fund of such county and to be used to assist in defraying the expenses of horticultural inspection. [L. '21, p. 526, § 11. Cf. L. '15, p. 523, § 30.]

§ 2869. [3082-31.*] Actions to Restrain Violations.

Whenever any person is about to or threatens to violate any provision of this act, or any obligatory rule or regulation, the commissioner of agriculture may, with the advice of the prosecuting attorney of the county where such violation is threatened or of the attorney general, begin an action in the superior court of such county in the name of the state upon the relation of such commissioner to restrain and enjoin such threatened violation, and in case such prosecuting attorney shall fail or refuse to begin such action upon the request of the commissioner, the same may be begun by or under the direction of the attorney general. In such action no bond shall be required for the issuance of a restraining order or injunction, but the state shall be liable for any damages occasioned by the unlawful suing out of such restraining order or injunction. [L. '21, p. 526, § 12. L. '15, p. 524, § 31.]

§ 2870. [3082-32.] Authority to Seize Infected Fruit, etc.

The commissioner of agriculture, the assistant commissioner and all horticultural inspectors are hereby authorized and empowered to seize and hold for use as evidence any article or thing found in the possession of or used, held for shipment, shipped, offered for sale or sold by any person in violation of any of the provisions of this act or of any law relating to horticulture, and to serve and enforce compliance with any restraining order or writ of injunction or mandate or any other writ issued by any court under the provisions of this act. [L. '15, p. 524, § 32.]

§ 2871. [3082-33.] Duty of Common Carriers to Assist Commissioner.

It shall be the duty of all clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers to render to the commissioner of agriculture and his inspectors all the assistance in their power in tracing, finding, or discovering the presence of any article named in this act. Any refusal or neglect on the part of such clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers to render such friendly aid to assist in the carrying out of the provisions of this act shall constitute a misdemeanor. [L. '15, p. 524, § 33.]

§ 2872. Inspection Authorized—Fee.

The commissioner of agriculture, assistant commissioner, and all horticultural inspectors are authorized and empowered to inspect, in-

investigate and certify to shippers and other interested parties the quality, grade and condition of fruits and vegetables and the cars in which they are loaded, such inspection and investigation to be made under such rules and regulations as the commissioner of agriculture may from time to time prescribe, including the payment of such fees as will be reasonable and as near as may be to cover the cost for the services rendered and such fee to be placed in the current expense fund of such county to be used to assist in defraying the expenses of horticultural inspection. Such certificates so issued shall be received in all courts of the state of Washington as prima facie evidence of the truth of the statements therein contained. [L. '21, p. 527, § 13.]

§ 2873. Appeals.

All questions of fact arising under this act shall be determined by the commissioner of agriculture and there shall be no appeal from his decision upon said question of fact. Either grower, horticultural society, association or marketing organization shall have the right to appeal to the superior court on questions of law. [L. '21, p. 527, § 14.]

§ 2874. Exercise of Powers and Duties Conferred.

The director of agriculture shall exercise the powers and perform the duties vested in and required to be performed by the commissioner of agriculture by this act, when such director is appointed and qualified, and assumes and exercises the duties of his office. [L. '21, p. 527, § 15.]

This "act" refers to the act amending this chapter.

CHAPTER XIII.

MARKETING OF FARM PRODUCTS.

§ 2875. Declaration of Public Interest.

The production and marketing of farm products is hereby declared to be a matter of public interest and a proper subject for investigation, encouragement, development, regulation and control by the state. [L. '17, p. 471, § 1.]

§ 2876. Director of Farm Markets—Duties and Powers.

It shall be the duty of the director to investigate and promote, in the interest of the state, economical and efficient distribution of all farm products, for this purpose co-operating to the fullest extent practicable with the United States Department of Agriculture and with other agencies of the federal government of this state and of other states, engaged in similar activities. He shall have power:

(a) To maintain a market news service by publication of bulletins and through newspapers, giving information as to prices, available supplies of different farm products, demand in local and foreign markets, freight rates, and any and all other such matters of interest to producers and consumers.

(b) To aid and assist producers and consumers in establishing economical and efficient systems and methods of distribution, in promoting more direct business relations through the organization of co-operative societies of sellers and buyers, and in every practicable way to reduce

the waste, expense and cost of marketing, that the producer may secure more adequate returns and the consumer a lower cost of food products.

(c) To investigate the methods of commission merchants and of all others who buy, sell, handle on commission or otherwise, or deal in farm products, to the end that distribution of such commodities in this manner may be efficiently and economically and honestly accomplished. In such investigation, he may hear complaints and suggestions and shall have power to visit the place of business of any individual, firm, corporation or association, and examine under oath such individuals and the officers and employees of such firms, corporations and associations for the purpose of obtaining accurate information. If the director shall find legislation necessary for the regulation of such distribution of farm products, he shall recommend to the governor not later than the fifteenth of November of each even numbered year.

(d) To investigate the feasibility of direct dealing between producers and consumers through the agency of the parcel post and the employment of mail order methods.

(e) To receive applications for farm help and for employment in farm work, assisting in bringing the job and the man together without expense to either employer or laborer, and to this end to co-operate with the authorities of the United States, the state or municipalities that may be engaged in similar work.

(f) To investigate transportation of farm products, methods, delays and charges, and advise and assist producers in relation thereto. [L. '17, p. 472, § 3.]

See *infra*, § 10848, duties devolve upon director of agriculture.

See *infra*, § 10893, director of farm marketing abolished.

§ 2877. Annual Reports.

The director shall prepare and submit to the director of the agricultural experiment station, on or before the first of December of each year a report of his department and such other facts, suggestions or recommendations as he may deem of value to the people. [L. '17, p. 473, § 4.]

§ 2878. Associations for Marketing Agricultural Products — Terms Defined.

(a) The term "agricultural products" whenever used in this act shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and farm products.

(b) The term "members" wherever used in this act shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(c) The term "association" wherever used in this act means any corporation organized under this act.

(d) The term "person" wherever used in this act shall include individuals, firms, partnerships, corporations and associations.

Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves as such, or for their members as such, but only for their members as producers.

This act shall be referred to as the "Co-operative Marketing Act."
[L. '21, p. 357, § 1.]

"Act" in this section refers to §§ 2878—2909.
See *infra*, § 2912, crop credit associations.

§ 2879. Co-operative Associations.

Five (5) or more persons engaged in the production of agricultural products may form a nonprofit, co-operative association, with or without capital stock, under the provisions of this act. [L. '21, p. 357, § 2.]

§ 2880. Purpose of Organization.

An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies, or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. [L. '21, p. 358, § 3.]

§ 2881. Director of Agriculture to Assist in Organization.

Every group of persons contemplating the organization of an association or corporation under this act shall communicate with the director of agriculture, whose duty it will be to advise with and assist them regarding the manner of organization and the preparation of the marketing contract between the corporation formed or to be formed and the members thereof: Provided, that such corporation shall not commence business or solicit members thereof until the form of said marketing contract shall have been approved by the director of agriculture. [L. '21, p. 358, § 4.]

§ 2882. Powers of Association.

Each association incorporated under this act shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment, or in the financing of any such activities; or in any one or more of the activities specified in this section. No association, however, shall handle the agricultural products of any nonmember.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above-mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged

in any related activity or in the handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) To buy, hold and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

(g) To do each and everything necessary suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the associations; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition any other rights, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this act; and to do any such thing anywhere. [L. '21, p. 358, § 5.]

§ 2883. Membership and Stock of Association.

(a) Under the terms and conditions prescribed in its by-laws, any association may admit as members, or issue common stock only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a nonstock association be other than a natural person, such member may be represented by any individual associate, officer or member thereof, duly authorized in writing.

(c) Any association organized hereunder may become a member or stockholder of any other association or associations organized hereunder. [L. '21, p. 359, § 6.]

§ 2884. Articles of Incorporation.

Each association formed under this act must prepare and file articles of incorporation, setting forth:

(a) The name of the association.

(b) The purpose for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, not exceeding fifty (50) years.

(e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors, which term shall not exceed two years.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled

to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or the vote of two-thirds of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and privileges granted to each.

(h) The articles must be subscribed by the incorporators and acknowledged by three or more of such incorporators before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this state; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state and other places, as prima facie evidence of the facts contained therein and of the due incorporation of such association. [L. '21, p. 360, § 7.]

§ 2885. Amendments of Articles.

The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by a majority of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this state. [L. '21, p. 361, § 8.]

§ 2886. By-laws.

Each association incorporated under this act must, within thirty (30) days after its incorporation, adopt, for its government and management a code of by-laws not inconsistent with the powers granted by this act. A majority vote of the members or stockholders, or their written assent, is necessary to adopt, alter or amend such by-laws. [L. '21, p. 361, § 9.]

"Act" in this section refers to §§ 2878—2909.

§ 2887. Meetings.

In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting. [L. '21, p. 362, § 10.]

§ 2888. Board of Directors.

The affairs of the association shall be managed by a board of not less than five directors, who shall be residents of the state of Washington and who shall be elected by the members or stockholders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the by-laws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The by-laws shall provide that primary elections shall be held in each district to select the directors apportioned to such districts and the result of all such primary elections must be ratified by the next regular meeting of the association. The by-laws shall provide that one or more directors shall be appointed by the director of agriculture. The director or directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors, and shall be regarded as representing the interests of the public. An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district. When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provide for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy. [L. '21, p. 362, § 11.]

§ 2889. Officers.

The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary, and treasurer, who need not be directors, and they may combine the two latter offices, and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors. [L. '21, p. 363, § 12.]

§ 2890. Membership, Liability of—Stock, Issue, Redemption, Transfer.

When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof. No

stockholder of a co-operative association shall own more than one-tenth of the issued common stock of the association; and an association in its by-laws may limit the amount of common stock which one member may own to any amount less than one-tenth of the issued common stock. Any association organized with stock under this act may issue preferred stock, with or without the right to vote. No member or stockholder shall be entitled to more than one vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate. The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto. The by-laws and the marketing agreement, of the association, may provide for the retiring of the common or preferred stock of the association. [L. '21, p. 363, § 13.]

§ 2891. Charges Against Officers.

Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity. In case the by-laws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office. [L. '21, p. 364, § 14.]

§ 2892. Marketing Contracts.

The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over on a proportional basis or otherwise to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding eight per cent per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight per cent per annum upon common stock:

Provided, that the form of such contract shall be approved by the director of agriculture, and shall state the maximum amount of any such reserves to be deducted from the sale price of the products of the members of such association: Provided further, that said contract shall contain a date upon which settlement will be made between the association and each by its members for the crop or product marketed by said association during the preceding marketing season, which date shall not be later than July 1st following the year in which any such crop or product has been produced. The by-laws and the marketing contract may fix as liquidated damages specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is legally maintained under the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state. In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. [L. '21, p. 365, § 15.]

§ 2893. Payment in Stock.

Whenever an association organized hereunder with preferred capital stock shall purchase the stock or any property or any interest in any property of any person, firm, or corporation, or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest, shares of its preferred stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued. [L. '21, p. 366, § 16.]

§ 2894. Annual Report.

Each association formed under this act shall prepare and file in the office of the director of agriculture an annual report on forms furnished by the director of agriculture, containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received, if a non-stock association; the total expenses of operations; the amount of indebtedness or liability, and its balance sheets. An examination and audit of the affairs of all associations incorporated under this act and doing a gross business of at least two hundred thousand dollars (\$200,000) per year, shall be made annually by the department of taxation and examination and at such other times as the director of agri-

culture may require. The director of taxation and examination is hereby authorized, empowered and directed to cause such examination and audit to be made. One copy of such audit shall be filed with the director of agriculture, one shall be sent to the secretary of the association, one to the president of the association, and another shall be kept in the files of the office of the department. A charge of not more than ten dollars (\$10) per day and expenses for each examiner shall be made to the association to pay the actual expense of making such audit. Associations doing a gross business of less than two hundred thousand dollars (\$200,000) annually shall provide in their by-laws or otherwise for the making and filing of annual audits of their books; provided that upon demand of one-tenth of the members of such association said audit shall be made by the department of taxation and examination in the manner provided herein for larger associations. [L. '21, p. 367, § 17.]

§ 2895. Violations and Insolvency.

If the director of agriculture shall find that any association is operating in violation of law or is insolvent, and after ten days' notice has failed or refused to comply with the law, he may by proper proceeding in the superior court of the county where the principal place of business of said association is located, cause a receiver for such association to be appointed, and the affairs of such association immediately liquidated under the direction of said superior court. [L. '21, p. 368, § 18.]

§ 2896. Membership of Association in Another Corporation.

An association may organize, form, operate, own, control, have an interest in, own stock, of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the customary percentage of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this state or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. [L. '21, p. 368, § 19.]

§ 2897. Contracts With Other Associations.

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or in any other state, for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement be-

tween them, unite in employing and using, or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses. A duplicate copy of each of the contracts mentioned in this section shall be filed in the office of the director of agriculture immediately after the execution and delivery thereof. [L. '21, p. 368, § 20.]

§ 2898. Associations Heretofore Organized.

Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this act by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, to the effect that the corporation or association has, by a majority vote of its stockholders or members, decided to accept the benefits and be bound by the provisions of this act. Amendments to articles of incorporation shall be filed as required in sections 2881 and 2884, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation: Provided, that any such corporation or association organized prior to the approval of this act shall be admitted to the benefits hereof, subject to all of the requirements of this act except that the marketing contract between such association and its members need not be approved by the director of agriculture. [L. '21, p. 369, § 21.]

This "act" refers to §§ 2878—2909.

§ 2899. Voluntary Dissolution.

The members of any association may by two-thirds vote of all such members, at any regular meeting or at a meeting regularly called for that purpose, vote to dissolve said association, and thereupon such proceedings shall be had for the dissolution of said association as is provided by law for the dissolution and disincorporation of corporations organized under the general law. [L. '21, p. 370, § 22.]

§ 2900. General Corporation Laws Applicable.

The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this act. [L. '21, p. 370, § 23.]

"Act" in this section refers to §§ 2878—2909.

§ 2901. Limitations on Benefits of Members.

Other than the usual salary or director's fees paid to any officer, director or employee of any association organized, incorporated or re-incorporated and transacting business under this act, and other than a reasonable fee paid by such association to such officer, director or employee for services rendered to such association, no officer, director or employee shall be a beneficiary of or receive, directly or indirectly, any fee, commission, or other consideration for or in connection with any transaction or business of such association: Provided, however, that noth-

ing in this act contained shall be construed to prohibit a director, officer or employee who may also be a member of such association from receiving all the ordinary and usual benefits which other members receive. Any officer, director or employee of any such association who violates any of the provisions of this section shall be guilty of a felony. [L. '21, p. 370, § 23-a.]

"Act" in this section refers to §§ 2878—2909.

§ 2902. False Statements and Entries—Penalty.

Any person who shall knowingly subscribe to, or make any false statement or entry in the books of any association, or who shall knowingly make any false statement in any report required to be filed with the director of agriculture, or who shall knowingly with intent to deceive, misrepresent the affairs of the association to any person authorized and directed by the department of taxation and examination to examine such associations, shall be guilty of a felony. [L. '21, p. 370, § 24.]

§ 2903. Removal or Destruction of Papers—Penalty.

Every officer, director, employee or agent, of any association, who for the purpose of concealing any fact or suppressing any evidence against himself or against any person, shall abstract, remove, mutilate, destroy, or secrete any paper, book, or record of any association, or of the department of agriculture, shall be guilty of a felony. [L. '21, p. 371, § 25.]

§ 2904. Action for Unpaid Stock Subscription.

The director of agriculture may maintain an action in his own name for the use of any association upon any unpaid contract of subscription to the capital stock of such association, or upon any promissory note given to such association in payment thereof, or to cancel any stock issued by it in violation of law. [L. '21, p. 371, § 26.]

§ 2905. Duties of Attorney General.

It shall be the duty of the attorney general to appear and act for the director of agriculture in all actions or proceedings involving any question under this act. [L. '21, p. 371, § 27.]

§ 2906. Appeals from Action of Director of Agriculture.

Every order, decision or other official act of the director of agriculture shall be subject to review, and any party aggrieved by such order, decision or act of the director of agriculture may appeal therefrom to the superior court of the county of Thurston by serving upon the director of agriculture a notice of such appeal, specifying the order, decision or act appealed from, and filing the same with the clerk of the superior court of the county of Thurston within sixty days after the date of such order, decision or official act. Whereupon the director of agriculture shall, within ten days after filing of such notice of appeal, make and certify a transcript of all the records and papers on file in his office affecting or relating to the order, decision or act appealed from, and upon the payment of the fee therefor by the appellant, the director of agriculture shall file the same in the office of the

clerk of said superior court. Upon the hearing of such appeal the burden of proof shall be upon the appellant, and the court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the action of the director of agriculture from which appeal is taken. Any party to such appeal to the superior court who is aggrieved by the judgment of said court rendered upon such appeal may prosecute an appeal to the supreme court of the state of Washington. The general laws relating to bills of exception, statements of fact and appeals to the supreme court, shall apply to all appeals taken to the supreme court under this act: Provided, that no supersedeas of the judgment of the superior court shall be allowed, except at the discretion of said superior court. If supersedeas is allowed, it shall be upon such bond and with such condition as the superior court may require by its order. [L. '21, p. 371, § 28.]

§ 2907. Annual License Fee.

Each association organized hereunder shall pay an annual license fee of fifteen dollars (\$15), but shall be exempt from all franchise or license taxes. [L. '21, p. 372, § 29.]

§ 2908. Fees for Filing Articles of Incorporation.

For filing articles of incorporation an association organized hereunder shall pay twenty-five dollars (\$25), and for filing an amendment to the articles ten dollars (\$10). [L. '21, p. 372, § 30.]

§ 2909. Partial Validity.

If any section of this act shall be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby. [L. '21, p. 372, § 31.]

"Act" in this section refers to §§ 2878—2909.

CHAPTER XIV.

WASHINGTON CROP CREDIT ACT.

§ 2910. Title.

This act shall be known and may be cited as the "Washington Crop Credit Act." [L. '21, p. 384, § 1.]

Validity of farm loan statute. *Ann. Cas.* 1917E, 216.

§ 2911. Purpose of Act.

The purpose of this act is to promote the orderly marketing of standard crops grown in the state of Washington by providing credit facilities whereby the growers thereof may finance the harvesting, storing and marketing of same. [L. '21, p. 384, § 2.]

§ 2912. Credit Association—Standard Crops.

Any number of bona fide growers of standard crops in the state of Washington, not less than ten, may associate themselves together to form a crop credit association in the manner hereinafter provided. The term "standard crops" as herein used means wheat, hay, apples, potatoes, and

such other crops as the director of marketing of the state of Washington shall hereafter designate. [L. '21, p. 384, § 3.]

See supra, § 2878, farm marketing associations.

§ 2913. Classification of Associations.

Such crop credit associations shall be divided into two classes:

(a) Temporary Crop Credit Associations, which shall exist for one year and for the purpose of establishing credit facilities for the handling of one crop.

(b) Permanent Crop Credit Associations, which may incorporate for a term not exceeding fifty years, with such powers and privileges as are hereinafter set forth or may be conferred thereon by law. [L. '21, p. 384, § 4.]

§ 2914. Supervision.

The director of farm marketing of the state of Washington shall have general charge and supervision of all such crop credit associations as herein provided. Before beginning his duties as the director of crop credit associations he shall make and file in the office of the secretary of state a bond in the penal sum of five thousand dollars (\$5,000), to be approved by the secretary of state, conditioned upon the faithful discharge of his duties as such director of crop credit associations. The word "director" wherever it shall hereafter appear in this act shall mean the director of farm marketing of the state of Washington. [L. '21, p. 384, § 5.]

§ 2915. Articles of Association.

Any qualified persons desiring to form a crop credit association as herein provided shall execute in quadruplicate and acknowledge before some officer authorized to make the acknowledgment of deeds articles of association, one copy of which shall be filed in the office of the director, one copy in the office of the secretary of state of the state of Washington, one copy in the office of the county auditor of the county where the principal place of business of such association is located, and one copy shall be kept as part of the permanent records and files of such association. [L. '21, p. 385, § 6.]

§ 2916. Temporary Association Articles.

If such association is to be a temporary association, said articles shall state the name of the association, its principal place of business, the amount of the membership fee to be charged and the amount of credit in the aggregate which it is estimated its members will require. In addition thereto, the organizers of such association shall file the application for a permit to transact business as hereinafter more fully set forth. The organizers of such temporary organization shall also pay to the director a fee of five dollars (\$5), and to the secretary of state of Washington a fee of ten dollars (\$10). [L. '21, p. 385, § 7.]

§ 2917. Permanent Association Articles.

The organizers of a permanent crop credit association shall likewise execute in quadruplicate and file as above provided original copies of proposed articles of association therefor. Said articles of association shall set forth:

(a) The name of the association which shall contain the words "Crop Credit Association."

(b) Its principal place of business.

(c) The term for which it is to exist, which shall not exceed fifty years.

(d) The amount of membership fees required of its members, not to exceed one hundred dollars (\$100) each.

(e) The business desired to be transacted by said association, if any, in addition to the powers and privileges hereinafter set forth. [L. '21, p. 386, § 8.]

§ 2918. Issue of Certificate.

If the director shall be convinced that there is a need for the proposed crop credit association and that the business which it is to do, as shown by said articles of association, is in accordance with the provisions of this act, he shall issue a certificate authorizing the filing of the said articles of association in the office of the secretary of state of Washington and in the office of the county auditor of the county wherein is located the principal place of business of said association. [L. '21, p. 386, § 9.]

§ 2919. Fees.

The organizers of any permanent crop credit association shall pay the following filing the license fees: To the director, ten dollars (\$10); to the secretary of state, fifteen dollars (\$15), and the annual license fee required of corporations to be collected by the secretary of state as in the case of other corporations; and thereafter said association shall pay to the secretary of state, annually on or before the first day of July, a license fee of fifteen dollars (\$15). [L. '21, p. 386, § 10.]

§ 2920. Powers of Association.

Upon the issuance of said certificate of authority by the director and the issuance of a license by the secretary of state, every such association shall be a body corporate and politic in fact and in name, by the name stated in the articles of association, and shall have power:

(1) To sue and be sued in any court having competent jurisdiction

(2) To make and use a common seal.

(3) To purchase, hold, own, mortgage, sell and convey real and personal property to borrow money as shall be necessary for the needs of said corporation and to lend same, or any part thereof, or any of the funds of the association to its members upon such security, real or personal, as it shall require; and to execute, as evidence of money borrowed, any and all forms of notes, bonds, debentures and certificates, and secure same by the execution of any mortgage, lien, deed of trust or the surrender of any property owned or held by it, and to pay, cancel, satisfy

and renew the same, and to receive any of the above evidences of indebtedness and securities for money loaned.

(4) To engage in the warehouse and storage business for the benefit of its members, and to handle, prepare for market, store, ship and sell all agricultural crops for or on account of its members, and to charge and receive compensation for any such service.

(5) To appoint such officers, agents and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation.

(6) To require of them such security as may be thought proper for the fulfillment of their duties and to remove them at will; except that no trustee shall be removed from office unless by vote of a majority of the members thereof.

(7) To make by-laws not inconsistent with the laws of this state or of the United States.

(8) To manage its property, to regulate its affairs, to provide for the transfer of membership therein, and to carry on all kinds of business within the objects and purposes of said association as expressed in the articles of said association or contained in this act.

(9) To act as broker for its members in disposing or selling of their crops, and to advance and lend money to any such member on the security of such crops or such other security, real or personal, as it may require.

(10) To hold, own and vote stock or other evidence of ownership in any other co-operative association or corporation.

(11) To buy, sell and deal in and to procure for its members such supplies as shall be necessary or useful in and about the growing, harvesting and marketing of any agricultural crop grown or to be grown by them. [L. '21, p. 387, § 11.]

§ 2921. Restrictions.

No crop credit association shall engage in the business of buying or selling for its own account, directly or indirectly, any crop grown, raised or produced by its members, or others, but such association may be and act as broker, as in this act provided, for the sale of the crops of its members. None of the funds or assets of any such association shall ever be used for or expended in and about the business of buying, selling or dealing in any such crops. [L. '21, p. 388, § 12.]

§ 2922. By-laws.

The organizers of every crop credit association shall, before it commences business, adopt by-laws for the government of said association, in which provision shall be made for the admission of members thereto; the terms of admission, lapsation and expulsion, and the membership fee of not to exceed one hundred dollars (\$100) which shall be required from each member. Upon the full payment of any such membership fee the association shall issue a certificate of membership which shall be transferable only to bona fide growers of standard farm crops under such conditions and regulations as shall be provided in such by-laws. No per-

son shall become a member of any crop credit association who is not, at the time of becoming such member, a bona fide grower of standard farm crops in the state of Washington. Such by-laws shall also contain rules and regulations for the proper and orderly government of such association and the exercise of its lawful powers. Every association shall submit its proposed by-laws to the director for his approval that the government of all crop credit associations in the state of Washington shall be uniform. If said by-laws are not approved by the said director, the same shall be suspended by his order until by-laws approved by him shall be adopted by such crop credit association. [L. '21, p. 388, § 13.]

§ 2923. Trustees and Officers—Election.

Such association shall be managed by a board of not less than three trustees. The trustees shall be elected by and from the members of the association at such time and for such term of office as the by-laws may prescribe and shall hold office during the term for which they are elected and until their successors are elected and qualified; but a majority of the members shall have the power, at any regular or special meeting legally called for that purpose, to remove any trustee or officer for cause, and fill the vacancy. The officers of every such association shall be a president, vice-president, secretary and treasurer, who shall be elected by the trustees. Each of said officers must be a member of the association. All elections shall be by ballot. Each member of the association shall be entitled to one vote only. [L. '21, p. 389, § 14.]

§ 2924. Loans and Securities.

Any crop credit association organized under the provisions of this act shall have authority to make loans to its members, in accordance with their credit needs, not to exceed sixty-six and two-thirds per cent of the fair market value of the standard farm crops grown by such member, and in turn may mortgage, transfer or hypothecate the said crops as direct or collateral security for the borrowing of money necessary to make such advances and loans to its members. Each loan by the association to its members shall be evidenced by the negotiable promissory note of the member borrower in an amount exceeding the credit extended to such member by ten per cent, with interest at a rate fixed by the association and maturing at least fifteen days prior to the maturity of the crop credit notes herein provided for, which note shall be secured by a negotiable warehouse receipt covering said standard agricultural product; a policy of insurance against loss by fire, and a certificate of inspection by the proper authority of the state of Washington as to the quality and variety of the farm product offered as such security. All such crops so offered as security for such loans must be free and clear of all encumbrances, except inspection, warehouse and insurance charges accruing against same: Provided, that when the standard crop used as the basis of credit is wheat, seventy-five per cent of the fair market value may be loaned thereon and no certificate of inspection thereof shall be required. [L. '21, p. 390, § 15.]

§ 2925. Crop Credit Notes—Application.

Every crop credit association which shall desire to issue its notes or commercial paper, secured by the crops of its members as hereinabove provided, shall make application to the director for authority to issue crop credit notes of the association, which application shall be made upon blanks furnished for that purpose by said director and shall show:

(1) The name and place of business of the association making such application.

(2) The kind of standard farm crop to be used by it for credit purposes, and only one standard farm crop shall be used for each issue of crop credit notes.

(3) The estimated quantity and quality of the crop to be so used.

(4) The estimated amount of money desired to be borrowed against any such crop.

(5) The period of credit desired, not to exceed six months.

(6) The estimated number of growers of such standard crop.

(7) The name of the trustee.

Said application shall be signed by the president and secretary of such association and attested by its seal, and shall be accompanied by a fee of five dollars (\$5). [L. '21, p. 390, § 16.]

§ 2926. Action on Application.

Upon the receipt of said application and the filing fee by the director he shall cause investigation thereof to be made covering the information contained in such application, and if he finds the said application in all respects in accordance with this act, he shall issue a certificate of authority to the trustee named in said application, in which certificate shall be stated a fair price for credit purposes of the farm crops mentioned in said application, to be used as the basis of credit in the issue of crop credit notes. Said fair price shall be determined by said director from any and all information obtained by him with reference to the particular farm crop, covering the condition of the markets in the United States and elsewhere; the visible supply of such product and the kind, quality and condition of same. Said fair price shall not be considered as in any manner fixing the price at which said products may or shall be bought or sold, but same shall be fixed only for the purpose of further assuring the purchasers of any securities or paper issued on the basis of the credit of such farm crop. [L. '21, p. 391, § 17.]

§ 2927. Security for Crop Credit Notes.

Upon the issuance of said certificate of authority to the trustee named in any such application, said trustee shall immediately so inform the officers of the association making such application. The association shall thereupon forthwith deliver to the said trustee all notes, warehouse receipts, securities, insurance policies and certificates of inspection held by it or which shall be required by the director as security for the proposed issue of crop credit notes, and shall convey full title of all property and securities represented by any evidence of indebtedness or constituting a lien thereon to the said trustee, to be by said trustee used as the security

for the issuance of the proposed crop credit notes by said association. [L. '21, p. 392, § 18.]

§ 2928. Notes, Issue and Payment.

Thereupon said crop credit association may issue, under the seal and signed by the president and secretary of such association, crop credit notes in the aggregate not to exceed the amount of such issue of notes stated in the certificate of authority of the director to the trustee. Said notes shall be in denominations of not less than fifty dollars (\$50) nor more than five thousand dollars (\$5,000), payable at a fixed period of maturity, not to exceed six months from the date of the certificate of authority, as shall be determined by the said board of trustees. Said notes shall thereupon be delivered to said trustee, who shall countersign same and deliver them at such times and in such amounts and at such discount as shall be determined by the board of trustees by resolution entered upon the minutes of their proceedings. Said notes shall contain the number of the certificate of authority and the date of issuance thereof, together with the facsimile signature of the director and a series number, and shall state the kind of standard crop held by said trustee as security therefor, and shall otherwise be in such form as the director shall prescribe. [L. '21, p. 392, § 19.]

§ 2929. Distribution of Proceeds of Notes.

Said trustee shall deliver said notes, properly countersigned, and receive the proceeds of the sale thereof, which proceeds shall be by said trustee immediately distributed to the members of said association in accordance with their credit requirements as shown by a schedule signed by the officers of said association and filed with the trustee showing the name and address of each member borrower, the kind, quantity and value of the crop pledged by him as security for his loan, and the amount borrowed thereon, less a brokerage charge of not to exceed two per cent (2%) thereof for the use of the association as determined by its trustees. [L. '21, p. 393, § 20.]

§ 2930. Compensation of Trustee Holding Securities.

The trustee holding the said securities herein provided shall be entitled, as compensation for all of its services rendered under this act, to a fee not to exceed one per cent (1%) of the par value of the notes issued by it where such issue shall be fifty thousand dollars (\$50,000) or less, and not to exceed one-half of one per cent for any such issue of more than fifty thousand dollars (\$50,000), payable from the brokerage charged by the association, as shall be agreed between the association and said trustee, which agreement shall be approved by the director. [L. '21, p. 393, § 21.]

§ 2931. Notes, General Obligation.

All such crop credit notes shall be general obligations of the crop credit association issuing same and shall be secured by the entire number of collateral notes of the members of said association, participating in such issue, deposited with said trustee. [L. '21, p. 393, § 22.]

§ 2932. Members' Indebtedness, Collection and Disposition.

Upon maturity of the notes evidencing the members' indebtedness to the association, the said trustee shall collect and place same in a fund for the retirement of said crop credit notes. Upon the collection of said indebtedness, which shall include the ten per cent (10%) excess, as hereinbefore provided, any and all warehouse receipts, insurance policies, certificates of inspection, or other security deposited for the security of the indebtedness of said member, shall be delivered to the said member or to his order. The funds so repaid by the members of the association, upon the order of the trustees of such association may be used for the immediate retirement of any outstanding crop credit notes of said issue, at a price not to exceed the face value of such crop credit notes. All members' notes, money, certificates and securities remaining in the hands of said trustee, after permission given it by the director, shall be returned to the crop credit association issuing same, which association shall collect as quickly as possible any remaining indebtedness under said issue then due to it. All sums so collected, less collection fees and expenses, shall be divided among and paid to the members of said association in proportion to the loans severally made to its members: Provided, however, that before any such division of moneys remaining after the retirement of any issue of crop credit notes, a full report of the issuance and sale of said notes and the retirement thereof shall be made to the director, and same shall not be distributed to the members of such association until the approval thereof by said director has been made in writing. [L. '21, p. 394, § 23.]

§ 2933. Trustee to Make Reports.

A full report of every issue of such crop credit notes shall be made to the director by the trustee at the time of sale of said notes and again at the time of the redemption thereof, said reports to be made upon blanks furnished therefor by said director. The director shall at all times have the right and privilege of inspecting the crops, securities, warehouse receipts and accounts of the said association or the said trustee until the issue secured by same shall have been fully paid and retired. Each association shall make an annual report to the director of markets, showing the gross returns to said association from the business of the previous year; an itemized statement of its expenses; the amount of its net gain, if any, which shall have been transferred to a surplus account; and the amount of money distributed to its members. [L. '21, p. 394, § 24.]

§ 2934. Capital.

Every permanent association organized under this act may establish a capital account which shall be its working capital. It may transfer thereto any membership fees, commissions, fees or charges against its members or profits from sale of supplies to its members, and may use said capital fund in the transaction of any lawful business conducted by the association. [L. '21, p. 395, § 25.]

§ 2935. Trustee—Who may Act.

Any bank, trust company or mutual savings bank organized under the laws of the state of Washington may be and act as the trustee for the issuance of any crop credit notes provided for herein, and any bank organized under the laws of the United States, may also act as such trustee, subject to the supervision of the directors as in this act provided. [L. '21, p. 395, § 26.]

§ 2936. Crop Credit Notes—Authority to Issue.

No issue of crop credit notes shall be made without first having secured the authority of the director, nor shall any such issue be founded upon any other than standard agricultural crops grown in this state. The director shall make general rules and regulations governing the issuance of such notes and for the proper administration and enforcement of this act. [L. '21, p. 395, § 27.]

§ 2937. Refunding Notes.

For good cause shown the director may permit the issuance of refunding notes to take up any balance of a series upon maturity thereof: Provided, there shall be ample security for said refunding issue in accordance with the requirements of this act, said refunding series to be issued at or prior to the maturity of said first series of notes covering any such crop. [L. '21, p. 396, § 28.]

§ 2938. Default by Association.

Upon default by any crop credit association in the payment of its crop credit notes promptly at the maturity thereof, notice of protest of which shall be immediately given by the trustee to the director, said director shall take charge of all the business, property, security and assets of said association whether the same be in possession of said association or in the hands of the trustee of its issue of crop credit notes, and shall have the power and authority immediately to market to the best advantage any crops remaining on hand as security for the remainder of said notes. He may make composition with the creditors of said association holding its crop credit notes; he may arrange for an extension of the time of payment thereof, and may otherwise fully liquidate the affairs of said association with all the powers of a receiver, duly and regularly appointed by the court having jurisdiction of the association involved, and said director may make application to the superior court in the county where the principal place of business of such association is located for any additional authority necessary to enable him properly and promptly to liquidate the affairs of said association and to pay its creditors. In any such liquidation the creditors holding crop credit notes shall be considered to have a first lien upon all the property and assets securing said notes, and thereafter shall share equally with the unsecured creditors of said association in any unencumbered assets thereof. [L. '21, p. 396, § 29.]

§ 2939. Liability Under Act.

No liability shall attach to the director; nor to the trustee issuing said certificates by reason of the exercise of the authority granted by this

act, except that said trustee shall be liable for misfeasance or malfeasance in the administration of said trust. No liability in excess of the membership fee charged by said association shall accrue to or against any member thereof by reason of such membership. [L. '21, p. 397, § 30.]

§ 2940. Scope of Act.

Any co-operative marketing association, stock company or association engaged exclusively in harvesting, storing, preparing for market or marketing the crops or products of its members or stockholders, may take advantage of the provisions of this act and shall be entitled to all of the privileges hereof upon filing the application for authority to issue crop credit notes as hereinbefore provided for temporary and permanent crop credit associations. Any certificate of authority issued to or for any corporation so applying shall be deemed to be for one crop season only as in the case of a temporary crop credit association. [L. '21, p. 397, § 31.]

§ 2941. Right of Borrower to Sell Own Crop.

Every member borrower personally or through his duly authorized agent or broker shall have the exclusive right to sell and dispose of the crop pledged by him for his loan: Provided, that after the maturity of the indebtedness from him to the association, the association may forthwith and without notice to the borrower, sell said crops to the best advantage and discharge said indebtedness. [L. '21, p. 397, § 32.]

§ 2942. Director's Fees.

All fees collected by the director shall inure to the benefit of the State College of Washington for use in the work of the director of marketing and shall be available therefor without any other or further appropriation thereof. A statement of all receipts and expenditures by the director shall be made in his annual report. [L. '21, p. 397, § 33.]

§ 2943. Violations of Act.

Every person who shall violate or knowingly aid or abet the violation of any provision of this act, and every person who fails to perform any act which it is made his duty to perform herein shall be guilty of a gross misdemeanor. [L. '21, p. 398, § 34.]

§ 2944. Partial Validity.

If any section or part of a section of this act shall, for any cause, be held unconstitutional, such holding shall not affect the rest of this act or any other section hereof. [L. '21, p. 398, § 35.]

§ 2945. Exercise of Directors' Powers and Duties.

When the director of agriculture shall have been appointed and qualified and shall assume and exercise the duties of his office, all powers and duties herein conferred and imposed upon the director of farm marketing shall be transferred to the office of the director of agriculture and be assumed and exercised by the incumbent thereof. [L. '21, p. 398, § 36.]

CHAPTER XV.

LAND DEVELOPMENT.

§ 2946. [3139-1.] Agricultural Districts.

For the purpose of improving the agricultural lands of this state and encouraging their most productive use, agricultural development districts are hereby authorized to be established in the various counties in this state, as hereinafter provided. [L. '13, p. 492, § 1.]

§ 2947. [3139-2.] County Districts—Election.

At any general election, or at any special election which may be called for that purpose, the board of county commissioners of any county in this state may, and on petition of ten per cent of the qualified electors of such county based on the total vote cast in the last general county election shall, by resolution submit to the voters of such county the proposition of creating an agricultural development district, which shall be coextensive with the limits of such county as now or hereafter established, except as provided in section 2952. [L. '13, p. 492, § 2.]

§ 2948. [3139-3.] Petition.

Such petition shall be filed with the county auditor, who shall within fifteen (15) days examine the signatures thereto and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed agricultural development district. [L. '13, p. 492, § 3.]

§ 2949. [3139-4.] Signatures—Amendment.

If the signatures to such petition are found to be insufficient the petition shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen (15) days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. [L. '13, p. 492, § 4.]

§ 2950. [3139-5.] Election—Notice.

Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the board of county commissioners, who shall submit such proposition at the next general election or, if such petition so requests, the board of county commissioners shall, at their first meeting after the date of such certificate, by resolution call a special election to be held not less than thirty nor more than sixty days from the date of such certificate. Such notice of election shall describe the boundaries of the district and state the purpose for which such district is proposed to be formed. [L. '13, p. 493, § 5.]

§ 2951. [3139-6.] Propositions Submitted.

In submitting the said question to the voters for their approval or rejection, the proposition shall be expressed on said ballot substantially in the following terms:

“— Agricultural Development District of — Yes.”

(Inserting the name of the county or number of district and county.)

“— Agricultural Development District of — No.”

(Inserting the name of the county or number of district and county.)

[L. '13, p. 493, § 6.]

§ 2952. [3139-7.] Districts Less Than County—Hearing on Petition.

Any petition for the formation of an agricultural development district may describe a district of less area than the county in which such petition is filed, and in such event the county commissioners shall fix a date for hearing on such petition and publish a notice of such hearing for two weeks in a newspaper of general circulation in such county, after which hearing the county commissioners may increase or diminish the boundaries of such proposed agricultural development district, and thereafter the same procedure shall be followed as is prescribed in this act for the formation of the larger agricultural development district, except that the petition and election shall be confined solely to the lesser agricultural development district: And provided, that whenever two or more petitions for the formation of an agricultural development district shall be filed as herein provided, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser agricultural development district shall ever be created within the limits, in whole or in part, of any agricultural development district. [L. '13, p. 493, § 7.]

§ 2953. [3139-8.] Canvass of Vote.

Within five days after such election the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the board of county commissioners shall so declare in its canvass of the returns of such election and such agricultural development district shall then be and become a municipal corporation of the state of Washington and the name of such agricultural development district shall be “Agricultural Development District of —” (inserting the name on the ballot). [L. '13, p. 494, § 8.]

§ 2954. [3139-9.] Expenses of Election.

All expenses of election for the formation of such agricultural development district shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the agricultural development district, if formed. [L. '13, p. 494, § 9.]

§ 2955. [3139-10.] Commissioners—Contracts.

The powers of the agricultural development district shall be exercised through an agricultural development commission consisting of three mem-

bers, who shall serve without pay, save expenses incurred in the course of their duties under the provisions of this act. For the purposes of this act the said commissioners shall be entitled to the advice and service of all state, county and municipal officers and institutions, particularly engineers, agricultural chemists, directors of experiment stations, and the state department of agriculture, and all such officers and institutions are hereby authorized and directed to co-operate with said commissioners in furthering the purposes of this act. Said commissioners are hereby forbidden to become interested, directly or indirectly in any purchase, contract or work under this act, and any such interest is hereby declared void. [L. '13, p. 494, § 10.]

§ 2956. [3139-11.] Election of Commissioners—Terms.

The said commissioners shall be elected one from each of the county commissioner districts of the county in which the agricultural development district is located, when the agricultural development district is coextensive with the limits of such county. When the agricultural development district comprises only a portion of the county, three commissioner districts numbered consecutively having approximately equal population and with boundaries following ward and precinct lines, shall be described in the petition for the formation of the agricultural development district, and one commissioner shall be elected from each of the said commissioner districts. Said commissioners shall hold office for a term of three years and until their respective successors are elected and qualified, each term to commence on the second Monday in January following the election thereto. At the same election at which the proposition is submitted to the voters as to whether an agricultural development district shall be formed, three commissioners shall be elected to hold office, respectively, for the term of one, two and three years. All candidates shall be voted upon by the entire agricultural development district, and the candidate residing in commissioner district number one receiving the highest number of votes in the agricultural development district shall hold office for the term of three (3) years; and the candidate residing in commissioner district number two receiving the highest number of votes in the agricultural development district shall hold office for the term of two years, and the candidate residing in commissioner district number three receiving the highest number of votes in the agricultural development district shall hold office for the term of one year, each of said terms to date from the second Monday in January following the election, but also to include the period intervening between the election and the second Monday in January following. [L. '13, p. 495, § 11.]

§ 2957. [3139-12.] Qualifications.

No person shall be eligible to hold the office of an agricultural development commissioner unless he is a qualified voter, a freeholder within such agricultural development district, and is and has been a resident for a period of three (3) years of the commissioner district from which he is elected. [L. '13, p. 496, § 12.]

§ 2958. [3139-13.] Nominations by Petition.

Nominations for agricultural development commissioners at the first special election and at subsequent general elections shall be by petition of not less than one per cent of the qualified electors of the commissioner district in which the candidate is a resident, to be filed in the office of the county auditor at least twenty days prior to such election. [L. '13, p. 496, § 13.]

§ 2959. [3139-14.] Vacancies—Cause.

A vacancy in the office of agricultural development commissioner shall occur by death, resignation, removal, conviction of a felony, non-attendance at meetings of the agricultural development commission for a period of sixty days unless excused by the agricultural development commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. [L. '13, p. 496, § 14.]

§ 2960. [3139-15.] Filling Vacancies—Special Election.

In the event of a vacancy in the office of agricultural development commissioner by death, resignation, or otherwise, such vacancy shall be filled at the next general election, the vacancy in the interim to be filled by appointment by a majority vote of the remaining agricultural development commissioners. In the event that such ad interim appointment shall not be made by the remaining commissioners within thirty (30) days following the occurrence of the vacancy, the appointment shall be made forthwith by the superior court of the county. If there should be at the time more than one vacancy, a special election shall be called to fill the same, by the remaining member, or, that failing, by the board of county commissioners of the county, such election to be held not more than forty days after the occurring of such vacancies. [L. '13, p. 496, § 15.]

§ 2961. [3139-16.] General Election Laws Applicable.

The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers, except as otherwise provided in this act. [L. '13, p. 497, § 16.]

§ 2962. [3139-17.] General District Election.

A general election shall be held on the first Saturday in December of each year (except the first Saturday in December immediately following the creation of such agricultural development district), for the election of agricultural development commissioners and for the submission of propositions, and special elections shall be held at such other times and for such purposes as the agricultural development commissioners may by resolution prescribe, subject to the limitations and pursuant to the requirements of this act. [L. '13, p. 497, § 17.]

§ 2963. [3139-18.] Notices of Election—Publication.

All notices of election shall be given by publishing the same for a period of ten days in a daily newspaper of general circulation in said

agricultural development district, or in at least two issues of a weekly newspaper of general circulation in said agricultural development district, such publication to be made within a period of twenty days immediately preceding such election; and by posting, for at least ten days prior to the date of election, a written or printed notice of such election in each polling place within such agricultural development district. The published notice shall give the time of holding the election, the hours the polls will remain open, the officer or officers to be elected, and a statement of the propositions to be submitted; and the posted notices shall, in addition, give the location of the polling places. [L. '13, p. 497, § 18.]

§ 2964. [3139-19.] Registration Books.

Officers of the city and county having charge of the registration books of any city or precinct in an agricultural development district shall deliver the same for the use of the election officers at all agricultural development elections. In the event of such registration books being required by law to be used by any school district or other public corporation at the same time as the use thereof will be necessary to the agricultural development district, such books shall be delivered to the agricultural development commission and school district or other public corporation jointly, and the same polling places and registration-books may be used jointly in such cases, and the same individuals may serve as election officers for all such joint elections, and in such cases the compensation of such election officers and other expenses shall be so divided that the agricultural development district shall bear only its proportionate share thereof. [L. '13, p. 497, § 19.]

§ 2965. [3139-20.] Polling Places.

There shall be not less than one polling place in each of the various wards of any incorporated city within such agricultural development district, and one polling place within each precinct of each agricultural development district not within the limits of any incorporated city. It shall be the duty of the county commissioners in the formation of the agricultural development district, and of the agricultural development commission in all subsequent elections to designate the polling places and appoint three election officers for each place of voting at least twenty days before each election. [L. '13, p. 498, § 20.]

§ 2966. [3139-21.] Opening of Polls.

The polls shall be open between such hours of the day as the commissioner shall designate, but in every case the polls shall be open between 1 o'clock P. M., and 8 o'clock P. M. [L. '13, p. 498, § 21.]

§ 2967. [3139-22.] Counting Votes.

Immediately after the closing of the polls the election officers shall then and there, without removing the ballot-box from the place where the ballots were cast, proceed to count the votes, and as soon as such count is completed a return thereof shall be signed by such election officers and securely enveloped and sealed and delivered, together with the ballot-box

containing the ballots, to the agricultural development commission, or some person delegated to receive the same on their behalf.

Within five days after the election, the agricultural development commission shall meet and proceed to canvass the returns of such election and shall thereupon declare the result. [L. '13, p. 498, § 22.]

§ 2968. [3139-23.] Who may Vote.

All electors who are, at the time of such election, duly qualified to vote within their respective precincts under the general election laws for state and county officers shall be entitled to vote at any election held in such agricultural development district. [L. '13, p. 499, § 23.]

§ 2969. [3139-24.] Powers of District.

All agricultural development districts organized under the provisions of this act shall be and are hereby authorized to exercise the following rights and powers, and all other rights and powers necessary for the purposes of this act.

(a) To acquire by purchase, condemnation and purchase or otherwise, all lands, property rights, leases, or easements necessary for the purposes of the agricultural development district; also water for irrigation purposes from any public watercourse, lake, stream or any other source;

(b) To exercise the right of eminent domain in the acquirement or damaging of all lands, property, property rights, leases or easements, and levying and collection of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said district shall have been created. Such right shall be exercised in the same manner and by the same procedure as is or may be provided by law for cities of the first class, except in so far as such law may be inconsistent with the provisions of this act, and that the duties devolving upon the city treasurer under such law are hereby imposed upon the county treasurer for the purposes of this act;

(c) To own and control lands, leases, and all easements in land necessary for the purposes of such agricultural development districts;

(d) To sell or lease lands and other property owned and controlled by said agricultural development district as hereinafter provided, and to execute all titles, leases and any other papers and documents in connection therewith, or incidental thereto;

(e) To build, improve or repair any roads within the agricultural development district;

(f) To raise revenue by levy of an annual tax on all taxable property within such agricultural development district, not exceeding two mills in any one year: Provided, that such levy shall be made and taxes collected in the manner now or hereafter provided by law for the levy and collection of taxes in school districts of the first class;

(g) To purchase, manufacture or otherwise acquire all materials and equipment necessary for the improvement of agricultural lands under the provisions of this act, and to sell or lease such materials and equipments at cost to farmers and settlers, within such agricultural development district;

(h) To give such aid in the production and marketing of agricultural products, not inconsistent with law, as said commissioners may deem proper;

(i) To borrow money and issue bonds as provided by the state Constitution for municipal corporations. General bonds of any such district may be issued for any period not exceeding twenty years;

(j) To create and fill such positions and offices and fix salaries and bonds thereof as may be necessary for the purposes of this act. [L. '13, p. 499, § 24.]

§ 2970. [3139-25.] Officers of Commission.

The agricultural development commission shall organize by the election annually from its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business, and shall adopt an official seal. [L. '13, p. 500, § 25.]

§ 2971. [3139-26.] Resolutions.

All proceedings of the agricultural development commission shall be by a resolution recorded in a book or books kept for such purpose, which shall be public records. [L. '13, p. 500, § 26.]

§ 2972. [3139-27.] Claims—How Paid.

All funds of the agricultural development district shall be paid to the county treasurer, and all disbursements shall be made by such officer on warrants drawn by the county auditor upon order of or vouchers approved by the agricultural development commission. No payments of any kind under this act shall be paid except upon certificate of the agricultural development commission that the sum therein named has been justly incurred, is necessary for or is due to the person, firm or corporation therein named over and above all just credits and offsets for services performed or to be performed or material furnished or property sold to the agricultural development district for the uses of this act. [L. '13, p. 501, § 27.]

§ 2973. [3139-28.] Agricultural Development Fund—Special Funds.

The county treasurer shall create a fund to be designated the "Agricultural Development Fund," into which shall be paid all money received by him in behalf of such agricultural development district, and no money shall be disbursed therefrom except upon warrants of the county auditor issued as in this act provided. The county treasurer shall also maintain such other special funds as may be prescribed by the agricultural development commission, into which shall be placed such moneys as the agricultural development commission may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by the authority of the agricultural development commission. [L. '13, p. 501, § 28.]

§ 2974. [3139-29.] Indebtedness.

Any agricultural development commission created under the provisions of this act is hereby authorized, prior to the receipt of taxes raised by levy, to borrow money or issue the warrants of the district in anticipation of the revenues to be derived by such district from the levy of taxes for the purpose

of such district during the first year, and such warrants shall be redeemed from the first money available from such taxes when collected. [L. '13, p. 501, § 29.]

§ 2975. [3139-30.] Investigation of Lands.

It shall be the duty of the said commissioners, as promptly as possible after the organization of such district, to commence an investigation of the unimproved agricultural lands within such district, for the purpose of determining what portions or areas of such lands are adapted to economical irrigation or clearing, and adapted for sale or lease as agricultural lands to settlers. For the purpose of such investigation the said commissioners are authorized to employ all necessary assistants, and shall be entitled to the services of all state, county and municipal officers and institutions in accordance with section 2955. [L. '13, p. 501, § 30.]

§ 2976. [3139-31.] Matters Considered.

Such investigation shall include a description of the qualities of the soil and of the locality as regards existing highways and railway transportation, also an estimated cost of clearing such lands or of conducting water upon any proposed tract, and shall point out the opportunity for reservoir sites and the probable cost of acquiring such sites for purposes of irrigating tracts of land. The result of such investigation shall be kept on record in the office of said commissioners, and a certified copy thereof shall be sent to the state Department of Agriculture for public information and use. [L. 13, p. 502, § 31.]

§ 2977. [3139-32.] Acquisition of Undeveloped Land.

The said commissioners shall have power to acquire by purchase or otherwise, except by condemnation, in accordance with the provisions of this act any undeveloped agricultural lands within the limits of the agricultural development district, for the purpose of improving and fitting such lands for productive use, but no lands may be acquired under this act from private owners (except from settlers under the provisions of sections 2980 and 2981) at a price exceeding twenty dollars an acre for logged-off lands and twenty-five dollars an acre for arid lands, and unless authorized by subsequent legislation no lands shall be cleared when the estimate therefor shall exceed one hundred dollars an acre. [L. '13, p. 502, § 32.]

§ 2978. [3139-33.] Refusal of Price Reported to Assessor.

In negotiating for the purchase of unimproved agricultural lands, whenever there shall have been offered in writing to a private owner a certain price and it shall be refused, the commissioners shall report that fact to the county assessor forthwith, and the price refused for such lands shall be considered by the assessor in respect to such and similar lands in that vicinity. [L. '13, p. 502, § 33.]

§ 2979. [3139-34.] Purchase or Lease Lands.

The said commissioners may lease or purchase any undeveloped agricultural lands at public auction or otherwise in accordance with law, including

school and granted lands, for the purpose of bringing such lands into productive use, and may sell or lease the lands so acquired and improved for agricultural use as provided in sections 2989 to 2994. [L. '13, p. 503, § 34.]

§ 2980. [3139-35.] Who Entitled to Benefit of Act—Preference Rights.

All citizens of this state shall be entitled to the benefits of this act as provided in this and the next following section. Any settler, being a citizen of the United States may offer not to exceed twenty acres of undeveloped, logged-off agricultural lands for sale to the commissioners of the agricultural development district in which such lands are located, and if the offer be accepted, then such vendor shall have a preferential right after such lands have been cleared and improved for agricultural use to repurchase and entry of not to exceed twenty acres of such lands, upon the terms described in sections 2989 to 2994, notwithstanding that such vendor may retain ownership of other lands not offered to said commissioners. Such vendors and repurchasers shall be subject to all the terms and conditions imposed by this act upon other purchasers. [L. '13, p. 503, § 35.]

§ 2981. [3139-36.] Preference in Letting Contracts.

When logged-off or cut-over lands have been sold by settlers subject to the right of preferential repurchase as provided in the next preceding section of this act, the commissioners shall give preference to the vendors of such lands when letting contracts for the clearing and improving of the same: Provided, such vendors undertake by contract in writing, on such terms and conditions as said commissioners may prescribe, to effect such clearing and improving at a price not exceeding the most satisfactory tender received by the commissioners from outside bidders, or in any case not exceeding a reasonable price in view of the value of such lands for agricultural purposes. [L. '13, p. 503, § 36.]

§ 2982. [3139-37.] Notice of Letting of Contracts.

Before awarding any contract (except only in the case of preferential repurchasers provided for in section 2981), the agricultural development commission shall cause to be published, in some newspaper within the district for at least fifteen days before the letting of such contract, a notice inviting sealed proposals for such work, plans and specifications for which must at the time of publication of such notice be on file in the office of the agricultural development commission subject to public inspection: Provided, however, that the agricultural development commission may at the same time, and as a part of the same notice, invite tenders for said work or materials upon plans and specifications to be submitted by the bidder. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the commission on or before the day and hour named. [L. '13, p. 504, § 37.]

§ 2983. [3139-38.] Check to Accompany Bid.

Each bid, tender or proposal named in section 2982 shall be accompanied by a certified check payable to the order of the agricultural development commission for a sum not less than five per cent of the amount

of such bid, and no bid, tender or proposal shall be considered unless accompanied by such check. [L. '13, p. 504, § 38.]

§ 2984. [3139-39.] Opening Bids and Letting Contracts.

At the time and place named such bids shall be publicly opened and read and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all checks shall be returned to the bidders. [L. '13, p. 504, § 39.]

§ 2985. [3139-40.] Retention of Check—Bond.

If such contract be let, then and in such case all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing of such work, and a bond given to the agricultural development district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commissioners, in an amount to be fixed by the commission, but not in any event less than twenty-five per cent of the contract price. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within fifteen days from the date at which he is notified that he is the successful bidder, the said check and the amount thereof shall be forfeited to the agricultural development district. [L. '13, p. 504, § 40.]

§ 2986. [3139-41.] Material or Labor by Contract or Otherwise.

All materials and equipments required by the agricultural development district for the purposes of this act may be manufactured or purchased in the open market or by contract, and all work ordered may be let by contract or done by day labor, as the agricultural development commission may determine. [L. '13, p. 505, § 41.]

§ 2987. [3139-42.] Lands to be Subdivided.

The commissioners shall cause all lands in their possession or control to be subdivided into the smallest practicable tracts, in order to provide for as many settlers as possible, giving preference whenever practicable to resident householders with families depending upon them. All tracts distant less than one mile from a state or county highway shall be connected by a temporary road, and the proportion which any particular tract should bear of the expense of that road shall be estimated by said commissioners against that tract in the price subsequently to be placed upon it for purposes of future sale or lease. [L. '13, p. 505, § 42.]

§ 2988. [3139-43.] Prospectus of Each Tract.

Whenever agricultural lands have been cleared or otherwise improved under the provisions of this act, the commissioners shall prepare a statement finally showing, in respect to each tract, in detail, the original cost of acquired lands, the cost of clearing, the quantity cleared, the soil analysis, the condition of the uncleared portion, and such other particulars

as experience may show to be useful data for colonists, and shall keep such statements on permanent record and transmit a certified copy thereof to the state Department of Agriculture for public information and use. [L. 13, p. 505, § 43.]

§ 2989. [3139-44.] Sale of Lands.

The said commissioners, as soon and so often as any lands acquired by purchase or otherwise are cleared and improved as aforesaid, shall cause the same to be appraised and offered to settlers on twenty equal annual payments (or less if so requested by the settler) at not less than the cost of their acquisition and improvement plus five per cent. One-half of one per cent per annum above the rate realized by the agricultural development district on its issue of bonds, and not less than four and one-half per cent per annum, interest shall be charged on deferred payments. [L. '13, p. 506, § 44.]

§ 2990. [3139-45.] Application to Purchase.

The manner of sale shall be by application and entry with priority to the first applicant. The commissioners shall execute the contracts of sale to purchasers on behalf of the agricultural development district in such form as shall carry out the intent of this statute to encourage settlement, and they shall make reasonable rules and regulations in respect thereto to insure good faith from the purchaser. [L. '13, p. 506, § 45.]

§ 2991. [3139-46.] Assignability of Right to Purchase.

No assignment of any claim by any purchaser shall be permitted until after such purchaser has made at least three annual payments and also has actually resided on the land at least two years. Continuous residence of not less than three years shall be required of any purchaser who may desire to anticipate the remaining payments and pre-empt the tract. The commissioners may on written application therefor, but are not required to permit in writing an absence from the land of not to exceed five continuous months in any one year. [L. '13, p. 506, § 46.]

§ 2992. [3139-47.] Purchasers Limited to One Tract.

No purchaser shall directly or indirectly acquire more than one tract. Tracts may be entered by persons who are not yet citizens of the United States, but all contracts shall provide that title shall not be delivered, notwithstanding the acceptance of payments meantime, until the purchaser has declared intention in good faith to become a citizen of the United States. All tracts shall be entered in parcels of not to exceed twenty acres each. [L. '13, p. 506, § 47.]

§ 2993. [3139-48.] Irrigable Lands—Acquisition of Reservoir Sites.

In respect of irrigable lands, whenever and so often as the commissioners shall have decided upon improvement thereof by a system of irrigation, then said commissioners are authorized to acquire by purchase, by condemnation and purchase, or by any other lawful means any reservoir sites or other land necessary for reservoirs, canals, ditches and laterals, within or without the district: Provided, they shall first have obtained

offers from the owners of two-thirds of the lands that can be watered therefrom, or from an irrigation district or company, to accept distribution from such reservoirs, which offer shall be in form binding upon such owners or irrigation districts or companies during a period sufficient and reasonable for the construction of the reservoir. The commissioners, having obtained such binding offers, may then call for the written opinion of some competent engineering expert, showing the estimated cost of the reservoir, its capacity, the area that can be watered therefrom and the source and constancy of supply thereto, and when reports thereon satisfactory to the commissioners shall be filed, they may proceed with the construction of any works within or without the district which in the opinion of said commissioners may be necessary for the impounding and distribution of the waters. [L. '13, p. 507, § 48.]

§ 2994. [3139-49.] Refusal of Price Reported to Assessor.

The commissioners may make offer to purchase from private owners any lands necessary, in whole or in part, for the purpose of such reservoir, canals, ditches and laterals aforementioned and if the price offered be refused, they shall certify such offer and refusal to the assessor of taxes in the county where such lands are situated and the price refused for such lands shall be considered by the assessor in respect of such and all similarly situated lands in the next assessment. [L. '13, p. 507, § 49.]

§ 2995. [3139-50.] Irrigation System—Construction.

Whenever the said commissioners feel justified in so doing, in view of the provisions of section 2993, they may construct any reservoirs, canals, pipe-lines, ditches, laterals and other necessary works, within or without the district, by contract or by direct labor, in such manner as in their judgment shall most effectively and economically store and distribute the water at least cost; and may sell perpetual water rights to individual land owners, or may supply water to irrigation districts or companies, on terms of twenty annual payments (or less if so requested by such owners, districts or companies), with interest on deferred payments at the rate of not less than four and one-half per cent per annum, and not in any case less than one-half of one per cent per annum above the rate realized by the agricultural development district upon its issue of bonds, of which the proceeds, directly or indirectly, may go into such undertaking. [L. '13, p. 507, § 50.]

§ 2996. [3139-51.] Price of Water—Maintenance.

The price per acre, for a water right shall be determined by dividing the total cost to the district of acquiring and constructing the reservoir and distribution system (including all expenses in connection therewith or incidental thereto), by the number of acres furnished with water rights therefrom; and an annual charge per acre for water rights may be levied for maintenance of such reservoir and distribution systems. [L. '13, p. 508, § 51.]

§ 2997. [3139-52.] Sale of Irrigable Lands.

Whenever and so often as the district may itself own or acquire any lands watered by such irrigation works, it may dispose of such lands to

settlers, irrigation districts or companies upon the terms, interest rates and conditions described in section 2995. [L. '13, p. 508, § 52.]

§ 2998. [3139-53.] Limitation on Sales to One Person.

Until the legislature shall otherwise provide the commissioners shall not sell or dispose of any irrigable lands to any one firm, person, or corporation exceeding forty acres, directly or indirectly, or sell or dispose of water rights to any firm, person or corporation to any tract exceeding one hundred and sixty acres, nor shall any assignment between holders be effective to evade these provisions without the written consent of the commissioners. [L. '13, p. 508, § 53.]

§ 2999. [3139-54.] Lease—Time Limit.

Any land or other property owned or controlled by the agricultural development district may, in the discretion of the commissioners, be leased for a period of not exceeding twenty years, on such terms and conditions as the commissioners may determine: Provided, that in all leases of land or property the net income therefrom to the agricultural development district, after allowing for depreciation, shall be not less than six per cent per annum of the fair selling value of such land or property, and shall in any case be sufficient to yield a net interest return to the district upon such investment at the rate of one-half of one per cent above the rate realized by the district upon any issues of bonds, the proceeds of which directly or indirectly may enter into the cost to the district of such land or property. [L. '13, p. 508, § 54.]

§ 3000. [3139-55.] By-products.

It shall be the duty of the commissioners to utilize, as far as practicable, any and all by-products from the lands secured, cleared and otherwise improved by them, and to make tests for the utilization and sale of by-products, and to manufacture or purchase equipment for any processes that may prove successful for that purpose. [L. '13, p. 509, § 55.]

§ 3001. [3139-56.] Issuance of Bonds.

To provide funds for its purposes, any agricultural development district formed under authority of this act may issue negotiable bonds, to be designated "Agricultural Development Bonds." These bonds shall be payable not more than twenty years after their date, and shall be executed in accordance with law by the president of the agricultural development commission and attested by the secretary thereof. They shall be registered or coupon bonds, issued in denominations of not less than one hundred nor more than one thousand dollars each, numbered from one up consecutively, and shall bear interest, payable semi-annually, at a rate not to exceed six per cent per annum. They shall be disposed of serially, dated the day of issuance, and shall not bear interest until after their actual sale, and shall be sold only when their proceeds may from time to time be required. The principal and interest shall be payable at such place as may be designated in the bond. The bonds and each coupon shall be signed by said presiding officer,

and shall be attested by the secretary under the seal of the agricultural development district. Such bonds shall be sold in such manner as the agricultural commission may by resolution declare to be for the best interest of the district. A register shall be kept of all the bonds issued, showing the number, date, amount, interest, to whom delivered (if coupon bonds) and the name of payee (if registered bonds); and also showing each and every bond executed, issued or sold under the provisions of this act, and when and where payable.

The coupons for the payment of interest on said bonds shall be considered for all purposes as warrants drawn upon the general fund of the agricultural development district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such agricultural development district, if there are no funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to indorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the rate named in the bond. [L. '13, p. 509, § 56.]

§ 3002. [3139-57.] Form of Bond.

The form of the bond shall be substantially as follows:

\$—.

No. —.

UNITED STATES OF AMERICA STATE OF WASHINGTON AGRICULTURAL DEVELOPMENT BOND.

The — Agricultural Development District of — in the state of Washington, for value received, hereby promises to pay to bearer, or to the registered holder of this bond, if the same be registered, on the 1st day of —, 19—, the sum of — Dollars with interest thereon at the rate of — per centum per annum, payable semi-annually on the first day of — and — in each year upon the presentation and surrender of the annexed interest coupons, as they severally become due; both principal and interest of this bond are payable in gold coin of the United States, of the present standard weight and fineness, at the — County Treasury, in the state of Washington; for the prompt payment whereof, both principal and interest as they mature, the full faith, credit and resources of the — Agricultural Development District of —, in the state of Washington, are hereby irrevocably pledged.

It is redeemable on any interest date occurring — or more years after the date hereof, at par, and interest on this bond shall cease when it is called for payment either at maturity or by redemption before maturity.

This bond is one of an issue of — similar bonds authorized by the legislature of the state of Washington in a statute passed in the year 1913 and entitled: (here insert the exact title of act.)

It is hereby certified and declared that all conditions and things required by the Constitution and laws of the state of Washington to exist and be done precedent to the issuance of this bond have existed and been done in due and regular form, as required by law, and that this bond is by virtue of the law made incontestable for any infor-

malities preceding its issuance, and the signatures of the president and the secretary hereto attached, together with the seal of the — Agricultural Development District of — in the state of Washington, are warrants to the holder thereof of the due execution and valid consideration for this instrument.

In Testimony Whereof the said president and secretary have hereto affixed their signatures and attached an impression of the seal of the — Agricultural Development District of —, in the state of Washington, and the coupons hereto annexed have been executed by lithographed facsimile in accordance with the act this — day of —. 19—. [L. '13, p. 510, § 57.]

§ 3003. [3139-58.] Public Funds may be Invested in Bonds.

All state, county, municipal and other public funds may be invested in such bonds of any agricultural development districts established under authority of this act, and such bonds shall be a preferential investment for the permanent school fund, second only to school district bonds, except when a higher rate of interest can be secured for the school fund by investment in other municipal bonds. [L. '13, p. 511, § 58.]

CHAPTER XVI.

RECLAMATION OF AGRICULTURAL LANDS.

§ 3004. Designation of Act.

This act shall be known and cited as the "State Reclamation Act." [L. '19, p. 442, § 1.]

See §§ 3018-3026, land settlement act.

Cited in 110 Wash. 530.

§ 3005. Purpose of Act—Reclamation Service.

The object of this act is to provide for the reclamation and development of such of the arid, swamp, overflow, and logged-off lands in the state of Washington as shall be determined to be suitable and economically available for reclamation and development as agricultural lands, and the state of Washington in the exercise of its sovereign and police powers declares the reclamation of such lands to be a state purpose and necessary to the public health, safety and welfare of its people. For that purpose there shall be and hereby is established a department of state government to be known as "The State Reclamation Service of Washington," which shall consist of the state reclamation board and such field experts, and other assistants and employees, as the board shall from time to time deem necessary. [L. '19, p. 442, § 2.]

Workmen's Compensation Act as applicable to employment in reclama-

tion of arid lands. *Ann. Cas.* 1917D, 14.

§ 3006. Duties of Board.

The state reclamation board, hereinafter called the board, shall maintain offices at the state capital and hold such regular and special meetings as the business of the department shall require, and keep

a record of its proceedings, and may from time to time adopt rules and regulations for the transaction of its business. . . . The attorney general shall be the legal adviser of the board. . . . [L. '19, p. 443, § 3.]

The state reclamation board is abolished and this section is largely obsolete.

See *infra*, § 10828, duties devolve upon director of conservation and development.

See *infra*, § 10893, board abolished.

§ 3007. Reclamation Revolving Fund—Reimbursement of Other Funds.

For the purpose of carrying out the provisions of this act there is hereby created in the state treasury a state reclamation revolving fund, hereinafter called the reclamation fund, which shall consist of all sums that may from time to time be appropriated thereto by the legislature from other funds in the state treasury; all gifts, donations, bequests, and devises, made to the state therefor, and the proceeds of the sale thereof; the proceeds of the sale or redemption of and the interest earned by securities purchased or acquired with the moneys thereof; all reimbursements for moneys advanced for the payment of assessments upon state, school, granted and other public lands for the improvement thereof, as hereinafter provided; and all taxes received under levies authorized by the legislature therefor.

Whenever the total amount in the reclamation fund, including cash on hand, market value of property, and par value and accrued interest of securities owned, reimbursements due or to become due for moneys advanced for the improvement of state, school, granted and other public lands, and all uncollected taxes, including the current levy, less all outstanding warrants drawn against such fund, shall equal five million dollars (\$5,000,000), all taxes from future levies authorized by this act made therefor shall be paid over to the respective funds in the state treasury from which moneys have been appropriated for the reclamation fund, until such funds are reimbursed for all sums so appropriated.

From the moneys appropriated from the reclamation fund there shall be paid, upon vouchers approved by the board and signed and attested by the chairman and secretary, the administrative expenses of the board and such amounts as shall be found necessary or expedient for the investigation and survey of reclamation projects proposed to be financed in whole or in part by the board, and such amounts as may be authorized by the board for the reclamation of logged-off lands and for the reclamation of lands of diking, drainage, diking and drainage, and irrigation districts duly and regularly organized under the laws of this state, and such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands, and all of the respective districts hereinabove referred to shall, for the purposes of this act, be known and designated herein as reclamation districts. [L. '19, p. 444, § 4.]

§ 3008. Powers of Board.

In carrying out the purposes of this act the board shall be authorized and empowered:

To make surveys and investigations of the unreclaimed and undeveloped lands in this state and to determine the relative agricultural values, productiveness and uses, and the feasibility and cost of reclamation and development thereof;

To formulate and adopt a sound policy for the reclamation and development of the undeveloped agricultural resources of the state, and from time to time select for reclamation and development such lands as may be deemed advisable, and the board may in its discretion advise as to the formation and assist in the organization of reclamation districts under the laws of this state;

To purchase the bonds of any reclamation district whose project is approved by the board and which is found to be upon a sound financial basis, and to contract with any such district for making surveys and furnishing engineering plans and supervision for the construction of its project, and to accept the bonds of such district in payment therefor, and to expend the moneys appropriated from the reclamation fund in the purchase of such bonds or in carrying out such contracts;

To sell and dispose of any reclamation district bonds acquired by the board, at public or private sale, and to pay the proceeds of such sale into the reclamation fund, Provided, that such bonds shall not be sold for less than the purchase price plus accrued interest;

To, whenever it shall deem it advisable, require any district with which it may contract, to provide such safeguards as it may deem necessary to assure bona fide settlement and development of the lands within such district, by securing from the owners of lands therein agreements to limit the amount of their holdings to such acreage as they can properly farm and to sell their excess land holdings at reasonable prices;

To clear and reclaim logged-off lands in the manner hereinafter in this act provided;

To employ all necessary experts, assistants and employees, and fix their compensation, and to enter into any and all contracts and agreements necessary to carry out the purposes of this act;

To have the assistance, co-operation and services of, and the use of the records and files in, all the departments and institutions of the state, particularly the office of the commissioner of public lands, the state Department of Agriculture, the office of the state hydraulic engineer, the bureau of farm development, the bureau of statistics, agriculture and immigration, the State College of Washington, and the University of Washington; and all state officers and the governing authorities of all state institutions are hereby authorized and directed to co-operate with the board in furthering the purposes of this act;

To co-operate with the United States in any plan of land reclamation or land settlement or agricultural development which the congress of the United States may provide and which may affect the development of agricultural resources within the state of Washington, or the settlement of soldiers, sailors, and other worthy persons, on the agricultural lands within this state, and the board shall have full power to carry out the provisions of any co-operative land settlement act that may be enacted by the United States.

The board shall prepare and report to the legislature, at the commencement of each biennial session, a full statement of its operations and recommendations. [L. '19, p. 445, § 5.]

See § 10828, *infra*, duties devolve upon director of conservation and development.

§ 3009. Reclamation Contracts With United States.

The board shall have the power to co-operate and to contract with the United States for the reclamation of arid, swamp, overflow, or logged-off lands in this state by the board or by the United States, and shall have the power to contract with the United States for the handling of such reclamation work by the United States and for the repayment of such moneys as the board shall invest from the reclamation fund, under such terms and conditions as the United States laws and the regulations of the interior department shall provide for the repayment of reclamation costs by the lands reclaimed. [L. '19, p. 447, § 6.]

§ 3010. Drainage and Irrigation District Reclamation Contracts.

Every diking, drainage, diking and drainage, and irrigation district duly and regularly organized under the laws of this state, or such other district as shall hereafter be authorized by law and organized for the reclamation or development of waste or undeveloped lands, shall be and is hereby authorized and empowered to enter into all contracts with the reclamation board for the reclamation of the lands of such district in the manner provided in this act, or such manner as such districts are now authorized by law to contract with the United States or with individuals or corporations, for the making of surveys and furnishing engineering plans and supervision for the construction of, or for the construction of, all works and improvements necessary for the reclamation of its lands, and for the sale or delivery of its bonds. [L. '19, p. 447, § 7.]

§ 3011. State Lands—Inclusion in District.

Whenever in the judgment of the commissioner of public lands any state, school, granted, or other public lands of the state will be specially benefited by any proposed reclamation project approved by the board, he may consent that such lands be included in any reclamation district organized for the purpose of carrying out such reclamation project, and in that event the reclamation board shall be authorized to pay, out of the current appropriations from the reclamation fund, the district assessments levied as provided by law against such lands, and any such assessments paid shall be made a charge against the lands upon which they were levied, and the amount thereof, but without interest, shall be added to the appraised value and included in the sale price of such lands when sold, and the state treasurer shall, upon the certificate of the state land commissioner, credit such amount of the proceeds of the sale, when received, to the reclamation fund. [L. '19, p. 448, § 8.]

§ 3012. Survey of State's Logged-off Land.

Whenever the commissioner of public lands shall believe that any tract of cut-over forest or logged-off state, school, granted, or other public lands of the state, is of such quality and so situated that it may be profitably cleared and made ready for cultivation for agricultural purposes under the provisions of this act, he may request the state reclamation board to make a survey and investigation thereof and to determine the cost of clearing the same and whether such clearing will increase the value of the land sufficiently to warrant the expense. [L. '19, p. 448, § 9.]

§ 3013. Report on Feasibility.

Upon the filing of such request by the commissioner of public lands the board may in its discretion cause a survey and investigation of the lands described in the request to be made, and determine whether the land is of such character and so situated that it can be profitably cleared and made ready for cultivation for agricultural purposes under the provisions of this act. In making such determination the board shall take into consideration: (a) the character and quantity of stumps and debris on the land and the cost of removing and destroying the same; and (b) the character of the soil, its depth and fertility, the number and kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land, the drainage, the number and extent of the markets accessible, the distance and means of transportation to market, the amount of similar land already under cultivation and accessible to the same market or markets, and the ordinary margin of profit per acre between the cost of production and the market price of the various crops to which the land is adapted.

Upon completion of the investigation the board shall make a detailed report of its findings and furnish a copy thereof to the commissioner of public lands and such report shall be kept on file for the information of the board and the commissioner and shall be open to public inspection. [L. '19, p. 448, § 10.]

§ 3014. Cost of Clearing Added to Sale Price of State Lands.

If the board shall determine that the state lands investigated as provided in the preceding section can be profitably cleared and made ready for cultivation and sold at an advanced price sufficient to cover the cost of clearing, it may cause the same to be cleared and pay the cost of such clearing out of the moneys appropriated from the reclamation fund for the reclamation of lands, and the cost of such clearing shall be made a charge against the lands cleared and included in the sale price thereof when sold, and such lands may be sold upon such terms as to deferred payments, including the cost of clearing, as is provided by law for the sale of state, school, granted, or other public lands of the state. [L. '19, p. 449, § 11.]

§ 3015. Tax Levy.

For the purpose of raising revenue for the carrying out of the provisions of this act, the state board of equalization shall, beginning the fiscal year of 1919, and annually thereafter, at the time of levying taxes for state purposes, levy upon all property subject to taxation, and the proper officers shall collect, a tax of one-half of one mill. The revenue so raised shall be paid into the state treasury and credited to the state reclamation revolving fund. [L. '19, p. 450, § 12.]

§ 3016. Appropriations.

There is hereby appropriated out of the general fund in the state treasury into the state reclamation revolving fund the sum of one hundred thousand dollars (\$100,000); for the purpose of making surveys and investigations of unreclaimed and undeveloped lands in this state and for

general administrative expenses of the state reclamation board there is hereby appropriated out of the state reclamation revolving fund the sum of fifty thousand dollars (\$50,000) or so much thereof as may be necessary: for the purpose of carrying out the provisions of this act relating to the purchase of the bonds of reclamation districts, the performance of contracts made with such districts, the payment of reclamation district assessments levied against lands of the state, and the payment of the cost of clearing logged-off lands of the state, there is hereby appropriated out of the state reclamation revolving fund the sum of one million dollars (\$1,000,000) or so much thereof as may be necessary: Provided, that no warrant shall be drawn upon the state reclamation revolving fund in excess of the amount in the state treasury to the credit of said fund. [L. '19, p. 450, § 13.]

§ 3017. Partial Invalidity.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional. [L. '19, p. 451, § 14.]

CHAPTER XVII.

LAND SETTLEMENT.

§ 3018. Designation of Act.

This act shall be known and cited as the "Land Settlement Act." [L. '19, p. 583, § 1.]

See *supra*, §§ 3004—3017, reclamation of agricultural lands.

Cited in 110 Wash. 527.

This act is not unconstitutional as levying a tax for other than a public purpose; the legislature, by the act, having decided that it was a public purpose: *State ex rel. State Reclamation Board v. Clausen*, 110 Wash. 525, 188 Pac. 538.

This act does not violate the equal

privileges and immunity guaranty of the constitution, and is not unconstitutional in that it discriminates in favor of agricultural lands; nor does it violate the due process clause of the fourteenth amendment to the federal constitution: *State ex rel. State Reclamation Board v. Clausen*, 110 Wash. 525, 188 Pac. 538.

§ 3019. Purpose of Act.

The state of Washington in the exercise of its sovereign and police powers declares that the settlement of such portions of the undeveloped lands in this state as may be determined to be suitable and economically available therefor is a state purpose and is necessary to the public health, safety and welfare of its people. In the exercise of such power the state, acting for itself and in co-operation with the United States, hereby establishes a definite land policy providing means whereby soldiers, sailors, marines, and others who have served with the armed forces of the United States in the war against Germany and her allies, or other wars of the United States, hereinafter generally referred to as "soldiers," and also industrial workers and other American citizens desiring a rural life, may settle upon and become owners of small improved farms and farm laborer's allotments. [L. '19, p. 583, § 2.]

Cited in 110 Wash. 527.

§ 3020. Co-operation Between State and Federal Governments.

That the state reclamation board created by the sixteenth legislature, hereinafter called the "board," shall have power to co-operate with the federal government in the settlement of any undeveloped lands in this state, and to avail itself of any authority of federal laws, rules and regulations therefor when any such settlement project shall be approved and adopted, by both the federal government and said board. Before said board shall expend any of the moneys appropriated for the settlement of land, except as herein otherwise provided, it shall enter into a written agreement with the federal government, setting forth the plan and basis of co-operation between the state and the federal government, and the expenditures to be incurred by each, and the provision for their repayment.

The contract with the United States may provide for the subdivision of the lands and other work needed to render one or more groups of farms available for agriculture.

The board is authorized to secure from the United States, subject to the provisions of federal laws, the necessary funds for making permanent improvements and for the purchase of necessary equipment. [L. '19, p. 584, § 3.]

Cited in 110 Wash. 527.

§ 3021. Reclamation Board—Powers.

The board shall have power:

To investigate and select for settlement suitable areas of undeveloped lands in this state available for settlement;

To purchase and acquire on behalf of the state such privately owned lands as in its judgment are available for settlement, whenever the same shall be within the limits of an approved project and after full investigation and official approval thereof;

To subdivide any lands owned by the state and found available for settlement, including lands purchased or acquired for that purpose, into tracts suitable for farms and farm laborer's allotments;

To make on any such farms and farm laborer's allotments such improvements as may be necessary to render the same habitable and productive;

To accept from private owners deeds or other instruments of trust relating to land and to subdivide, improve, and sell such lands;

To lease to prospective settlers any land selected by the board of settlement;

To dedicate to public use appropriate tracts for roads, schoolhouses or other public purposes;

To purchase and acquire under state laws any state, school or granted lands of the state which the board shall determine are available for settlement under the provisions of this act, whenever the same shall be within the limits of an approved project and after full investigation and official approval thereof;

To purchase and acquire lands in co-operation with the United States under such conditions as may be deemed advisable for the purposes of this act, and to convey the same under such conditions and restrictions as may be approved by the secretary of the interior;

To arrange with the federal government for sharing in the expense of furnishing agricultural training for settlers so as to render them better qualified for the cultivation of their lands, under appropriate conditions of supervision by the federal government;

To sell and convey such improved farms and farm laborer's allotments subject to the limitations of this act;

To make such rules and regulations and perform any and all acts as may be necessary and proper for the purpose of carrying out the provisions of this act.

If it shall appear that federal aid and co-operation shall not be available, or the board shall determine to adopt and proceed with any land settlement project without federal aid and co-operation, then and in such event the board may acquire lands for such land settlement project and conduct their settlement with moneys from the state reclamation fund appropriated for land settlement purposes.

The board shall have power and it shall be its duty, upon request of any land settlement or colonization company operating in the state of Washington, to make, or cause to be made, a careful examination and, providing investigation warrants, to certify to the following conditions in reference to said company and its project:

(1) That the land is suitable to agricultural purposes and in passing upon this feature it shall first procure a report from the Washington State College and make such further investigations as the board deems advisable;

(2) That its location in reference to markets, public roads, and transportation facilities makes it suitable for colonization purposes;

(3) That the proposed plan of settlement and colonization is in the interest of the settlers and especially in reference to the following points:

(a) The price at which the land is proposed to be sold;

(b) The aid to be rendered the settlers in improving the same;

(c) The rate of interest to be charged and the length of time within which payments are to be made.

(4) That provision is made for deferred payments on the amortization plan maturing in not less than twenty years;

The expense incurred in making such examination and certification shall be paid by the applicant therefor.

Before any such certificate is issued such settlement and colonization company shall fully satisfy the board that it is able to and will faithfully carry out its plan of settlement and colonization and all contracts entered into with settlers.

Whenever any such certificate shall be issued it shall be lawful for such settlement and colonization company to advertise the fact that its plan of settlement and colonization has been approved by the state of Washington.

It shall be unlawful for any person, firm, or corporation to claim, represent, advertise, or hold out in any manner that the board has issued to him or it any such certificate mentioned in this section unless such certificate has actually been so issued and unless such person, firm or corporation shall have fully complied with, and is complying

with, such certificate and the terms and conditions therein prescribed and the rules and regulations of said board. [L. '21, p. 236, § 1. Cf. L. '19, p. 585, § 4.]

Cited in 110 Wash. 527.

§ 3022. Preference Rights of Soldiers—Purchase Contracts.

That the board shall give to soldiers the preference right to purchase or lease such farms and farm laborer's allotments.

A qualified applicant must be a citizen of the United States and must satisfy the board that he is not the holder of agricultural land or possessory rights therein which, together with the land and improvements to be purchased hereunder, shall exceed a value of \$15,000. No purchaser shall at any one time hold more than one farm or farm laborer's allotment. Every purchaser shall satisfy the board as to his fitness, both financial and otherwise, to cultivate and develop the same successfully.

Each approved applicant shall enter into a contract of purchase which shall provide for the payment of the purchase price of the land, the reclamation costs and the farm improvements and other charges, if any, and shall require the purchaser actually to occupy the land within six months and actually to reside thereon for at least eight months in each calendar year for a period of at least five years, unless prevented by illness or other cause satisfactory to the board; and other absence from the land exceeding four months in any calendar year shall be a breach of the contract.

The contract shall provide that it shall not be assigned without the consent of the board.

The purchase price of the land shall be paid in annual installments to be fixed by the board for a total period of not to exceed forty years, with interest on deferred payments from the date of the contract at the rate of four per cent per annum.

Title to the land shall not pass until full payment has been made for the land and improvements. [L. '19, p. 586, § 5.]

Cited in 110 Wash. 528.

§ 3023. Notice of Leasing or Sale.

The lands disposed of under this act shall be leased or sold, in accordance with regulations adopted by the board, after public notice in at least one newspaper published in the state and of general circulation therein, and one newspaper published in the county where the land is situated, once a week for five consecutive weeks, the first date of publication being at least sixty days prior to the date of lease or sale, setting forth generally the location of the land and the terms of lease or sale and stating that detailed information can be obtained at the office of the board and such other convenient places as are designated in the notice. [L. '19, p. 587, § 6.]

Cited in 110 Wash. 529.

§ 3024. Investigations and Reports.

The board shall investigate land settlement conditions in other states and elsewhere. The board shall report biennially to the legis-

lature, giving a full statement of its operations and recommendations under the provisions of this act, and shall furnish a copy of its report to the secretary of the interior. [L. '19, p. 587, § 7.]

§ 3025. Appropriations.

For the purpose of carrying out the provisions of this act relating to acquiring lands and improving the lands of the state, and the lands acquired or taken in trust under the provisions of this act, there is hereby appropriated out of the state reclamation revolving fund the sum of one hundred and fifty thousand dollars (\$150,000), or so much thereof as may be necessary; for the administrative expenses of the board in carrying out the provisions of this act there is hereby appropriated out of the general fund the sum of ten thousand dollars (\$10,000), or so much thereof as may be necessary: Provided, that no warrant shall be drawn upon the state reclamation revolving fund in excess of the amount in the state treasury to the credit of said fund. [L. '19, p. 588, § 8.]

Cited in 110 Wash. 529.

§ 3026. Partial Invalidity.

If any part of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity or constitutionality of the act as a whole, or of the part thereof not adjudged invalid or unconstitutional. [L. '19, p. 588, § 9.]

Cited in 110 Wash. 530.

§ 3027. Penalty for Violations.

Any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a gross misdemeanor. [L. '21, p. 239, § 2.]

CHAPTER XVIII.

STATE CONTROL OF BLASTING POWDER.

§ 3028. Purchase of Powder and Explosives.

It shall be the duty of the state board of control, within thirty days after this act takes effect, to make an investigation of the practicability of purchasing manufactured powder and other explosives for the purposes of sale by the state for land clearing purposes in the manner hereinafter provided. If the state board of control shall determine from such investigation that all the powder required to carry out the provisions of this act can be acquired by contract from manufacturers at a reasonable price as to justify the purchase thereof, it shall be the duty of the state board of control from time to time to advertise for bids for the quantities needed for the purposes of carrying out the provisions of this act, in the manner required by law for the purchase of supplies by the state board of control, and to enter into contracts for the purchase of the same with the lowest and best responsible bidders therefor. [L. '19, p. 439, § 1.]

§ 3029. Resale Price.

The explosives purchased under the provisions of this act, at any time within five years from the date of approval thereof, shall be sold for cash for actual use within this state for land clearing and road building purposes, at prices equaling the actual cost of purchase plus the actual cost of delivery at the warehouse where sold. [L. '19, p. 439, § 2.]

§ 3030. County Warehouses for Explosives.

The county commissioners may establish a warehouse for the storage and distribution of explosives purchased under the provisions of this act, in each county in the state when petitioned so to do. Whenever a warehouse shall be established in any county, the board of county commissioners of such county shall provide and maintain, at the expense of the county, a suitable building for use as such warehouse. The state board of control shall, from time to time, employ or contract with persons, firms or corporations, to transport explosives from the point of delivery to this state to such warehouse. The county auditor of the county in which any such warehouse is established shall keep a record of all purchases and sales and make monthly report to the board of county commissioners. The county commissioners shall have the power to appoint a warehouse superintendent who shall have charge of the county powder warehouse and the sale of powder to the county. The said warehouse superintendent shall furnish a sufficient bond to insure the safe handling of the funds; the amount of the bond together with his salary shall be fixed by the county commissioners. The county auditor shall provide vouchers for the sales of powder and the uses thereof, and it shall be the duty of the warehouse superintendent to have each purchaser sign a voucher for each amount purchased and the use thereof, and he shall report all sales with the voucher and purchase price to the auditor each day for the preceding day's sale: Provided, however, that if in the judgment of the county commissioners the county's use of powder shall not justify them in hiring the warehouse superintendent, the county auditor may depute the county agriculturalist or county engineer to act as warehouse superintendent. [L. '19, p. 440, § 3.]

§ 3031. Requisitions on State Board of Control.

The board of county commissioners shall be entitled to obtain explosives by requisition filed with the state board of control at such times and in such amounts as shall be reasonably necessary to supply the demands of the consumers in their locality (and shall be liable upon their bond to account for the proceeds of the sale of the same). [L. '19, p. 441, § 4.]

§ 3032. Settlements.

The county auditor shall, on or before the tenth day of each calendar month, report to, and settle his accounts with the board of control for all sales of explosives made by him for the preceding month. [L. '19, p. 441, § 5.]

§ 3033. "Powder Revolving Fund."

All proceeds from the sale of explosives shall be turned into the state treasury and credited to a special fund to be known as the "Powder Revolving Fund," except that from and after the expiration of five years from the date of approval of this act, two per cent of the actual purchase price of the explosives sold shall be credited to the general fund until such time as the state is reimbursed for the amounts hereinafter appropriated from the general fund. The powder revolving fund shall be used exclusively for the purchase and distribution of explosives as provided in this act, and for the cost of distribution of explosives, including transportation. [L. '19, p. 441, § 6.]

§ 3034. Violations of Selling Price and Use Conditions—Penalty.

It shall be unlawful for any person to sell explosives purchased under the provisions of this act for any sum in excess of the selling price thereof as fixed by the state board of control, and it shall be unlawful for any person knowingly to sell explosives purchased under the provisions of this act, or to purchase the same except for actual use in this state for land clearing purposes. Any person found guilty of violating the provisions of this section shall be guilty of a gross misdemeanor. [L. '19, p. 441, § 7.]

§ 3035. Appropriations.

For the purpose of creating the "Powder Revolving Fund" there is hereby appropriated out of the general fund in the state treasury the sum of seventy-five thousand dollars (\$75,000). For the purposes of carrying out the provisions of this act there is hereby appropriated out of the "Powder Revolving Fund" the sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary: Provided, that no warrant shall be drawn upon the "Powder Revolving Fund" in excess of the amount in the state treasury to the credit of said fund. [L. '19, p. 442, § 8.]

Aliens. See Criminal Law, § 2334-1; Real Property, § 10581.

Alimony. See §§ 982—997.

ANIMALS.

TITLE XVII.

ANIMALS.

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CHAPTER I.

REGULATION OF LIVESTOCK INDUSTRY.

§ 3036. [3140.] Commissioners, How Appointed.

Whenever three or more counties in this state shall vote to accept the benefits and share the burdens of this chapter as hereinafter provided, then the governor of the state, by and with the advice and consent of the senate, shall appoint a board of stock commissioners, consisting of one member from each of such counties, and such stock commissioners, upon entering upon their duties, shall take an oath to uphold and support the constitution of the United States and the constitution and laws of this state, and to well and truly perform their duties as provided by law, which oath shall be filed in the office of the secretary of state. [L. '95, p. 75, § 1.]

See *infra*, § 6010, duties of state board of health as to diseases of domestic animals.
See *infra*, §§ 11128, 11129, taxation of grazing stock.

§ 3037. [3141.] Notice of Election, How Submitted—Ballots.

It shall be the duty of the county commissioners of any county in this state, whenever petitioned by fifty or more electors of the county, unless such petition be counterbalanced by a remonstrance of electors more numerously signed, to submit to the qualified electors of such county at a special election to be held upon thirty days' notice, the question of accepting the benefits and sharing the burdens of this chapter. For the

purpose of giving time for remonstrance, such petition shall lie over unacted on for ten days after the filing of the same. Said election shall be ordered advertised, held and conducted, and the vote canvassed and returned as other elections held under the provisions of the code: Provided, the officers of the board of said special election shall receive two dollars only for their service. The question shall be submitted to the electors in the following form: "For stock law," "Against stock law." Should the vote of the county be in the affirmative, the result shall be certified to the governor under the hand and seal of the auditor of the county, whereupon, when three or more counties have so voted in the affirmative, the governor shall make the appointments provided by section 3036. [L. '95, p. 75, § 2.]

§ 3037½. [3142.] Place of Meeting.

Said board when appointed shall meet at the city of Sprague and organize by the election of a president and secretary, and shall have power to fix the times and places of meeting thereafter, and to establish the place where the office of the secretary and records of the board shall be kept. The members of said board shall receive no compensation or mileage for their services, but shall be allowed their actual expenses incurred in the performance of their duties. [L. '95, p. 76, § 3.]

§ 3038. [3143.] Duties of Board.

It shall be the duty of said board to exercise a general supervision over and as far as may be, protect the stock interests of the state from theft and disease, and it shall have power and authority to make rules and regulations governing the recording of stock brands and governing the recording of the shipment of livestock on railroads, and the keeping of a record thereof. Such regulations, concerning the matters aforesaid, as may be made, shall be filed in the offices of the county auditors of the several counties to be affected by this chapter. A copy of the regulations concerning recording of the shipment of livestock shall be certified by the president and secretary of the board to railroad companies whose lines run through or traverse said counties. Said board shall also have the power, whenever deemed necessary by it, to assist in the prosecution of any and all crimes or misdemeanors against the laws of this state in feloniously branding or stealing any stock, or any other crime or misdemeanor under any of the laws of this state for the protection of the rights and interests of stock owners, and may employ counsel out of the fund hereinafter provided for to assist in any such prosecution. Said board shall also devise and recommend to the legislature from time to time such legislation as in their judgment will foster the stock industry of the state. It shall be the duty of railroad companies to require a compliance on the part of their employees with such regulations as the board may make concerning the record to be kept of the shipment of livestock. [L. '95, p. 76, § 4.]

§ 3039. [3144.] Inspectors—Appointment—Duties.

The said board of stock commissioners are hereby authorized, and it is made their duty, to appoint such stock inspectors as they may deem neces-

sary for better protection of the livestock interests of the state, and such inspector shall perform such duties in the inspection of stock and in the bringing to justice of such persons depredating on stock, and persons violating the provisions of this chapter, as may be prescribed by the board, and such inspectors shall have the same power to summon a posse when necessary to make arrests in the same manner and to the same extent as sheriffs. Such inspector may, when deputized, exercise the powers of deputy sheriffs, but shall not receive any fee or emolument therefor from the state or county. Inspectors shall be paid such compensation out of the funds hereinafter provided for as the board may determine. [L. '95, p. 77, § 5.]

§ 3040. [3145.] Annual Tax Levied.

An annual tax shall be laid on all the horses and cattle of the several counties affected by this chapter for the purpose of raising a fund for the purpose of carrying out its provisions: Provided, eight head of stock shall be exempt from said tax to every owner. The rate of taxation to be laid on such livestock for each year shall be fixed by the board of stock commissioners and be by them certified to the county auditors of the several counties each year prior to the annual tax levy, and the county commissioners of the several counties shall include in their tax levy the rates so fixed by said board of stock commissioners on said livestock, and cause the same to be collected along with other state and county taxes. The taxes so collected shall be covered into the state treasury as other state taxes, and shall there be kept intact for the purpose of meeting the expenditures to be incurred under this article. The treasurer shall disburse the same on warrants drawn by the state auditor upon the certificate of the president and secretary of the stock board under regulations to be prescribed by the state auditor. [L. '95, p. 77, § 6.]

See *infra*, § 11234, taxes, how levied.

§ 3041. [3146.] Brands Recorded.

From and after the passage of this act it shall be the duty of all butchers engaged in the business of slaughtering cattle in this state to keep a true and correct report of all marks and brands of all cattle slaughtered by them, recording also the name or names of persons from whom said cattle were bought, together with their residence and date of purchase and delivery of said cattle. The said record shall be kept in a suitable book in the butcher's place of business, subject at all times to the inspection of the public. [L. '95, p. 77, § 7.]

See *infra*, § 3054.

§ 3042. [3147.] Butchers to Attest Records.

It shall be the duty of all butchers keeping a record as provided in the last preceding section to make or cause to be made on or before the first day of each month two exact and correct copies of the said record as kept by him or them, and shall be and appear before the nearest acting justice of the peace within the county in which said butcher carries on and conducts his business, and shall make affidavit to the correctness of the

said record, one copy of which shall be placed and kept on file in the office of the said justice of the peace and the other copy shall be sent by the said butcher to the county auditor of the county and be placed and kept on file by the said auditor, and be subject as other papers in his office to the inspection of the public. [L. '95, p. 78, § 8.]

§ 3043. [3148.] License—Bonds Given.

All persons carrying on the business of butchering in the counties adopting the provisions of this chapter shall, on the first day of January of each year or at such later period of the year as they shall commence business, pay into the county treasury of the county in which they do business an annual license tax of ten dollars, and shall enter into bond with sureties to the satisfaction of the county auditor in the sum of five hundred dollars, conditioned that they will in all respects comply with the provisions of this article concerning their business. The obligee in said bond shall be the state of Washington. Said bond shall be filed with the county auditor, and any person suffering loss by reason of non-compliance with the provisions of this chapter on the part of any such butcher shall be entitled to sue on said bond for his damages. The license tax collected from butchers shall be paid into the state treasury and there become a part of the fund provided for by section 3040. [L. '95, p. 78, § 9.]

§ 3044. [3149.] Preservation of Hides.

Any person or persons, other than a licensed butcher, who shall slaughter any cattle shall preserve the hides of said cattle intact for thirty days at his usual place of abode, and permit the same to be inspected by any and all persons. [L. '95, p. 79, § 10.]

§ 3045. [3150.] Estrays, Examination of Marks on.

No person shall take up stray stock in this state without first examining the marks and brands before two disinterested witnesses, and swearing to the marks and brands before the nearest justice of the peace prior to advertising said stock. The said affidavit shall be filed with said justice of the peace, and shall contain the names of the witnesses before whom the marks and brands were examined. [L. '95, p. 79, § 11.]

See *infra*, § 3154 et seq., estrays.

§ 3046. [3151.] Branding.

It shall be unlawful for any person to brand or mark any calf, calves or other cattle that are running at large between the first day of December of each year and the first day of April following: Provided, any owner of stock may brand on his own premises at any time in the presence of one or more responsible citizens. [L. '95, p. 79, § 12.]

§ 3047. [3152.] Penalty.

Any persons who shall violate any of the provisions of sections 3041, 3042, 3044, 3045, 3046, or shall willfully fail or refuse to comply with any of the requirements thereof, shall be deemed guilty of a misdemeanor,

and on conviction thereof in a court of competent jurisdiction shall be punished by a fine of not less than fifty dollars or more than five hundred dollars, or by imprisonment in the county jail not less than one month and not exceeding six months, at the discretion of the court, or by both such fine and imprisonment, at the discretion of the court. All moneys collected by such fines shall be paid into the general fund of the county for the benefit of the public schools of the county. [L. '95, p. 79, § 13.]

§ 3048. [3153.] Driving Another's Stock from Range.

No person shall be permitted to lead, drive, or in any manner remove any horse, mare, colt, jack, jenny, mule, or any head of neat cattle, or hog, sheep, goat, or any number of these animals, the same being the property of another person, from the range on which they are permitted to run in common, without the consent of the owner thereof first had and obtained: Provided, the owner of any such animals as aforesaid, finding the same running on the herd grounds, or on common range with other animals of the same, may be permitted to drive his own animal or animals, together with such other animals as he cannot conveniently separate from his own, to the nearest and most convenient corral, or other place for separating his own from other animals, if he, in such case, immediately, with all convenient speed, drive all such animals not belonging to himself back to the herd ground or range from which he brought such animals. [L. '91, p. 25, § 1; 1 H. C., § 2514.]

§ 3049. [3154.] Penalty.

Any person violating the provisions of the foregoing section shall be guilty of a misdemeanor, and on conviction thereof shall be punishable by a fine of not less than twenty nor exceeding five hundred dollars, or imprisonment not exceeding six months nor less than thirty days, or both such fine and imprisonment, discretionary with the court having jurisdiction of the same. [L. '91, p. 26, § 2; 1 H. C., § 2515.]

§ 3050. [3155.] Separation of Stock—Penalty.

It shall be the duty of any and all persons searching or hunting for stray horses, mules, or cattle to drive the band or herd in which they may find their stray horses, mules, or cattle into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said animals shall drive them out of and away from the corral in which they may be driven, before setting the herd at large. Any person violating this section shall be deemed guilty of a misdemeanor, and on conviction thereof, before a justice of the peace, shall be fined in any sum not exceeding one hundred dollars, and half the costs of prosecution; said fine so recovered to be paid into the school fund of the county in which the offense was committed; and in addition thereto shall be imprisoned until the fine and costs are paid. [L. '69, pp. 408, 409, §§ 1, 2; Cd. '81, § 2537; 1 H. C., § 2516.]

CHAPTER II.

MARKS AND BRANDS.

§ 3051. [3156.] Owner may have Mark and Brand.

Any person or persons being the owner or owners of horses, mules, cattle, sheep, goats, or hogs may keep a mark, brand and counter-brand, different from the brand of his neighbors, and as far as practicable, different from any others. [Cd. '81, § 2550; 1 H. C., § 2496.]

For former laws on this subject, see L. '55, pp. 37, 38; L. '68, pp. 42—44; L. '75, pp. 130, 131; L. '77, p. 401.

See supra, §§ 3041, 3044, duty of butchers as to.

See supra, § 3045, duty as to, on taking up branded estrays.

See supra, § 3046, unlawful to brand except within certain months.

See infra, § 3085, brand of stallion running at large, proof.

See infra, § 3206, penalty for unlawful mutilation of domestic animals.

Cited in 110 Wash. 433.

This section does not preclude oral evidence of an unrecorded private mark upon stock to establish ownership in a prosecution for larceny of cattle: State v. Swager, 110 Wash. 431, 188 Pac. 504.

§ 3052. [3157.] Record of Brands—Data Accompanying.

Every owner adopting a brand or mark shall record with the county auditor his mark, brand, and counter-brand, dewlaps or wattles, by delivering to such auditor his brand and counter-brand, burnt upon a piece of leather, and a description of his mark, dewlaps, or wattles; and the auditor shall enter, in a book kept by him for that purpose, a description of said mark, dewlaps or wattles, and brands, together with the owner's name and time of recording, also describing the part or place on the animal where such mark, dewlap, wattle, or brand is designed to be used, and any person other than the owner thereof using or imitating, or causing to be used or imitated, any such recorded mark, dewlap, wattle, brand, or counter-brand within the county where the same is recorded shall be deemed guilty of a misdemeanor, and punished as provided in section 3055. The auditor, when any mark, dewlap, wattle, or brand is presented for record, shall satisfy himself that they are different from any other recorded in his office, and he shall be entitled to charge a fee of fifty cents for every entry made under the provisions of this chapter. [Cf. Cd. '81, § 2551; L. '91, p. 136, § 1; 1 H. C., § 2497.]

See, also, supra, §§ 2594, 2595.

§ 3053. [3158.] Certified Copy of Brand, etc., as Evidence.

On trial of any action involving ownership of any animal, a certified copy of the marks and brands made by the auditor, over the seal of his office, shall be considered as prima facie evidence in such trial as to such ownership. [L. '75, p. 131, § 3; Cd. '81, § 2552; 1 H. C., § 3498.]

§ 3054. [3159.] Record of Slaughtered Animals.

Any person or persons slaughtering cattle, and having a definite place of slaughter, shall keep at such place a book, in which shall be entered, on the day of slaughter, the age, as near as may be, and brands of cattle, or other animals slaughtered; also a full description of every mark or brand on such animal, together with the date of receipt or purchase, and

the name of the person from whom the same was received or purchased, and such book shall be kept for the inspection of any person desiring so to do. [L. '75, p. 131, § 4; Cd. '81, § 2553; 1 H. C., § 2499.]

See *supra*, § 3041, duty of butchers.

§ 3055. [3160.] Penalty for Violation of This Chapter.

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined, for the first offense, in any sum not exceeding fifty dollars, and for a repetition of the offense, not less than fifty dollars nor more than one hundred dollars, and in default of payment, imprisonment in the county jail at the discretion of the court. One-half of the fines collected under the provisions of this chapter shall go to the informant, and the residue shall be paid to the county treasurer for the school funds of the county where the said offense was committed. [L. '75, p. 131, § 6; Cd. '81, § 2554; 1 H. C., § 2500.]

CHAPTER III.

LIENS FOR SERVICE OF SIRES.

§ 3056. [3161.] Proceedings to Secure Lien.

In order to secure to the owner or owners of sires payment for service, the following provisions are enacted: That every owner of a sire having a service fee, in order to have a lien upon the female served, and upon the get of any such sire under the provisions of this chapter for such service, shall file for record with the county auditor of the county where said sire is kept for service a statement, verified by oath or affirmation to the best of his knowledge and belief, giving the name, age, description, and pedigree, as well as the terms and conditions upon which such sire is advertised for service: Provided, that owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this chapter. [L. '90, p. 451, § 1; 1 H. C., § 2501.]

§ 3057. [3162.] Auditor to Issue Certificate, etc.

The county auditor, upon the receipt of the statement as specified in the last preceding section of this chapter, duly verified by affidavit, shall issue a certificate to the owner or owners of said sire, which shall be posted by the owner in a conspicuous place where said sire may be stationed, which certificate shall state the name, age, description, pedigree, and ownership of such sire, the terms and conditions upon which the said sire is advertised for service, and that the provisions of this chapter, so far as relates to the filing of the statement aforesaid, have been complied with. [L. '90, p. 451, § 2; 1 H. C., § 2502.]

§ 3058. [3163.] Owner may have Lien—Statement to be Filed.

The owner or owners of any such sire receiving such certificate, by complying with the last two preceding sections of this chapter, shall obtain and have a lien upon the female served for the period of one year from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: Provided, said owner or

owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: Provided further, that the lien upon the get of any such sire shall be a preferred lien: And provided further, that no sale or transfer of any female animal served shall defeat the right of such lienholder. [L. '13, p. 155, § 1. Cf. L. '90, p. 451, § 3; 1 H. C., § 2503.]

§ 3059. [3164.] Foreclosure of Lien.

Liens under this chapter [are] to be foreclosed in the same manner as liens upon other personal property are foreclosed. [L. '90, p. 452, § 4; 1 H. C., § 2504.]

§ 3059½. [3165.] Fees of Recording Officer.

For filing certificate, making copy of such affidavit, and the certificate of date of such filing, the clerk of record shall be entitled to the same fees as are provided by law for similar service in regard to chattel mortgages. [L. '90, p. 452, § 5; 1 H. C., § 2505.]

§ 3060. [3165-1.*] Pedigree Enrolled—Certificate—Disqualification.

Every person, firm or corporation owning any stallion, or jack, for sale, exchange or for public service in this state, shall cause the name, description and pedigree as far as may be known of such stallion or jack to be enrolled by the Department of Agriculture of the state of Washington, and procure a certificate of such enrollment from said department, which shall thereupon be presented to and recorded by the auditor of the county in which said stallion or jack is used for public service.

In order to obtain the license certificate herein provided for, the owner of each stallion or jack shall obtain a certificate of soundness, signed by a veterinarian registered to practice in the state of Washington and authorized to issue such certificate by the commissioner of agriculture, for which certificate the veterinarian shall be entitled to charge a fee of not to exceed five dollars (\$5) and his actual and necessary traveling expenses in going to and returning from the place where such examination is made and shall forward the veterinarian's certificate, together with the stud-book certificate of registry of the pedigree of the said stallion or jack, and other necessary papers relating to his breeding and ownership to the Department of Agriculture.

The presence of any of the following named diseases shall disqualify a stallion or jack for public service: bone spavin, ringbone, sidebone, navicular disease, bog spavin, curb with curby formation of hock, glanders, farcy, maladie due coit, urethral gleet, mange, or melanosis; and the Department of Agriculture is hereby authorized to refuse its certificate of enrollment to any stallion or jack affected with any of the diseases here specified and to revoke the previously issued enrollment certificate of any stallion or jack found on investigation by the department to be so affected. [L. '11, p. 483, § 1; L. '17, p. 412, § 1.]

See *infra*, § 10850, duties of commissioner devolve upon director of agriculture.

§ 3061. [3165-2.*] Standard Used—Determination of Pedigree.

The commissioner of agriculture shall examine and pass upon the merits of each pedigree submitted, and shall use as his standard for action the stud-books and signatures of the duly authorized officers of the various horse or jack pedigree registry associations, societies or companies recognized by the Department of Agriculture of this state, and shall accept as pure-bred and entitled to a license certificate as such, each stallion or jack for which a pedigree registry certificate is furnished bearing the signature of the duly authorized officers of a recognized and approved stud-book. [L. '11, p. 484, § 2; L. '17, p. 413, § 2.]

§ 3062. [3165-3.] Posting Certificate.

The owner of any stallion or jack used for public service in this state shall post and keep affixed, during the entire breeding seasons, copies of the license certificate of such stallion or jack, issued under the provisions of the next succeeding section, in a conspicuous place both within and upon the outside of every stable or building where the said stallion or jack is used for public service at his home or elsewhere. [L. '11, p. 484, § 3.]

§ 3063. [3165-4.*] Forms of Certificate.

Subd. 1. The license certificate issued for a stallion or jack whose sire and dam are of pure breeding and the pedigree of which is registered in a stud-book recognized by the Department of Agriculture, shall be in the following form:

The Department of Agriculture of the State of Washington.

Certificate of Pure-bred Stallion or Jack No. —.

The pedigree of the stallion or jack (name) —. Owned by —.

Described as follows: (Color) —. (Breed) —.

Foaled in the year —, has been examined and it is hereby certified that the said stallion or jack is of pure breeding and is registered in a stud-book recognized by the Department of Agriculture of the state of Washington.

(Signature) — —,

Commissioner of Agriculture.

Subd. 2. The license certificate issued for a stallion or jack whose sire or dam is not of pure breeding shall be in the following form:

Department of Agriculture of the State of Washington.

Certificate of Grade Stallion or Jack No. —.

The pedigree as far as may be known of the stallion or jack (name) —. Owned by —.

Described as follows: (Color) —.

Foaled in the year —, has been examined and it is found that the said stallion or jack is not of pure breeding and is therefore, not eligible for registration in any stud-book recognized by the Department of Agriculture of the state of Washington.

(Signature) — —,

Commissioner of Agriculture.

Subd. 3. The license certificate issued for a stallion whose sire and dam are pure-bred, but not of the same breed, shall be in the following form:

Department of Agriculture of the State of Washington.

Certificate of Cross-bred Stallion No. —.

The pedigree of the stallion (name) —. Owned by —.

Described as follows: (Color) —.

Foaled in the year —, has been examined and it is found that his sire is registered in the — and his dam in —.

Such being the case, the said stallion is not eligible for registration in any stud-book recognized by the Department of Agriculture of the state of Washington.

(Signature) — —,
Commissioner of Agriculture.

Subd. 4. The license certificate issued for a nonstandard-bred stallion shall be used in the following form:

Department of Agriculture of the State of Washington.

Certificate of Nonstandard-bred Stallion No. —.

The pedigree so far as may be known of the stallion (name) —.
Owned by —.

Described as follows: (Color) —.

Foaled in the year —, has been examined and it is found that the stallion is not eligible to registration as standard-bred, and for the purpose of the license is not pure-bred, although recorded in a nonstandard department of the American Trotting Register.

(Signature) — —,
Commissioner of Agriculture.

[L. '17, p. 413, § 3; L. '11, p. 484, § 4.]

§ 3064. [3165-5.*] Form of Poster—Fee for Certificate—Assignment.

Each bill and poster issued by the owner of any stallion or jack enrolled under this act, or used by him or his agent for advertising, shall have such stallion's or jack's certificate of enrollment printed in bold-face type, not smaller than long primer, on said bill or poster, and the first mention thereon of the name of the stallion or jack shall be preceded by the words: "Pure-bred," "grade," "cross-bred," or "nonstandard-bred," in accordance with the wording of the certificate of enrollment; and it shall be illegal to print upon the poster any misleading reference to the breeding of the stallion or jack, his sire or his dam, or to use upon such bill or poster a portrait of a stallion or jack in a misleading way; and each newspaper advertisement printed to advertise any stallion or jack for public service shall show the enrollment certificate number and state whether it reads "pure-bred," "grade," "cross-bred," or "nonstandard-bred."

A fee of two dollars (\$2) shall be paid to the Department of Agriculture for the examination and enrollment of each pedigree and for the issuance of a license certificate, in accordance with the breeding for the stallion or jack as above provided.

A renewal of each license certificate issued under the provisions of this act shall be obtained from the commissioner of agriculture on the thirty-first day of December of the year following the year in which such certificate was issued and every two years thereafter, by filing with the commissioner of agriculture a new certificate of soundness, issued within thirty days prior to the application for such renewal by an authorized veterinarian, and the payment of a fee of one dollar (\$1).

Upon the transfer of the ownership of any stallion or jack enrolled under the provisions of this act, the certificate of enrollment may be transferred to the transferee by said department upon submittal of satisfactory proof of such transfer and upon payment of the fee of fifty cents (50c); and a fee of fifty cents (50c) shall be charged for a duplicate license certificate issued where proof is given of loss or destruction of the original certificate. [L. '17, p. 415, § 4. Cf. L. '11, p. 486, § 5.]

§ 3065. [3165-5½.] Certificate for Animals Brought into State.

Any person, firm or corporation bringing any stallion or jack into the state shall within sixty days thereafter procure the license certificate provided for in section 3060. Any person, firm or corporation offering any stallion or jack for sale for breeding purposes shall first procure the license certificate provided for in section 3060. [L. '11, p. 487, § 5½.]

§ 3066. [3165-6.] Penalty.

Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof be fined in any sum not exceeding fifty dollars and for each and every subsequent violation of the provisions of this act shall be guilty of a misdemeanor and subject to a fine of not less than fifty dollars. [L. '11, p. 487, § 6.]

§ 3067. [3165-7.] Complaint of Unsoundness.

When a complaint is made to the department of animal husbandry that a stallion or jack is unsound, and, on investigation an examination is by the department deemed necessary, such examination shall be made by the state veterinarian, or his deputy; but the owner of the stallion or jack shall have the right to select some registered veterinarian to act with the state veterinarian, and in case these two shall fail to agree they shall appoint a third registered veterinarian to act as referee, and his decision shall be final. [L. '11, p. 487, § 7.]

CHAPTER IV.

STOCK RUNNING AT LARGE.

§ 3068. [3172-1.] Livestock Area.

That the board of county commissioners of any county of this state shall have the power to designate by an order made and published, as provided in section 3070, certain territory within such county in which it shall be unlawful to permit livestock of any kind to run at large: Provided, that no territory so designated shall be less than two square miles

in area: And provided further, that this act shall not affect counties having adopted township organization. [L. '11, p. 93, § 1. Cf. L. '05, p. 194, § 1; L. '07, p. 566, § 1.]

See *infra*, § 3154 et seq., estrays.

Cited in 77 Wash. 502.

Rem. & Bal. Code, § 3166, providing for livestock areas, was not unconstitutional, as conferring judicial powers on the county commissioners and assessors, their acts being ministerial rather than judicial, and especially as the conferring of judicial powers on them is not obnoxious to the constitution; and it is not discriminatory, as it applies to the whole state, and being a police regulation, may be made to apply

to certain locations: *State v. Storey*, 51 Wash. 630, 99 Pac. 878.

When animal is "estrays" or at large. 9 Ann. Cas. 284.

Liability of municipality for wrongful act of officer impounding or killing animal running at large. 21 Ann. Cas. 984.

General features and constitutionality of statutes respecting estrays. 8 Am. St. Rep. 271.

§ 3069. [3172-2.] Petition—Notice—Hearing.

Whenever ten residents within a proposed district shall file with the county auditor a petition, asking, within the territory therein named, no livestock of any kind shall be permitted to run at large, the county commissioners shall, at their next meeting, make an order fixing a time and place when a hearing will be had upon such petition, which time shall not be less than twenty days nor more than ninety days from the filing of such petition; and shall cause notice of the time to be given by publishing such notice in some newspaper having a general circulation within such territory for three successive weeks before the day fixed in such order; if there be no newspaper having a general circulation in such territory, then by posting such notice in three public places in such territory at least twenty days before the day of hearing, and such notice shall set forth the petition. It shall be the duty of the board of county commissioners at the time fixed for such hearing, or at the time to which such hearing may be adjourned, to hear all persons interested in the question presented by such petition, and to determine whether such district shall be created. [L. '11, p. 93, § 2.]

§ 3070. [3172-3.] Commissioners to Make Order.

If the board of county commissioners shall determine to prohibit the running at large of livestock within the territory described in such petition or in any portion thereof, it shall make an order defining the boundaries of such territory, which shall be entered upon the records and published in a newspaper having general circulation in such territory for four successive weeks, or by posting in three public places in such territory for four weeks. [L. '11, p. 94, § 3.]

Under this section, the commissioners' power is not fully exercised by the granting of an application upon a hearing and the record entry of such action on the minutes; hence, until the order is entered and published, the matter was in a de-

terminative stage, and the commissioners had power to give notice of a reconsideration of the application: *State ex rel. Sieler v. Virnig*, 77 Wash. 502, 137 Pac. 1039.

§ 3071. [3172-4.] Penalty.

Any person, or any agent, employee or representative of a corporation, violating any of the provisions of such order after the same shall

have been published or posted as provided in section 3070, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than two dollars, nor more than ten dollars, for each offense, and it shall be the duty of the prosecuting attorney of such county, on complaint of any resident or freeholder of said territory to forthwith enforce the provisions of this section. [L. '11, p. 94, § 4.]

§ 3072. [3172-5.] Swine not Permitted at Large.

The owner of swine shall not allow them to run at large at any time or within any territory, and any violation of this section shall render such owner liable to the penalties provided for in section 3071: Provided, that swine may be driven upon the highways while in charge of sufficient attendants. [L. '11, p. 94, § 5.]

§ 3073. [3173.] Unlawful for Swine to Run at Large.

It shall be unlawful for the owner or owners of any swine to allow them to run at large in any county in the state. [L. '90, p. 454, § 1; 1 H. C., § 2488.]

For former laws on this subject see L. '69, pp. 362, 363; L. '83, p. 54; L. '88, pp. 55—57.

§ 3074. [3174.] Liability of Owner.

If any swine shall be suffered to run at large in any county of this state contrary to the provisions of this act, and shall trespass upon the land of any person, the owner or person having possession of such swine shall be liable for all damages the owner or occupant of such land may sustain by reason of such trespass; and for a second or subsequent act of trespass by such swine, such owner or person shall be liable for treble the amount of damages done by the same; such damages may be recovered in a civil action before any justice of the peace. [L. '90, p. 454, § 2; 1 H. C., § 2489.]

"Act" refers to §§ 3073—3080.

Cited in 109 Wash. 383, 384, 386.

Treble damages for injuries committed by trespassing swine, "suffered to run at large," under this section, cannot be recovered on mere proof of the trespass, it

being necessary to show that they were running at large with the consent or knowledge of the owner; "suffer" meaning to "permit": *Willis v. Gerking*, 108 Wash. 382, 186 Pac. 1064.

§ 3075. [3175.] Swine may be Restrained—Proceedings.

If any swine shall be found running at large contrary to the provisions of this act, it shall be lawful for any person to restrain the same forthwith and shall immediately give the owner notice in writing that he has restrained said swine, and the amount of damages he claims in the premises, and requiring the owner to take said swine away and pay such damages. If said owner fails to comply with the provisions of this section within three days after receiving such notice, such damages may be recovered in a civil action before any justice of the peace, and such person who sustains damages as aforesaid shall have a lien upon said swine for the damages sustained by the said swine, and for keeping same: Provided, that if the owner of such swine is unknown, the notice required in this act shall be published for two weeks in a

newspaper published in the county. [L. '99, p. 52, § 1. Cf. L. '90, p. 454, § 3; 1 H. C., § 2490.]

"Act" refers to §§ 3073—3080.

See *infra*, § 3090 et seq., damages by notice, etc.

§ 3076. [3176.] Assessment of Damages by Swine—Notice to Freeholders.

If the owner of such swine so restrained shall object to the damages claimed by the persons having such swine in possession, and the parties cannot agree upon the same, either party may apply to any justice of the peace of the precinct, and if there be no justice of the peace in the precinct, then the nearest justice in [the] county, for the appointment of appraisers to assess the damages done by such swine, and the reasonable cost of taking up and keeping the same; and it shall be the duty of such justice of the peace to issue notice to three disinterested freeholders of the precinct to appear upon the premises where such swine may be, and assess the damages as herein required. [L. '90, p. 455, § 4; 1 H. C., § 2491.]

§ 3077. [3177.] Appraisers—Oath and Duties of—Right of Possession.

The persons so notified, or any two of them attending, shall take an oath that they will fairly and impartially assess the damages in controversy, and they shall make out, sign, and deliver to each party a written statement of their appraisal of damages in the premises, and upon the payment of the damages and expenses allowed by such appraisers the owner shall be entitled to take his swine away; and if refused, the same may maintain an action therefor, as in other cases of wrongful taking or detention of property. [L. '90, p. 455, § 5; 1 H. C., § 2492.]

§ 3078. [3178.] Fees of Justices, etc., How Collected.

The justice of the peace shall be allowed a fee of fifty cents for issuing the notice and swearing the appraisers, and the constable or person serving the notice shall be allowed a fee of one dollar for each appraiser notified, and mileage to and from the place of service; each appraiser shall be allowed a fee of one dollar, which fee shall be paid by the owner of such swine before he shall be entitled to take them away. Or if such owner fails to pay such fees, the person having such swine shall pay the same, and may add the same to the damages allowed him in premises. [L. '90, p. 455, § 6; 1 H. C., § 2493.]

§ 3079. [3179.] Unnecessary to Fence Against Swine.

It shall not be necessary for any person to fence against swine in this state, and it shall be no defense to any action or proceeding brought or had under the provisions of this act that the party injured or taking up any swine did not have his lands inclosed by a lawful fence. [L. '90, p. 456, § 7; 1 H. C., § 2494.]

"Act" refers to §§ 3073—3080.

§ 3080. [3180.] Swine may be Driven on Highway—Liability of Owner.

Nothing in this act shall be so construed as to prevent owners or other persons from driving swine from one place to another along any

public highway, the owner or owners being responsible for all damages that any person or persons may sustain in consequence. [L. '90, p. 456, § 8; 1 H. C., § 2495.]

"Act" refers to §§ 3073—3080.

§ 3081. [3181.] Castration of Bulls Running at Large.

It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of June, any bull above the age of ten months found running at large out of the inclosed grounds of the owner or keeper, and if the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: Provided, such act of castration shall have been skillfully done by a person accustomed to doing the same: And provided further, that if the person so taking up or capturing such bull, or causing him to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that said animal is being kept for breeding purposes, it shall be his duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the keeping of said animal at the rate of fifty cents per day, and take and safely keep said animal thereafter within his own inclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay for such act of castration the sum of one dollar and fifty cents, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided; and the amount for which he may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof: And provided further, that if said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate him without giving any notice to the owner or keeper whatever. [L. '90, p. 453, § 1; 1 H. C., § 2506.]

See *infra*, § 3088, gelding of stallions and jacks.

§ 3082. Bulls on Open Ranges to be Pure Bred.

It shall be unlawful for any person, firm, association or corporation to turn upon or allow to run upon the open range in this state any bull other than a registered pure-bred bull of a recognized beef breed. [L. '17, p. 411, § 1.]

§ 3083. Proportion of Bulls to Cows.

That before any person, firm, association or corporation shall turn upon the open range in this state any female breeding cattle of more than fifteen in number, two years old or over, they shall procure and turn with said female breeding cattle one registered pure-bred bull of recognized beef breed for every forty females or fraction thereof, of twenty-five or over: Provided, however, that this act shall not apply to

counties lying west of the summit of the Cascade mountains. [L. '17, p. 411, § 2.]

§ 3084. Penalty.

Any person, firm, association or corporation violating any of the provisions of this act shall be guilty of a misdemeanor. [L. '17, p. 412, § 3.]

This "act" applies to this and the last two preceding sections.

§ 3085. [3182.] Stallions, Unlawful to Run at Large.

It shall be unlawful for the owner of stallions in this state to permit the same to run at large. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred and fifty dollars nor more than two hundred and fifty dollars, and one-half of the fine so enforced shall, in each case, be paid to the complaining witness: Provided, that this section will not apply to stallions running with and belonging to bands of horses which are herded and corralled by the owners once each day. [L. '95, p. 335, § 1.]

See *infra*, § 3099, damages by.

§ 3086. [3183.] Evidence.

In any prosecution under the last preceding section proof that the animal running at large is branded with the registered or known brand of the defendant shall be prima facie evidence that the defendant is the owner of said animal and proof that said animal is found at large shall be prima facie evidence that the owner permitted the same to be at large. [L. '95, p. 335, § 2.]

§ 3087. [3184.] Animals to be Removed.

The complaining witness shall notify the owners of said animals, and a reasonable time shall be allowed for the removal of the same. [L. '95, p. 336, § 3.]

§ 3088. [3185.] Gelding Certain Animals Running at Large.

It shall be lawful for any person to take up and geld, at the risk of the owner, within the months of April, May, June, July, August and September, in any year, any stud-horse, jackass, or stud-mule of the age of eighteen months and upwards that may be found running at large out of the inclosed grounds of the owner or keeper; and if the said animal shall die, the owner shall have no recourse against the person or persons who may have taken up and gelded, or caused to be gelded, the said animal, if the same has been done by a person in the habit of gelding, and the owner shall pay one dollar and a half therefor. [Cd. '81, § 2547; 1 H. C., § 2507.]

Compare L. '71, p. 89.

See *supra*. § 3081, castration of bulls.

§ 3089. [3186.] Certain Animals Excepted—Penalty.

It shall not be lawful for any person or persons to geld any animal, knowing such animal is kept or intended to be kept for covering mares;

and any person so offending shall be liable to the owner for all damages, to be recovered in any court having proper jurisdiction thereof; but if any owner or keeper of the covering animal shall willfully or negligently suffer the said animal to run at large out of the inclosed grounds of said owner or keeper, any person may take the said animal and convey him to his owner or keeper, for which he shall receive three dollars per day, recoverable before any justice of the peace of the county; for the second offense, six dollars per day; and for the third offense said animal may be taken up and gelded. [Cd. '81, § 2548; 1 H. C., § 2508.]

CHAPTER V.

DAMAGES BY DOMESTIC ANIMALS AND DOGS.

§ 3090. [3187.] Injured Party may Take up Animals.

Any person suffering damage done by any horses, mares, mules, asses, cattle, goats, sheep, swine or any such animals, which shall trespass upon any cultivated land, inclosed by lawful fence, may retain and keep in custody such offending animals until the owner of such animals shall pay such damage and costs, or until good and sufficient security be given for the same. [L. '93, p. 46, § 1.]

See supra, § 295, answer in action for property distrained.

See infra, § 5443, trespass by breaking lawful fence.

Damages to stock on unfenced railroad, see infra, §§ 10506—10509.

§ 3091. [3188.] Notice of Restraint—Damages.

Whenever any animals are restrained as provided in the last section, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, and the probable amount of the damages sustained: Provided, he knows to whom such animals belong. [L. '93, p. 46, § 2.]

See supra, § 3075 et seq., damages by swine at large in certain counties.

§ 3092. [3189.] Posting Notices.

If the owner or the person having in charge or possession of such animals is unknown to the person sustaining the damage, the notice provided in the last section shall be given by posting three notices, in three public places in the neighborhood where the animals are restrained, for ten days. [L. '93, p. 47, § 3.]

§ 3093. [3190.] Suit for Damages.

If the owner or person having such animals in charge fails or refuses to pay the damages done by such animals, or give satisfactory security for the same within twenty-four hours from the time the notice was served, if served personally, and within ten days from the date of posting of the notice as provided in the last section, the person damaged may commence a suit, before any court having jurisdiction thereof, against the owner of such animals, or against the persons having the same in charge, or possession, when the trespass was committed, if known; and if unknown, the defendant shall be designated as John Doe,

and the proceedings shall be the same in all respects as in other civil actions, except as herein modified. [L. '93, p. 47, § 4.]

§ 3094. [3191.] Sale of Animals to Satisfy Judgment.

Upon the trial of an action as herein provided the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred for keeping the offending animals, and any judgment rendered for damages, costs, and expenses against the defendant shall be a lien upon such animals committing the damage, and the same may be sold and the proceeds shall be applied in full satisfaction of the judgment as in other cases of sale of personal property on execution: Provided, that no judgment shall be continued against the defendant for any deficiency over the amount realized on the sale of such animals, if it shall appear upon the trial that no damage was sustained, or that a tender was made and paid into court of an amount equal to the damage and costs, then judgment shall be rendered against the plaintiff for costs of suit and damages sustained by defendant. [L. '93, p. 47, § 5.]

§ 3095. [3192.] Continuance.

If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, the case shall be continued, and proceedings had as in the next section provided, if the proper defendant be unknown to plaintiff. [L. '93, p. 47, § 6.]

§ 3096. [3193.] Unknown Owner—Service, How Made.

If the owner or keeper of such offending animals is unknown to plaintiff at the commencement of the action, or if on the trial it appears that the defendant is not the proper party, defendant, and the proper party is unknown, service of the summons or notice shall be made by publication, by publishing a copy of the summons or notice, with a notice attached, stating the object of the action and giving a description of the animals seized, in a weekly newspaper published nearest to the residence of the plaintiff, if there be one published in the county; and if not, by posting said summons or notice with said notice attached in three public places in the county, in either case not less than ten days previous to the day of trial. [L. '93, p. 48, § 7.]

§ 3097. [3194.] Disposal of Funds Arising from Sale.

If when such animals are sold, there remains a surplus of money, over the amount of the judgment and costs, it shall be deposited with the county treasurer, by the officer making the sale, and if the owner of such animals does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund, for the use of the public schools of said county. [L. '93, p. 48, § 8.]

§ 3098. [3195.] Jurisdiction—Appeal.

Justices of the peace shall have exclusive jurisdiction of all actions and proceedings under this act when the damages claimed do not exceed one hundred dollars: Provided, however, that any party considering himself aggrieved shall have the right of appeal to the superior court as in other cases. [L. '93, p. 48, § 9.]

"Act" refers to the foregoing sections of this chapter.

§ 3099. [3196.] Damage by Stud, etc., Running at Large—Liability for.

If any stud-horse, stud-mule, jackass, ridgling, or stag, while running at large out of the inclosed grounds of the owner or keeper, shall damage any other animal by biting or kicking him, or shall do any damage to person or property of any kind whatever, the owner of said stud-horse, stud-mule, jackass, ridgling, or stag shall be liable for all damages done by him. [Cd. '81, § 2549; 1 H. C., § 2509.]

See *infra*, § 3103, damage by vicious animals.

§ 3100. [3197.] Trespass by Sheep on Lands of Another.

It shall be unlawful in this state for sheep to enter any land or lands, inclosed or uninclosed, belonging to or in the possession of any person other than the owner of such sheep, unless by the consent of the owner of said land other than the public lands of the United States. [L. '13, p. 519, § 1. Cf. L. '88, p. 203, § 1; 1 H. C., § 2510; L. '07, p. 78, § 1.]

§ 3101. [3198.] Penalty for Driving Sheep upon Another's Land.

Any person, being the owner or having in his possession, charge, or control, as herder, or otherwise, any sheep, who shall herd or drive such sheep upon the lands of another for the purpose of pasture, against the consent of the owner of such lands, shall be deemed guilty of a misdemeanor. [L. '13, p. 519, § 2. Cf. L. '88, p. 204, § 2; 2 H. C. P., § 87; L. '07, p. 78, § 2.]

§ 3102. [3199.] When Public Lands Deemed Private.

Lands owned or claimed by any person under any of the land laws of the United States, subject to the paramount title of the United States, shall be deemed in possession of such person for the purposes of this and the last preceding section. [L. '88, p. 204, § 3; 1 H. C., § 2511.]

§ 3103. [3200.] Liability of Owners of Dangerous or Vicious Cattle.

Any person or persons who own or are owners of dangerous or vicious cattle, which animal or animals are known to endanger the safety of persons traveling through neighborhoods, by their dangerous and vicious disposition, having twelve hours' notice of the dangerous disposition of such animal or animals, and shall neglect or refuse effectually to prevent such cattle from disturbing the peace and safety of the neighborhood where such animals may range, such owner or owners shall be liable to a fine of not less than five dollars nor more than fifty dollars, which may be recovered before any justice of the peace of the county, with costs of suit, for the use of the school fund. [L. '54, p. 445, § 1; L. '63, p. 447, § 1; L. '69, p. 400, § 1; Cd. '81, § 2555; 1 H. C., § 2512.]

As to repeal of this section, see § 2304, and note to next section.

See *supra*, § 3099, damage by stud running at large.

Personal Injuries, Duties of Owners: Pac. 1125, 6 L. R. A. (N. S.) 1164; Miller See Remington's Digest, Animals, § 9; v. Reeves, 101 Wash. 642, 172 Pac. 815. Lynch v. Kineth, 36 Wash. 368, 78 Pac. 923, 104 Am. St. Rep. 958; Harris v. Carstens Packing Co., 43 Wash. 647, 86

At common law a person is not liable for injuries from the bite of a dog unless he was owner, keeper, or harbinger of the

dog: *Markwood v. McBroom*, 110 Wash. 208, 188 Pac. 521.

Knowledge of Vicious Propensities: See *Remington's Digest, Animals*, § 10; *Robinson v. Marino*, 3 Wash. 434, 28 Pac. 752, 28 Am. St. Rep. 50; *Gunderson v. Biersen*, 80 Wash. 459, 142 Pac. 685; *Halm v. Madison*, 65 Wash. 588, 118 Pac. 755; *Mailhot v. Crowe*, 99 Wash. 623, 170 Pac. 131.

The receiver of a motion picture company is not the owner, keeper or "harborer" of a dog owned by a former employee of the company and kept and fed by the receiver's watchman, where the receiver had no knowledge of such fact or of the existence of the dog, which was kept on an unfrequented spot, and the watchman's care of it was beyond the scope of his employment with the receiver: *Markwood v. McBroom*, 110 Wash. 208, 188 Pac. 521.

Knowledge of the officers of an insolvent company that a dangerous dog had been kept on the premises could not be imputed to the receiver where the dog belonged to an employee and was not a part of the assets: *Markwood v. McBroom*, 110 Wash. 208, 188 Pac. 521.

Evidence and Damages: See *Remington's Digest, Animals*, §§ 13—16; *Robinson v. Marino*, 3 Wash. 434, 28 Pac. 752, 28 Am. St. Rep. 50; *Harris v. Carstens Packing Co.*, 43 Wash. 647, 86 Pac. 1125, 6 L. R. A. (N. S.) 1164; *Grissom v. Hofius*, 39 Wash. 51, 80 Pac. 1002, 3 Ann. Cas. 125; *Mailhot v. Crowe*, 99 Wash. 623, 170 Pac. 131.

Contributory Negligence: See *Remington's Digest, Animals*, § 11; *Lynch v. Kineth*, 36 Wash. 368, 78 Pac. 923, 104 Am. St. Rep. 958; *Gunderson v. Bieren*, 80 Wash. 459, 142 Pac. 685.

Necessity for knowledge by owner of viciousness of domestic animal. 1 Ann. Cas. 205.

Knowledge of viciousness of animal by agent or servant as imputable to owner. 18 Ann. Cas. 673.

Evidence of disposition of animal prior to injury. 32 L. R. A. (N. S.) 1159.

Admissibility of evidence of subsequent vicious conduct of animal inflicting injury. 17 L. R. A. (N. S.) 1233.

Expert testimony as to vicious character of animals. 24 L. R. A. (N. S.) 1189.

§ 3104. [3201.] Killing Vicious Cattle in Self-defense.

Any person who shall, in defense of himself or others, kill one or more such animals, shall not be liable for any damage for any such act. [L. '54, p. 445, § 2; L. '63, p. 447, § 2; L. '69, p. 400, § 2; Cd. '81, § 2556; 1. H. C., § 2513.]

As to repeal of this section, see § 2304. The title of that act does not cover civil remedies.

§ 3105. Dogs Killing Domestic Animals.

Whenever any dog shall kill or injure any sheep, swine or other domestic animal, the owner of such animal may present a claim for damages to the nearest justice of the peace and such justice shall investigate the facts and determine the value of such animal killed or the damages to such animal injured, and shall issue and file with the county treasurer a certificate stating the amount of damages sustained and shall be paid for making such investigation and filing such certificate out of the domestic animal protection fund a fee of three dollars (\$3). [L. '19, p. 28, § 4.]

Constitutionality of statute making owner liable for damage by dog. 13 Ann. Cas. 847.

What are animals within statute in

relation to killing of animals by dogs. 44 L. R. A. (N. S.) 607.

Liability of owners of dogs for their vicious acts. 10 Am. Rep. 270; 36 Am. Rep. 752.

§ 3106. Liability of Owner of Vicious Dog — Damages from Protection Fund—Harboring Dogs.

The owner or keeper of any dog shall be liable to the owner of any animal killed or injured by such dog for the amount of damages sus-

tained and costs of collection, and in case the owner or keeper of such dog is unknown or the damages cannot be collected, the person suffering damages may file a claim for the damages sustained with the county treasurer, and upon making proof to the satisfaction of the county treasurer by affidavit or otherwise, that the owner of the dog occasioning the damage is unknown or that the damages cannot be collected from such owner, the treasurer shall pay to the claimant out of the domestic animal protection fund the amount of damages sustained as certified by the justice of the peace. Any person who shall keep any dog or allow the same to be and remain upon his premises for a period of fifteen days shall be deemed the owner of such dog for the purposes of this section. [L. '19, p. 29, § 5.]

§ 3107. Killing Vicious Dogs.

It shall be lawful for any person who shall see any dog chasing, biting, injuring or killing any sheep, swine or other domestic animal, outside the enclosure of the owner or keeper of such dog, or biting or injuring any child or person, to kill such dog, and it shall be the duty of the owner or keeper of any dog found chasing, injuring or biting any domestic animal, or injuring or biting any child or person, to thereafter keep such dog in leash or confined upon the premises of the owner or keeper thereof, and in case any such owner or keeper of a dog shall fail or neglect to comply with the provisions of this section, it shall be lawful for any person to kill such dog found running at large. [L. '17, p. 722, § 6; L. '19, p. 29, § 6.]

See *infra*, § 3115, quarantine of and muzzling of dogs.

§ 3108. Duty of Owner to Kill—Penalty.

It shall be the duty of any person owning or keeping any dog which shall be found killing any domestic animal to kill such dog within forty-eight hours after being notified of that fact and any person failing or neglecting to comply with the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than five dollars (\$5) and of one dollar (\$1) for each day that he shall fail and neglect to comply with the provisions of this section, and the costs of prosecution. [L. '17, p. 722, § 7; L. '19, p. 30, § 7.]

See notes to § 3103, *supra*.

Cited in 110 Wash. 212.

§ 3109. Application to Cities.

This act shall not apply to cities of first or second class regulating the licensing of dogs by ordinance. [L. '17, p. 723, § 8; L. '19, p. 30, § 8.]

CHAPTER VI.

DISEASED AND INFECTED STOCK.

§ 3110. [3201-1.*] Tuberculine Tests—Inspector—Bond.

On the written application of the owner of any bovine animal to the commissioner of agriculture for the examination and testing of such animal to ascertain whether the same is infected with tuberculosis, it

shall be the duty of the commissioner of agriculture to cause such examination and test to be made. The inspector of the Department of Agriculture making the examination and test shall be a veterinarian duly licensed to practice veterinary medicine, surgery and dentistry in this state, and shall qualify by giving a bond to the state of Washington with sufficient surety to be approved by the commissioner of agriculture in the penal sum of two thousand dollars (\$2,000): Provided, that veterinary inspectors of the United States bureau of animal industry may be appointed by the commissioner of agriculture to make the examination and tuberculine test as herein provided, and when so employed they shall act without bond or compensation, and shall possess the same power and authority in this state as the inspector of the Department of Agriculture. [L. '19, p. 650, § 89; L. '15, p. 292, § 1.]

See *infra*, § 10850, duties devolve upon director of agriculture.

Regulations which the state may enforce concerning quarantine of animals. 97 *Am. St. Rep.* 242.

Validity and construction of statutory regulations as to infected animals. 26 *L. R. A.* 638; 43 *L. R. A.* (N. S.) 1066.

Delegation by legislature as to powers of quarantining cattle. 32 *L. R. A.* (N. S.) 651.

Validity of statute or ordinance providing for destruction of diseased animals without compensation. 15 *Ann. Cas.* 48; 18 *L. R. A.* (N. S.) 369.

Validity of statute providing for destruction of diseased animals with compensation to owner. *Ann. Cas.* 1917D, 89.

§ 3111. [3201-2.*] Indemnity or Quarantine—Appraisal and Payment—Expenses.

On such examination and test being completed, if the inspector shall believe that the animal is infected with tuberculosis, the owner of the animal shall have the option of indemnity or quarantine; if he selects indemnity the owner and inspector shall appraise the value of the suspected animal, and in the appraisal of such animal due consideration shall be given to its breeding, dairy or meat value. In the event of their failing to agree upon the value, they shall call upon the county agricultural agent of the county in which the animal was tested to decide the matter, or in case there be no county agricultural agent in the county the inspector shall apply to the judge of the superior court of the county where the animal or animals are located to appoint a third appraiser. Each owner, or agent, of tuberculous cattle which have been appraised shall market the cattle within thirty days from date of appraisal and shall obtain from the purchaser a report, in triplicate, blank forms for which shall be furnished said owner, or agent, by the inspector of the Department of Agriculture, certifying as to the amount of money actually paid for the animals. The animal or animals shall be slaughtered under the supervision of a veterinary inspector of the Department of Agriculture or the United States bureau of animal industry, or a veterinarian duly licensed to practice veterinary medicine, surgery and dentistry in this state. The veterinary inspector or veterinarian shall hold a postmortem examination and determine whether or not the animal be passed to be used for food. The postmortem examination must conform with the meat inspection regulations of the United States bureau of animal industry. Upon the receipt of said report, in triplicate, certifying as to the amount of money actually paid for the animal

or animals, and if the owner has complied with all lawful quarantine laws or regulations, the Department of Agriculture shall cause to be paid to the owner of the animal or animals one-third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the Department of Agriculture be more than twenty-five dollars (\$25) for any grade animal, or more than fifty dollars (\$50) for any pure-bred animal. Every county agricultural agent who shall act as an appraiser, as hereinabove provided, shall receive his actual necessary traveling expenses in going to and returning from the place of appraisal, and every appraiser appointed by the judge of the superior court shall receive his actual and necessary traveling expenses and a per diem of three dollars (\$3) for the time actually spent, to be paid by the state: And provided further, that the state shall not be required to pay the owner of any animal imported into this state within six months prior to the inspection and test the sums hereinabove provided for, but the owner of such animal shall receive the proceeds of the sale of such slaughtered animal: And provided further, that the right to indemnity shall not exist, nor shall payment be made for any animal owned by the United States, this state or any county, city or village in this state: And provided further, that the expenses of herding, caring for, feeding and transporting or slaughtering all animals under these provisions shall be paid by the owner thereof. [L. '19, p. 651, § 90. Cf. L. '15, p. 293, § 2.]

§ 3112. [3201-3.] Exhaustion of Appropriation.

Whenever the appropriation made by the legislature for the purpose of carrying out the provisions of this act during any biennium shall be exhausted, no further animals shall be slaughtered under the provisions of this act. [L. '15, p. 294, § 3.]

§ 3113. [3201-4.] Quarantine and Test at State Line.

Whenever the commissioner of agriculture shall have reason to believe that any bovine animal about to be imported into this state is infected with tuberculosis he shall have the power and authority to quarantine such animal at the state line and make an examination and test thereof and if any such animal shall be found to be infected with tuberculosis it shall not be permitted to enter this state. [L. '15, p. 294, § 4.]

§ 3114. [3203.] Commissioner of Agriculture — Quarantine for Tuberculosis—Penalty.

The commissioner of agriculture shall have general supervision of all contagious and infectious diseases among domestic animals within or that may be in transit through the state and he is empowered to establish quarantine against any and all such animals affected with any contagious or infectious disease or diseases or that may have been exposed to others thus diseased, whether within or without the state: Provided, that no bovine animal that has been in this state more than six months shall be quarantined for tuberculosis without the tuberculine test and the commissioner of agriculture is empowered to establish and enforce

quarantines for such length of time as he may deem necessary to determine whether any bovine animal about to be imported into this state for feeding, breeding or dairy purposes is infected with tuberculosis, and he may with the concurrence of the state board of health, make such rules and regulations as he may deem necessary for the protection against the spread and for the suppression of contagious or infectious diseases among domestic animals, which rules and regulations shall be published and enforced, and in doing said things, or any of them, he shall have the power to call on any one or more peace officers, whose duty it shall be to give him all the assistance in their power, and every person violating or failing to comply with any such rule or regulation shall be guilty of a misdemeanor. [L. '15, p. 294, § 5.]

§ 3115. [3204.*] Quarantine Districts—Dogs to be Muzzled—Penalty.

Quarantine shall mean the placing and restraining of any animal or animals by the owners or agents in charge of them within certain inclosures described or designated by the commissioner of agriculture, the assistant commissioner of agriculture assigned to the division of dairy and livestock or any inspector of the Department of Agriculture, in writing, and if the quarantine shall be for the purpose of preventing the spread of rabies or hydrophobia, the notice shall be published in the official newspaper of the county or counties included in the quarantined area or if there be no such newspaper then in one newspaper circulating generally within such area and said notice shall contain a warning to the owners of dogs within the quarantined area to confine closely or to muzzle all such dogs to effectually prevent biting, and any dog found running at large in such quarantined area at any time after five days from the date of the publication of such notice or known to have been removed from or to have escaped from such area, not being muzzled as aforesaid, may be shot or otherwise destroyed, by any person, without liability therefor.

Any owner or owners or agent who fails to comply with or willfully violates or negligently allows such quarantine to be violated by the escape and running at large of quarantined animals shall be guilty of a misdemeanor. [L. '17, p. 40, § 1. Cf. L. '15, p. 295, § 6. Cf. L. '03, p. 29, § 2.]

See *infra*, § 10850, duties devolve upon director of agriculture.

§ 3116. [3205.] Penalty for Resisting or Obstructing.

Any person who willfully hinders, obstructs or resists said veterinary surgeon or his assistants, or any peace officer acting under him or them when engaged in the duties or exercising the powers herein conferred, shall be guilty of a misdemeanor, and punished accordingly. [L. '95, p. 457, § 3.]

§ 3117. [3206.] To Respond to Calls, When—Substitutes.

Whenever a majority of any board of health, county commissioners, city council, trustees of incorporated towns or township, whether in session or not, shall, in writing or by telegraph, notify the state veterinary of the prevalence of or probable danger from any of said diseases, he shall at once repair to the place designated in said notice and take such

action as the exigencies may demand, and he may in case of emergencies appoint substitutes or assistants, with equal power, whose compensation shall be five dollars per day and actual traveling expenses. [L. '95, p. 457, § 4.]

§ 3118. [3207.] Veterinary Surgeons to Report Diseased Stock.

It shall be the duty of every graduate veterinary surgeon and every person professing to be a veterinary surgeon practicing their profession within this state to report to the state veterinary surgeon immediately upon the discovery thereof the existence or suspected existence among domestic animals without the state of any of the following diseases: Glanders, tuberculosis, actinomycosis, hog cholera, swine plague, anthrax, contagious keratitis, stomatitis, pustulosa, contagiosa, scabies, contagious abortion and rabies. In the event of the failure or refusal on the part of the above-named persons to so do he shall be guilty of a misdemeanor and punished accordingly. [L. '03, p. 29, § 3.]

§ 3119. [3208.] Destruction of Diseased Stock.

Whenever in the opinion of the state veterinary surgeon the public welfare demands the destruction of any diseased animal under the provisions of this act, he shall cause the same to be destroyed. No stock shall be destroyed except on the written order of the state veterinary surgeon. The governor of the state with the state veterinary surgeon may co-operate with the government of the United States for the object of this act and the governor is hereby authorized to receive and receipt for any money receivable by this state through provisions of any act of congress which may at any time be in force upon this subject, and to pay the same into the state treasury to be used according to the act of congress and the provisions of this act. [L. '95, p. 457, § 5; L. '01, p. 229, § 3.]

"Act" in this section refers to the foregoing sections of Laws 1895.

See supra, § 2724, and infra, § 10847, duties devolve upon director of agriculture.

Cited in 50 Wash. 125.

§ 3120. Exhibition of Bovine Animals—Certificate of Health.

It shall be unlawful to exhibit at any state, county or district fair, or livestock exhibition within the state of Washington, any bovine animal over one year old, unless within six months prior to such exhibition it has been subjected to a tuberculine test and received a certificate of health from a qualified veterinarian. No entry of such animal for exhibition shall be accepted by any authorized representative of any such fairs or exposition, until such certificate of health has been filed with the proper officer of the fair or exposition. [L. '21, p. 218, § 1.]

§ 3121. Penalty for Violation.

Any person who exhibits or permits the exhibition of any animal in violation of the provisions of this act, shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty (\$50) dollars nor more than two hundred and fifty (\$250) dollars. [L. '21, p. 218, § 2.]

§ 3122. [3209.] Importation of Cattle Infected With Texas Disease or Spanish Fever.

The introduction of Texas cattle, or cattle infected with what is known as the Texas cattle disease or Spanish fever, into the state of Washington, is hereby prohibited. [L. '69, p. 404, § 1; 1 H. C., § 2517.]

See *infra*, § 3129, civil liability.

See *infra*, § 3130, duty of sheriffs.

§ 3123. [3210.] Penalty.

Any person or persons introducing or bringing into said state any Texas cattle, or cattle infected with the Texas cattle disease, or Spanish fever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the county jail for a term not exceeding twelve months, or fined in a sum not less than five thousand dollars, or be both fined and imprisoned at the discretion of the court. [L. '69, p. 401, § 2; 1 H. C., § 2518.]

See notes to last section.

§ 3124. [3211.] Importation of Infected Stock Prohibited—Examination and Permit—Fees.

It shall be unlawful to bring into the state of Washington any horses, cattle or swine for work, feeding, breeding or dairy purposes without first having such animals examined and found free from the following contagious diseases: Glanders, farcy, tuberculosis, actinomycosis, rinder pest, foot and mouth diseases, contagious abortion, contagious keratitis, scabies, *maladie du coit*, swine plague and hog cholera and without having obtained a permit so to do from the commissioner of agriculture, the assistant commissioner of agriculture assigned to the division of dairy and livestock or an inspector of the Department of Agriculture assigned to the division of dairy and livestock and no railroad or transportation company, or other common carrier shall bring any such animals into this state without first having had the same examined and found free from said diseases and having obtained the permit hereinabove provided for. The provisions of this section shall not apply to animals imported into this state for immediate slaughter, or to range stock cattle imported into this state for range pasturage or beef cattle imported for the purpose of feeding in transit, but it shall be unlawful to sell such cattle for dairy purposes. [L. '15, p. 295, § 7. Cf. L. '03, p. 234, § 1; L. '05, p. 338, § 1.]

For former law, see L. '05, c. 143, pp. 356–359; Bal. Code, §§ 3447—3469, repealed by L. '07, p. 111, § 1.

§ 3125. [3211-1.] Importations for Slaughter.

It shall be unlawful for any person, firm or corporation to sell for dairy or breeding purposes any animal imported into this state for immediate slaughter. [L. '15, p. 296, § 8.]

§ 3126. [3211-2.] Appropriation.

For the purpose of carrying out the provisions of this act the sum of twenty-five thousand dollars, or so much thereof as may be necessary,

is hereby appropriated out of any moneys in the general fund not otherwise appropriated. [L. '15, p. 296, § 9.]

§ 3127. [3212.] Disposition of Moneys Collected.

Any money or moneys collected by the state veterinarian or his deputies under this act, shall be turned over to the state treasurer upon the first day of each month to be turned into the general fund of the state. [L. '05, p. 339, § 1½.]

"Act" in this section, refers to §§ 3124—3128.

§ 3128. [3214.] Penalty for Unlawful Importation.

All railroad, livestock, transportation and stockyard companies and their employees and all other persons are hereby forbidden to bring horses, cattle and swine into the state except in compliance with the foregoing regulations, and any violation of the same will constitute a misdemeanor and be punished accordingly. [L. '03, p. 235, § 3.]

This section applies to the last three sections.

§ 3129. [3215.] Liability for Damages from Infected Cattle.

Any person or persons offending, as stated in section 3122, shall be liable for any and all damages to any person or persons that may be injured by reason of the introduction of such Texas or diseased cattle. [L. '69, p. 405, § 3; 1 H. C., § 2519.]

§ 3130. [3216.] Duty of Sheriffs and Constables.

It shall be the duty of the sheriffs and constables of the several counties in the state to arrest and bring before a justice of the peace, for examination, any person they have reason to believe has violated section 3122. [L. '69, p. 405, § 4; 1 H. C., § 2520.]

CHAPTER VII.

SHEEP INSPECTION AND DISEASED SHEEP.

For former laws on the subject of this chapter see L. '66, pp. 105, 106; L. '67, pp. 148—153; L. '68, pp. 57—59; repealed L. '69, p. 356; L. '69, pp. 377, 378; L. '73, p. 481; L. '75, pp. 125—129; L. '79, pp. 87—90; Code '81, §§ 2228—2237; L. '88, pp. 204—207; 1 H. C., §§ 2477—2487; L. '97, pp. 25—30; Bal. Code, §§ 3402—3415b; L. '01, pp. 137—150; L. '07, p. 210, § 1.

See *infra*, § 3150, county to furnish supplies for deputies free.

§ 3131. [3219.] Duties of Inspectors—Investigating Diseases.

It shall be the duty of the state veterinarian and of the deputies under his direction, to investigate all cases of contagious and infectious diseases among sheep within the state which may come to his or their knowledge, and to make official visits of inspection to any locality where such diseases exist or where they have reason to believe such diseases may exist, and to inspect or cause to be inspected any sheep within the state, and all sheep brought into the state from any other state, territory or foreign country, and he or they shall have authority to order a quarantine of any infected premises, and in case such disease shall become prevalent in any locality within the state, the state veterinarian may issue a proclamation forbidding any sheep being transferred from

said locality without certificate issued by himself or one of his deputies showing such animals to be in good health, and the expense of herding, feeding and caring for all sheep quarantined under these provisions shall be paid by the owner thereof. The state veterinarian and his deputies shall have the power to administer oaths and to examine witnesses in so far as the same may be necessary in the performance of their duty. [L. '09, p. 657, § 2.]

See *supra*, § 2724, and *infra*, §§ 10847, 10850, duties devolve upon director of agriculture.

See *infra*, §§ 3144, 3145, fees, how paid.

Power of the states to provide for
the inspection and to regulate the

importation of animals. 93 Am. St.
Rep. 77.

§ 3132. [3220.] Governor may Prohibit Importations.

Whenever the governor of the state has reason to believe that scab or other contagious or infectious diseases of sheep have become prevalent in any locality or localities of any other state or territory, or that conditions exist that render sheep from such localities likely to convey disease or whenever the state veterinarian shall certify in writing to the governor that conditions exist in localities in any other state or territory, which may render any of the sheep coming therefrom likely to convey disease, the governor shall by proclamation declare such locality as presumably infected, and prohibit importation therefrom of any sheep into this state, except under such restriction as the state veterinarian may deem proper. Any person, persons, firm or corporation who, after publication of such proclamation, has or received in charge any sheep from any of the prohibited districts and transports, conveys or drives the same to and within the limits of this state, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars nor less than five hundred dollars. And such offending person, persons, firm or corporation shall likewise be liable for all damage sustained by any person, persons, firm or corporation by reason of the importation into this state of such sheep from prohibited districts: Provided, however, that nothing herein contained shall prohibit the transportation of animals from such prohibited districts through the state by railroad trains or steamboat lines under such restrictions as may be prescribed by the law of this state or by the government of the United States. [L. '09, p. 657, § 3.]

§ 3133. [3221.] Co-operation by United States Bureau.

The governor shall, through the secretary of agriculture of the United States government, request the co-operation of the United States bureau of animal industry in controlling and eradicating contagious and infectious diseases in sheep, and when said bureau, through its duly authorized representatives, agents, or employees, shall be thus engaged, they shall possess the same power and authority in this state as the state veterinarian and his deputies under and by virtue of this act; and all dipping and other treatment required for the control and eradication of such diseases within this state shall be performed in the manner prescribed by the United States bureau of animal industry, and the dips, remedies and appliances used shall be those approved by the said bureau of animal industry. [L. '09, p. 658, § 4.]

See note to § 3135.

§ 3134. [3222.] Dipping for Scabies—Certificate.

Whenever it becomes necessary by reason of the prevalence of scabies, or exposure of scabies, of the sheep of any county or counties in this state, the state veterinarian shall have full authority to issue an order compelling the dipping of all the sheep in such district or localities, whether all the sheep at the time be affected with or exposed to scabies or not; and such dipping shall be done under the supervision of the deputy sheep inspector or federal inspectors, and shall be done in some dip or dips approved by the United States bureau of animal industry; and the dipping shall be performed in a manner in accordance with the rules and regulations of said bureau of animal industry. After dipping, when the official in charge shall be satisfied that the sheep are in a sound and healthy condition, the owner shall be entitled to receive a certificate to that effect signed by the said official; and the said certificate shall be in such form as the state veterinarian shall adopt; such certificate shall permit the sheep to move in and through all counties in this state so long as they remain free from disease and exposure thereto. [L. '09, p. 658, § 5.]

§ 3135. [3223.] Inspection and Quarantine—Expenses Paid by Owner.

The state veterinarian and his deputies and the officials of the United States bureau of animal industry shall have authority to inspect and quarantine and treat sheep affected with a contagious, infectious or communicable disease or diseases, or suspected of being so affected, or that have been exposed to any such disease; and it shall be the duty of the deputy inspector to inspect once each year all the sheep that may be within his county; and his fees and expenses for the inspection of such sheep shall be as hereinafter provided for in this act: Provided, however, that where it is necessary to inspect the same band of sheep more than once during any one year the owner or agent in charge of such sheep shall not be charged by the deputy inspector any fees or expenses for the second inspection, unless such inspection should reveal the said sheep to be actually affected with or exposed to scab or scabies, and in such event the owner or agent in charge of such sheep shall pay the fees and expenses of the deputy inspector as hereinafter provided for. [L. '09, p. 659, § 6.]

"Act" in this section refers to all except the last two sections of this chapter.

§ 3136. [3224.] Quarantine of Infected Sheep—Penalty.

Whenever upon examination by such state veterinarian, his deputy, or deputies or federal inspector, as the case may be, any sheep, band or flock of sheep, or any portion of them kept or herded in any county of the state of Washington, shall be found infected with scab or any other contagious or infectious disease, the entire band or flock in which said infected sheep are running or ranging shall be considered as infected and treated as such, and said state veterinarian, his deputy or deputies, or the federal inspector, as the case may be, shall immediately quarantine the entire band or flock and forthwith notify the owner or person in charge of said sheep in writing, to dip said sheep twice for said disease within the period of thirty days from said notice: the first dipping not to exceed fifteen days from the receipt of said notice, and the second dipping to be within the period of from ten to fourteen days thereafter; and also during such period, to keep such sheep free from contact with other sheep by such

means as said inspector shall specify until after the second dipping: Provided, that in case the owner shall regard it unsafe to dip the same on account of their condition, especially ewes heavy with lamb, or by reason of the inclemency of the weather, the official in charge may authorize such owner or person in control to place such sheep in a corral, field, feedyard or appropriate range, where such sheep shall be kept under quarantine regulations and free from contact with other sheep until such time as they are in condition to dip. Any person or persons so allowed to keep sheep in such corral, field, feedyard, or range, or who shall willfully or knowingly take or permit to be taken any such sheep therefrom, except as permitted or directed by the inspector in charge, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [L. '09, p. 659, § 7.]

§ 3137. [3225.] Moving Infected Sheep—Permit—Notice.

Any person, persons, firm or corporation within this state who shall desire to move his or their sheep which are infected with scab or other infectious or contagious disease from place to place within this state, shall first obtain from the state veterinarian or one of his deputies a traveling permit. Upon receipt of the application for such a permit the state veterinarian or one of his deputies shall examine the sheep, and such permit shall only be granted for the purpose of removing said sheep to the nearest suitable point where there are available dipping works or where such works can be constructed, at which place said sheep shall be dipped under the direction of such official. In such removal only that route shall be used which such official shall designate in his permit, and before moving said sheep the owner or person in charge shall first notify all parties herding said sheep along or over said route that the infected sheep must travel, of the fact that they are to pass and the time at which they will pass over said route, and such route shall be considered as quarantined, and any person, persons, firm or corporation injured or damaged by reason of the moving of said sheep shall be entitled to recover from the owners thereof in civil action the amount of such damages: Provided, however, that no party shall be entitled to recover damages who shall voluntarily herd or cause to be herded any sheep on such quarantined ground, and any sheep so voluntarily herded on such ground shall be considered as affected as in this act provided for infected sheep within this state. Any person, persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars. [L. '09, p. 660, § 8.]

"Act" refers to all except the last two sections of this chapter.

§ 3138. [3226.] Importation—Inspection—Quarantine.

Any person, persons, firm or corporation, their agent or employees, who shall drive or herd, or cause to be driven or herded, or bring or cause to be brought, by road or trail, into the state of Washington from any other state, any sheep shall immediately upon crossing the said line and before proceeding into the state a distance greater than two miles, make written application to the state veterinarian or his nearest deputy, for

the inspection of said sheep, and said application shall be delivered in person or by telegraph or telephone or registered letter. The notice must state the time and place when and where the said sheep crossed the line, the locality from which they came, the name and residence of the owner or owners thereof, and of the person in control of the same, the number, the brands and character of the animals. The state veterinarian on receiving such notice shall at once proceed, either by himself or his deputies to inspect the sheep, and if upon inspection he shall deem it necessary to prevent or avoid infection, he shall cause said sheep to be quarantined not more than three miles from where they entered the state for such period as may be necessary, not to exceed thirty days. And if he shall regard it necessary, shall cause said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine. Any person, persons, firm or corporation, their agent or employees, who shall ship into the state by railroad or steamboat lines from any other state any sheep, shall immediately upon unloading the same at any point within this state notify personally or by telephone or by telegraph or registered letter the state veterinarian; and thereupon the said official or one of his deputies shall proceed to inspect said animals, and if upon inspection he shall deem it necessary to prevent or avoid infection he shall cause said sheep to be quarantined not more than three miles from the point where they are unloaded for such period not to exceed thirty days as may be necessary, and if he shall deem it necessary shall cause said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine: Provided further, however, that such sheep are not for immediate slaughter or en route through the state on railroad trains or boat lines to other states, and that any sheep held in quarantine under this section may be released therefrom at any time for the purpose of immediate slaughter: And provided further, that if in the opinion of the state veterinarian it is unnecessary to inspect sheep coming into this state from certain districts or localities from other states he may issue an order dispensing with such inspection and restriction. Any person, persons, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars. Such fine shall be a lien upon the sheep and may be foreclosed as personal property liens are foreclosed under the existing laws of this state or may be enforced as a judgment against the offending party. [L. '09, p. 661, § 9.]

§ 3139. [3227.] Refusal of Owner to Dip—Powers of Inspectors.

If any other owner or person in charge of any sheep shall neglect or refuse to dip the same as required by the terms of this act upon request of the state veterinarian or any of his deputies or any federal official clothed with power under this act, or to permit the same to be dipped by them, it shall be the duty of such official to seize such animals and dip the same, and he is hereby given authority so to do, and when in his opinion they are restored to health and free from possible infection he shall notify in writing the owner or person in charge of the sheep of the amount of the costs, charges and expenses incurred by him, and the same shall be paid within ten days of the receipt of such notice and the same

shall be collected as in this act provided for the collection of like charges. [L. '09, p. 662, § 10.]

"Act" refers to all except the last two sections of this chapter.

§ 3140. [3228.] Importing Infected Sheep—Penalty—Disinfection.

Any person, persons, firm or corporation who shall drive or cause to be driven, bring or cause to be brought, ship or cause to be shipped into this state from any other state any sheep infected with scab or any other infectious or contagious disease and knowing of the condition of the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than one thousand dollars, and in case the offending party is a corporation, its officers shall be liable in the same manner as individuals would be liable. Any transportation company which shall convey from point to point within this state any sheep infected with scab or any other contagious or infectious disease, knowing the condition of the same, shall be deemed guilty of a misdemeanor and shall be punished as in this section above provided. All corrals, yards, pens, sheds, chutes, cars or boats of such company which shall have been occupied by infected sheep shall immediately thereafter, and within forty-eight hours be disinfected by said company, and failure on its part so to do shall likewise be deemed a misdemeanor and punished as in this section above provided. Such disinfection shall be done in accordance with the rules of the United States bureau of animal industry relating to the disinfection of such places, boats and cars, and the state veterinarian, his deputy, and the officials of said bureau of animal industry shall each have authority to enforce the provisions of this section, and when such company shall neglect for a period of forty-eight hours to so disinfect, such officials may take possession of such corrals, yards, pens, sheds, chutes or boats, and proceed to disinfect them at the expense of such company, such expense to be recovered by an action in the name of the state veterinarian in any court of competent jurisdiction. [L. '09, p. 663, § 11.]

§ 3141. [3229.] Sale of Diseased Sheep—Penalty.

It shall be unlawful to sell, exchange, give away or in any manner part with to another, any sheep infected with a contagious or infectious disease, or any animal which has, or which the owner of or his agent or employee or the party in possession thereof has reason to believe has, within thirty days next preceding such transfer, been exposed to any infectious or contagious disease, without first notifying the proper purchaser or purchasers of said sheep that it is so infected, or that it has been so exposed; and any violation of the provisions of this section shall constitute a misdemeanor, and the penalty upon conviction shall be a fine of not less than one hundred dollars nor more than five hundred dollars. [L. '09, p. 664, § 12.]

§ 3142. [3230.] Quarantine Limits.

In all cases where quarantine of sheep is authorized by the provisions of this act, the state veterinarian and his deputies and the officials of the United States bureau of animal industry are each and all empowered to designate and specify the place, limits and boundaries of any quarantine

area or territory, and they are hereby given authority over the same until the purpose of such quarantine shall have been effected, and any person, persons, firm or corporation owning or having in his or their possession sheep within such quarantined area, who shall permit or allow any of such sheep to go beyond the limits of the same, without permit from the official in charge, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and all of the officials above named are hereby clothed with full authority to control sheep and territory in quarantine, and to take and hold possession thereof as provided by the terms of this act, and for all purposes thereof. [L. '09, p. 664, § 13.]

"Act" refers to all except the last two sections of this chapter.

§ 3143. [3231.] Report to Veterinarian of Infection.

It shall be the duty of any person, persons, firm or corporation owning or having in his or their control any sheep which have become infected with scab or any other infectious, communicable or contagious disease, or which have been exposed in any manner to such disease, to immediately report the same to the state veterinarian by registered letter, telegraph, telephone or in person within ten days after the said condition has come to his or their knowledge, and failure to do so, or any attempt on the part of any person, persons, firm or corporation to conceal the existence of such disease, or to willfully or maliciously obstruct or hinder the inspector or his deputies in the discharge of his or their duties shall be deemed guilty of a misdemeanor and shall subject the offender to a fine, upon conviction, of not less than one hundred dollars, nor more than five hundred dollars. [L. '09, p. 664, § 14.]

§ 3144. [3232.] Inspection Expenses—Owner to Pay.

The expense of inspection, feeding, holding, dipping, treating and taking of all sheep inspected, quarantined, dipped or otherwise treated under the provisions of this act, including the fees and expenses of any deputy sheep inspector arising in connection with the same, must be paid by the owner of such sheep and such charge shall be a lien upon such sheep for such charges and expenses, which lien shall be prior and paramount to any and all other liens, demands or other claims against such sheep, and the state veterinarian or his deputies may retain possession of such sheep until such charges and expenses have been paid. Such lien shall be enforced at any time after ten days from the date when said charge shall be incurred and shall not be dependent upon possession of said sheep and may be foreclosed in the name of the state veterinarian in the manner provided for the foreclosure of other liens upon personal property; or in lieu of foreclosing such lien said state veterinarian may bring an action in his own name in any court of competent jurisdiction to recover the amount of such charges and expenses: Provided, however, that when work is done by the state veterinarian in person he shall charge no fees. [L. '09, p. 665, § 15.]

§ 3145. [3233.] Compensation of Inspectors—Record and Reports.

The deputy inspectors provided for under this act shall be entitled to no salary, but shall receive fees and expenses as follows, to wit: For all

services performed in the examination or inspection of sheep or in quarantining or dipping sheep or any duties made incumbent upon them under this act, the sum of four dollars per diem for any day or part of a day so utilized by them, and in addition thereto their actual, necessary expenses attending the performance of such duties, the same to be paid by the owner of the sheep as in this act provided: Provided, however, that no inspector of the United States bureau of animal industry shall make any charge for fees or expenses against the owner or owners of any sheep in the state for any service performed. And every deputy inspector appointed under the provisions of this act must keep a book to be known as the "Inspection record," in which he must enter and record all his official acts and accounts as such deputy inspector, and such record shall show the names of owners of all animals so inspected, the number thereof, the reason why such inspection was made, the names of the persons to whom certificates of health were granted and the date thereof, the brands upon said sheep, all orders and directions made by him in each case, the amount of his per diem and expenses in each case, and such other matters as the state veterinarian may require. And each deputy must, on or before the first day of October in each year, and as often as may be required by the state veterinarian, report to him in writing, in such detail as may be required, his work and the conditions of the sheep industry in his section of the state. [L. '09, p. 665, § 16.]

"Act" refers to all except the last two sections of this chapter.

§ 3146. [3234.] Annual Report to Governor.

The state veterinarian shall make this a part of his annual report each year to the governor, upon all matters connected with his work for the year ending. [L. '09, p. 666, § 17.]

§ 3147. [3235.] Wrongful Handling of Sheep by Inspectors—Penalty.

All officers appointed under the provisions of this act shall use every precaution to protect the sheep under their care from injury and shall select proper places for quarantine and dipping, and shall so enforce quarantine regulations as to make the expenses as light as possible upon the owner, consistent with public interest; and any officer who by virtue or power conferred upon him under this act, willfully oppresses, wrongs or injures any person, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [L. '09, p. 666, § 18.]

"Act" refers to all except the last two sections of this chapter.

§ 3148. [3236.] Mingling Infected Sheep—Liability of Owner.

Whenever any sheep suffering from scab or any infectious or contagious disease shall mingle with healthy animals belonging to another, through the fault or negligence of the owner of said diseased sheep, his agent or employees, such owner shall be liable in an action at law for all damages sustained by the owner of such healthy sheep. [L. '09, p. 667, § 19.]

§ 3149. [3237.] Disposition of Fines—Lien on Sheep.

All fines and penalties imposed under the provisions of this act shall be collected in behalf of and in the name of the state and shall become a part of the general fund thereof, and the offenses herein declared to be misdemeanors shall be prosecuted by the several prosecuting attorneys of the state in the superior courts thereof in the same manner that misdemeanors are prosecuted under the general laws of the state. And it is hereby made incumbent upon such prosecuting attorneys to foreclose liens herein provided, when necessary, and to act in either civil or criminal matters under this act when requested to do so by the veterinarian or his deputies. [L. '09, p. 667, § 20.]

“Act” refers to all except the last two sections of this chapter.

§ 3150. [3238.] County to Furnish Supplies.

It shall be the duty of the boards of county commissioners of the several counties in this state to furnish free to the deputy sheep inspectors all the books, blanks and other stationery necessary for them in the performance of their duties. Such books and stationery as may be needed by the state veterinarian shall be furnished by the state. [L. '09, p. 667, § 21.]

§ 3151. [3239.] Action on Inspector's Bond.

The official bonds provided in this act shall be given to the state as herein provided, but may be sued upon by any person injured because of the negligent or unfaithful performance of duty upon the part of the official giving such bond: Provided, that no action shall be instituted after six months have elapsed from the date the cause of such action accrued. [L. '09, p. 667, § 22.]

§ 3152. [3240.] Spreading Disease—Liability of Owner—Lien—Actions.

Nothing in this act shall be construed as exempting any person owning sheep from liability in a civil action for damages for negligently or carelessly spreading scab, or scabies, or any other contagious or infectious diseases, but any person so spreading or causing said disease to be spread, either personally or through his agents in charge of sheep belonging to him, shall be liable in a civil action for damages sustained by any other person for injury to such other person's sheep by the infecting of such sheep with the scab or scabies or any other contagious or infectious disease, the same as if this act had not been passed, and no certificate issued under the provisions of this act shall be any defense or excuse in an action for damages of this character. Any damages that may be recovered in such a civil action for damages shall be a lien upon the sheep infected as stated herein by any other band or herd of sheep, for which infection such suit may have been brought, and the court in rendering judgment in any action brought for such damages shall declare such judgment to be a lien upon such sheep and direct them to be sold under special execution to pay such judgment. [L. '01, p. 146, § 21.]

“Act” in this section refers to the next section.

The present force of this and the next section is doubtful.

§ 3153. [3241.] Foreclosure of Liens—Costs and Attorney's Fees.

The liens herein provided for shall be foreclosed by an action brought in the superior court for the county wherein the lien originated in the name of the said county by the prosecuting attorney for said county as chattel mortgages are foreclosed by a suit in superior court, and upon commencing such an action in said court the prosecuting attorney shall immediately move for the appointment of a receiver to take charge of said sheep and keep the same pending the action, and it shall be the duty of the court to appoint such receiver without notice, and all the expense thereof and all the costs that are taxed in civil actions between individuals shall be taxed up in favor of the county in such a proceeding, and an attorney's fee of fifty dollars shall be taxed in such a proceeding in addition to the attorney's fee allowed by law in a civil action, and all the said costs and attorney's fees shall be paid into the county treasury and shall be credited to the same fund to which the fees collected by county officers are credited: Provided, that the sheep inspector may employ an attorney to assist the prosecuting attorney in such case, when said attorney's fees will go to such attorney so employed. [L. '01, p. 147, § 22.]

See note to last section.

CHAPTER VIII.**ESTRAYS.****§ 3154. [3242.] County Auditor to Keep Record of Estrays.**

It shall be the duty of the county auditors of the several counties of the state to keep a book of suitable dimensions to be called the "Record of estrays." The book shall be divided into two parts; the first part shall be designated "Estrays lost," and the second part "Estrays found." The part designated "Estrays lost," shall be ruled and spaced substantially as follows: The first column to contain the name of the owner; the second, his address; the third, the date lost or strayed; fourth, the kind of animal and age; fifth, the color; sixth, brands; seventh, earmarks; eighth, other marks of identification; ninth, customary range; tenth, page registered in "Estrays found." The part designated "Estrays found" shall be ruled and spaced substantially as follows: The first column to contain the name of the finder; the second, his address; third, the date found; the fourth, fifth, sixth, seventh, and eighth, columns to be the same as in "Estrays lost"; the ninth column to designate the place where the owner may claim and obtain the animal; and the tenth the page registered in "Estrays lost"; eleventh, the date sold; twelfth, to whom sold; thirteenth, price obtained; fourteenth, publication fee; fifteenth, other costs; sixteenth, balance. If the animal be breachy or vicious such fact shall also be noted in the third column. The part designated "Estray lost" shall be so arranged that the names of the owners shall be registered in alphabetical order, and thumb indexed so that each letter may be readily found. The part designated "Estrays found," shall be so arranged, that the names of the finders will be registered in alphabetical order, and indexed as specified for the part designated "Estrays lost." In addition to the foregoing each portion of said two parts of said record of estrays, shall contain an alphabetical index reference to the following: the age and kind of animal, the color, brands, earmarks; said index to refer to the page and the num-

ber of the line in which the particular animal is referred to. It shall be the duty of the auditor of each county to keep said index up to date, and as complete as practicable. [L. '05, p. 44, § 1.]

See supra, §§ 3068—3089, stock running at large.

For former acts on this subject see L. '54, pp. 380—382; L. '60, pp. 337—339; L. '63, pp. 435—437; L. '68, p. 72, § 1; L. '75, p. 99, § 1; Cd. '81, § 2538; 1 H. C., § 2535; Bal. Code, §§ 3500—3508.

Validity of Impounding Ordinances: See Remington's Digest, Animals, § 8; Shook v. Sexton, 37 Wash. 509, 79 Pac. 1093.

§ 3155. [3243.] Registration by Person Losing Animal.

Any person losing an animal shall register the same with the county auditor of his county under "Estrays lost," for which the auditor shall collect a fee of fifty cents, for each animal registered, and deliver to the owner a receipt with his seal attached which receipt shall describe the animal registered. [L. '05, p. 45, § 2.]

§ 3156. [3244.*] Registration by Finder.

Any person about whose premises any animal may be in the habit of running at large at any time between the first day of October and the first day of March east of the Cascade ranges and between the first day of December and the first day of March, west of the Cascade range, and at any time of the year within a district in which livestock shall not run at large, established as provided by section 3070, may take up such animal and shall within ten days thereafter cause the same to be registered with the county auditor of his county under "Estrays found," giving the information required by the record as fully as practicable, and the auditor shall charge against such estrays the said fee of fifty cents for each animal so registered. Breachy or vicious animals may be taken up and registered as herein provided. The word "animal" or "animals" for the purpose of this chapter, shall include only horses, mules, cattle and hogs. [L. '19, p. 412, § 1. Cf. L. '05, p. 45, § 3.]

See supra, § 3045, duty to examine brand and notify owner in certain counties.

§ 3157. [3245.] Auditor to Notify Owner of Estrays Found — Form of Notice.

Immediately upon registering any animal as found, the auditor shall examine the record of "Estrays lost" and if the animal found appears thereon, he shall immediately notify the owner by mailing him a notice addressed to the postoffice designated opposite his name on the record, which notice shall contain the information appearing in the fourth, fifth, sixth, seventh and eighth columns of the record, and shall require the owner to appear within twenty days from the date of such notice and pay all charges and take the said animal into his possession.

The several county auditors shall keep on hand blank forms of such notice which shall be substantially as follows:

— To —

— Washington.

You are hereby notified that your (here state the kind of animal), color —, branded —, earmarked —, otherwise marked —, has been taken up and by —, and is now at —, and unless you pay all charges

against the said estray, and take possession thereof within twenty days from this date, the same will be sold according to law.

Dated this — day of —, 19—.

P. O. Address —.

— —, Auditor.

[L. '05, p. 45, § 4.]

§ 3158. [3246.*] Payment of Fees—Animals Found not to be Worked.

The owner of any estray upon learning that the same has been found, shall pay to the auditor the fee for registering the estray as found, and take his receipt therefor with his official seal attached, which receipt shall describe the animal registered, and upon exhibiting such receipt and making out his title, and paying the finder the sum of one dollar for taking up the animal and reporting the same to the auditor, and the further sum of fifteen cents per day for keeping the estray, from the time of registering the same as found, shall be allowed to take possession of the animal. The claimant's possession of the auditor's receipt showing payment of the fee for registering the same as lost, and of the auditor's receipt, showing payment of the fee for registering the same as found, shall be proof of ownership sufficient to justify the finder in surrendering possession of the estray. Any taker-up of an estray who shall work such animal, or otherwise use the same so as to derive benefit therefrom shall forfeit all pay for the keep thereof. [L. '19, p. 413, § 2. Cf. L. '05, p. 46, § 5.]

§ 3159. [3247.] Disposition of Fees.

All fees collected by the auditor hereunder, and all sums derived from estray sales shall be turned into the current expense fund of the county. [L. '05, p. 46, § 6.]

§ 3160. [3248.] Sale of Unclaimed Estrays—Publication of Notice.

If the person entitled to the possession of an estray shall not appear and make out his title thereto as herein provided, and pay the charges against the same as herein specified within twenty days from the time it is registered as found, as provided in this chapter, it shall be the duty of the auditor to immediately publish notice once a week for two consecutive weeks, in the paper doing the county printing, which notice shall give the name of the finder of the estray, the date when taken up, place where kept, description of the animal as shown by the record, and shall state that if the owner does not appear and make out his title and pay all charges against said estray on or before the day and hour fixed for such sale, which shall be stated in the notice, and which shall not be less than fifteen nor more than twenty days from the date of the first publication thereof, such estray will be sold at the place where kept to the highest bidder for cash. If the owner or his legal representative appear he shall pay all charges incurred up to the time of his appearance including publication fee, and sheriff's or constable's fees if any have been incurred. [L. '05, p. 46, § 7.]

Forfeiture and sale of distrained and impounded animals. 1 Ann. Cas. 993.

§ 3161. [3249.] Form of Notice.

Such notice for publication may be substantially as follows:

ESTRAY SALE.

Notice is hereby given that (name of finder) on the — day of —, 19—, took up and now keeps at — Washington, (kind and age of animal), branded —, earmarked —, otherwise marked —, and said estray will be sold to the highest bidder for cash, at the place kept, as above specified on — the — day of —, 19—, at the hour of — o'clock in the — noon of said day, unless the owner thereof or his legal representatives shall appear prior to that time and make out his title, and pay all charges against said estray.

Date of the first publication of this notice —, 19—.

Auditor of — County.

[L. '05, p. 47, § 8.]

§ 3162. [3250.] Notice of Sale of Several Animals.

In any community where any number of estrays are registered as found at or near the same time, all such estrays may be advertised for sale by the auditor in the same notice, by describing each animal. It shall be the duty of the county auditor to specify in said notice the place where the sale is to take place, and any person holding any estray or estrays so advertised shall take the same to the place specified in said notice so that the same may be sold as provided in this act. [L. '05, p. 47, § 9; L. '09, p. 417, § 1.]

§ 3163. [3251.] Sale to Highest Bidder.

At the time stated in such notice, the sheriff or any constable, or any elector, other than the finder, deputed by the sheriff for such purpose shall sell the same at public auction for cash to the highest bidder, and the finder may bid therefor at such sale, and after deducting all charges of the finder as herein provided, and the fees of the sheriff or constable for selling, which shall be the same as a sale on execution the remainder of the proceeds shall be turned into the auditor within ten days, by the party conducting the sale. Provided, that if any person other than the sheriff or a constable conducts such sale no fees for selling shall be allowable. [L. '05, p. 47, § 10.]

§ 3164. [3252.] Redemption.

If the owner of the property sold, or his legal representative, within six months after the sale shall have been made, furnish satisfactory evidence to the auditor of the ownership of the said property, he or they shall be entitled to redeem said property upon the payment of all costs incurred in connection therewith. Any person buying an estray at a sale had under the provisions of this act shall be vested with an absolute title to the same after six months from the date of such sale, unless notified by the auditor of the redemption of same by its owner or his legal representative. [L. '05, p. 48, § 11; L. '09, p. 418, § 2.]

§ 3165. [3253.] Publisher's Fees.

The publisher's fees for publishing the notices specified herein, shall be paid for in the manner and at the rate provided for the publication of the proceedings of the county commissioners. [L. '05, p. 48, § 12.]

§ 3166. [3254.] Registration of Animals Presumably Estrays.

Any person knowing of any animal running at large in any month, which he believes to be an estray, may take the same into his possession and register the same as found, or may register the same without taking the animal into his possession by specifying the range where the owner may be likely to find the same, but no charges shall be allowed any finder for taking or keeping such animal and no such animal shall be advertised for sale between the first day of March and the first day of October, except breachy or vicious animals, or estrays taken up prior to said first day of March, as herein provided. The several county auditors shall make no charge for registering estrays as found between the first day of March and the first day of October. [L. '05, p. 48, § 13.]

See *supra*, § 3045.

§ 3167. [3255.] Sale, Where to be Held.

Any owner or finder of any estray may register the same as lost or found in any one or more counties of the state, but the sale must be in the county where the estray is taken up, and the finder shall pay the registration fee outside the county where the estray is taken up. [L. '05, p. 48, § 14.]

§ 3168. [3256.] Penalty.

If any person shall take up, keep or use any estray without complying with the provisions of this chapter, he shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not to exceed one hundred dollars. [L. '05, p. 48, § 15.]

§ 3169. [3257.] Conversion of Estrays.

If the taker-up of estray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and willfully violate any of the provisions of the law regulating the taking up of estrays, such person so offending shall be fined in any sum not exceeding five hundred dollars, and not less than double the value of such estray property. [L. '54, p. 94, § 101; Cd. '81, § 916; 2 H. P. C., § 91.]

See *supra*, § 2076, allegation of ownership.

This section was repealed by L. '01, p. 264, § 6, but the repeal was void as this section was not within the title of that act.

CHAPTER IX.

APIARIES AND THEIR INSPECTION.

§ 3170. Division of Apiculture in State College.

There is hereby created and established a division of apiculture in the State College of Washington which shall consist of the state entomologist of the State College of Washington and of such apiarist in-

spectors as may be from time to time appointed by the state entomologist by and with the consent of the dean of agriculture of the State College of Washington. The state entomologist shall receive no additional salary as such but shall be paid his actual necessary traveling expenses incurred in the performance of his duties under this act. [L. '19, p. 283, § 1.]

Laws of bees. *Ann. Cas.* 1917B, 983.

§ 3171. Instruction by State Entomologist.

It shall be the duty of the state entomologist to give in person and by the inspectors of his division, lectures and field demonstrations and hold institutes throughout the state on the production of honey, the care of the apiary, and kindred subjects relative to the care of bees and the profitable production of honey. [L. '19, p. 283, § 2.]

§ 3172. Apiary Inspectors.

The state entomologist shall have the power and it shall be his duty, (with the approval of the dean of agriculture of the State College of Washington) to appoint a sufficient number of apiary inspectors who shall, under his direction, have charge of the inspection of apiaries, the investigation of outbreaks of bee diseases and the enforcement of the provisions of this act in relation to their eradication and control. Each of said apiary inspectors shall be paid not more than six dollars (\$6) per day for his services as such while so employed and his actual necessary traveling expenses incurred in the performance of his duties. [L. '19, p. 283, § 3.]

§ 3173. Inspection of Apiaries.

The state entomologist shall, as often as he deems necessary or when requested in writing by the owner of an apiary or upon the written complaint of any owner of an apiary, make or cause to be made by an inspector an inspection of any apiary or apiaries for the purpose of ascertaining whether or not they are infected with "American foul brood," "European foul brood," or any other disease which is infectious or contagious in its nature or injurious to bees in their eggs, larval, pupal or adult stages, and upon such inspection if it is found that any apiary is so infected, the entomologist, or inspector making the inspection, shall give the owners or caretakers thereof full instructions as to the best methods of controlling or eradicating the infection. [L. '19, p. 284, § 4.]

§ 3174. Destruction of Infected Honey and Appliances.

The state entomologist or inspector, who shall have made an inspection, as provided in the preceding section, shall visit all infected apiaries a second time after ten days from the date of any such inspection and if he finds that the disease has not been treated according to an approved method, providing conditions were such that it could be so treated, shall burn or cause to be burned all colonies affected by such disease and all honey and appliances which would spread the same, without recompense from the state to the owner, lessee, or other person interested therein. [L. '19, p. 284, § 5.]

§ 3175. Restrictions on Removal of Infected Bees.

It shall be unlawful for the owner, lessee, caretaker, or any other person in charge of any apiary, or appliances wherein infectious or contagious diseases exist, to sell, barter or give away, or to move without the consent of an inspector, any diseased bees, either queen bees or workers or colonies, or appliances affected with any contagious or infectious disease, or to expose other bees to the danger of such infection. [L. '19, p. 285, § 6.]

§ 3176. Hindering Inspection.

For the purpose of the enforcement of the provisions of this act, the state entomologist and the apiary inspectors shall have access and ingress to all apiaries or places where bees are kept and it shall be unlawful for any person to resist, impede or hinder in any way such officer in the discharge of his duties under the provisions of this act. [L. '19, p. 285, § 7.]

§ 3177. Duty of Inspector to Disinfect Himself.

It shall be the duty of the state entomologist and of any inspector and of any other person who shall have inspected any infected apiary or who shall have knowingly come in contact with or handled any diseased bees, before proceeding to any other apiary, to thoroughly disinfect his person and clothing and any tools or appliances used by him which shall have come in contact with any infected material. [L. '19, p. 285, § 8.]

§ 3178. Queen Bee Apiaries.

It shall be unlawful for any person engaged in the rearing of queen bees for sale, to use any honey in the making of candy for use in mailing cages unless such honey has been boiled for at least thirty minutes, and it shall be the duty of every person engaged in the rearing of queen bees for sale to have his queen rearing apiary or apiaries inspected by an apiary inspector whenever necessary and whenever conditions for inspection are favorable, and in case any infectious or contagious disease is discovered by such inspection, it shall be unlawful for the person owning, leasing or in charge of such queen rearing apiary or apiaries to ship any queen bees therefrom until he shall have received a certificate in writing from the state entomologist or an apiary inspector that such apiary or apiaries are free from all disease. [L. '19 p. 285, § 9.]

§ 3179. Annual Report to Governor.

The state entomologist shall make an annual report to the governor concerning the operation of the division of apiculture, which shall give the number of apiaries inspected, the number of colonies treated, the number of colonies destroyed and such other information as he may deem necessary or of value to the bee keeping industry. [L. '19, p. 286, § 10.]

§ 3180. Certification and Inspection of Imported Bees.

It shall be unlawful for any person to import any bees into this state unless such bees are accompanied by a certificate issued by the officers having charge of apiary inspection in the state or country from

which such bees are imported, stating that they are free from contagious and infectious diseases, without giving notice to the state entomologist at least ten days before their arrival of his intention so to do, or to receive and place any such imported bees unaccompanied by such certificate in any apiary, or to liberate such bees without first having the same inspected by an apiary inspector; and if upon such inspection of any imported bees, they shall be found to be affected by an infectious or contagious disease, it shall be the duty of the inspector making the inspection to require such bees to be isolated and treated until such time as the inspector shall determine that all danger of infection is removed, or the inspector may in his discretion order said bees and all cages, hives and combs imported therewith to be destroyed. [L. '19, p. 286, § 11.]

§ 3181. Immovable Combs Prohibited.

It shall be unlawful for any person to keep any bees in any hives or boxes wherein the combs are immovable or which are so constructed as to impede or hinder inspection. [L. '19, p. 286, § 12.]

§ 3182. Penalty.

Every person convicted of violating or failing to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined as provided by law. [L. '19, p. 287, § 13.]

§ 3183. [3265.] Poisoning Honey-bees—Penalty.

It shall be unlawful for any person within the state of Washington to willfully or maliciously kill or poison any honey-bees. It shall further be unlawful for any person within said state to willfully or maliciously place any poisonous or sweetened substance for the purpose of injuring honey-bees, in any place where such poisoned or sweetened substance is accessible to honey-bees within this state. Any person or persons violating the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than ten dollars, nor more than one hundred dollars. [L. '97, p. 11, §§ 1, 2.]

CHAPTER X.

PREVENTION OF CRUELTY TO ANIMALS.

§ 3184. [3266.] Humane Societies, etc.—Incorporation.

Any citizens of the state of Washington who have heretofore, or who shall hereafter, incorporate as a body corporate, under the laws of this state as a humane society or as a society for the prevention of cruelty to animals may avail themselves of the privileges of this act: Provided, that the corporate body existing at any given time and first incorporated as aforesaid in any county, shall be the only one entitled to the benefits and privileges of this act in such county. [L. '01, p. 302, § 1.]

"Act" refers to §§ 3184—3201.

What constitutes cruelty to animals.
47 **Am. Rep.** 310.

Constitutionality of statute or ordinance for prevention of cruelty to animals. **L. B. A.** 1916A, 951.

Malice or willfulness as ingredient of the offense of abusing animals. 41
L. B. A. (N. S.) 433.

§ 3185. [3267.] Authority of Members to Suppress Cruelty to Animals.

All members and agents, and all officers of any society so incorporated, as shall by the trustees of such society be duly authorized in writing, approved by any judge of the superior court of the county, and sworn in the same manner as are constables and peace officers, shall have power lawfully to interfere to prevent the perpetration [perpetration] of any act of cruelty upon any animal and may use such force as may be necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any of the provisions of this act in the same manner as herein provided for other officers; and may carry the same weapons that such officers are authorized to carry: Provided, that all such members and agents shall, when making such arrests, exhibit and expose a suitable badge to be adopted by such society. All persons resisting such specially authorized, approved and sworn officers, agents or members shall be guilty of a misdemeanor. [L. '01, p. 302, § 2.]

"Act" refers to §§ 3184—3201.

§ 3186. [3268.] Certain Officers Empowered to Make Arrests for Violations.

All sheriffs, constables, police and peace officers are empowered to make arrests for the violation of any provisions of this act, as in other cases of misdemeanor. [L. '01, p. 302, § 3.]

"Act" refers to §§ 3184—3201.

§ 3187. [3269.] What Constitutes Cruelty.

Every person who cruelly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills, or causes, procures, authorizes, requests or encourages so to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten or mutilated or cruelly killed, any animal; and whoever having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the same, or unnecessarily fails to provide the same with the proper food, drink, air, light, space, shelter or protection from the weather, or who willfully and unreasonably drives the same when unfit for labor or with yoke or harness that chafes or galls it, or check rein or any part of its harness too tight for its comfort, or at night when it has been six consecutive hours without a full meal, or who cruelly abandons any animal, shall be guilty of a misdemeanor. [L. '01, p. 303, § 4. Cf. L. '93, p. 41, § 2; see Cd. '81, § 930; 2 H. P. C., § 164.]

See *infra*, §§ 5062, 5063, dissection, and penalty.

§ 3188. [3270.] Transportation in Cruel Manner—Penalty.

If any person shall carry, transport, or confine, or cause to be carried, transported or confined upon any wagon, railway, car, vehicle, boat, vessel or otherwise, any domestic animal, in a cruel or unnecessarily [unnecessarily] painful manner, posture or confinement, he shall be guilty of a misdemeanor. And whenever any such person shall be taken into cus-

tody therefor by any officer or authorized person, such officer or person may take charge of such car, wagon, vehicle, boat or vessel and its contents together with the horse or team attached to any such wagon or vehicle, and place or leave the same in some reasonably safe place of custody; and any necessary expense which may be incurred for taking care of and keeping the same, shall be a lien thereon, to be paid before the same can be lawfully recovered; and if the said expenses, or any part thereof, remain unpaid, they may be recovered by the person incurring the same, of the owner of such domestic animal, or of the person guilty, as aforesaid, in any action therefor. [L. '01, p. 303, § 5.]

§ 3189. [3271.] Docking Horses' Tails Prohibited.

Every person who shall cut or cause to be cut, or assist in cutting the solid part of the tail of any horse in the operation known as "docking," or in any other operation for the purpose of shortening the tail or changing the carriage thereof, shall be guilty of a misdemeanor. [L. '01, p. 304, § 6.]

§ 3190. [3272.] Unlawful to Cause Certain Animals to Fight.

Every person who wantonly or for the amusement of himself or others, or for gain, shall cause any bull, bear, cock, dog, or other animal to fight, chase, worry or injure any other animal, or to be fought, chased, worried or injured by any man or animal, and every person who shall permit the same to be done on any premises under his charge or control; and every person who shall aid, abet, or be present at such fighting, chasing, worrying or injuring of such animal as a spectator, shall be guilty of a misdemeanor. [L. '01, p. 304, § 7.]

§ 3191. [3273.] Owning or Training Fighting Animals—Attending Exhibitions—Penalty.

Every person who owns, possesses, keeps, or trains any bird or other animal with the intent that such bird or other animal shall be engaged in an exhibition of fighting, or is present at any place, building or tenement, where training is being had or preparations are being made for the fighting of birds or other animals, with the intent to be present at such exhibition, or is present at such exhibition, shall be guilty of a misdemeanor. [L. '01, p. 304, § 8.]

§ 3192. [3274.] A Misdemeanor to Attempt Violation.

Every person who shall attempt to do any act or thing which by this act is made a misdemeanor shall be guilty of a misdemeanor. [L. '01, p. 304, § 9.]

"Act" refers to §§ 3184—3201.

§ 3193. [3275.] Complaints—Issuance of Search-warrants.

When complaint is made on oath, to any magistrate authorized to issue warrants in criminal cases that the complainant believes that any of the provisions of law relating to or in any way affecting animals, are being or are about to be violated in any particular building or place, such magistrates shall issue and deliver immediately a warrant directed

to any sheriff, constable, police or peace officer, or officer of any incorporated society qualified as provided in section 3185, of this chapter, authorizing him to enter and search such building or place, and to arrest any person or persons there present violating or attempting to violate any law relating to or in any way affecting animals, and to bring such person or persons before some court or magistrate of competent jurisdiction within the city or county within which such offense has been committed or attempted to be committed, to be dealt with according to law. [L. '01, p. 304, § 10.]

§ 3194. [3276.] Power to Arrest Without Warrant.

Any person qualified under section 3185 of this chapter, and any sheriff, constable, police or peace officer may enter any place, building or tenement, where there is an exhibition of the fighting of birds or animals or where preparations are being made or training had for such exhibition, and without a warrant arrest all or any persons there present and bring them before some court or magistrate of competent jurisdiction to be dealt with according to law. [L. '01, p. 305, § 11.]

§ 3195. [3277.] Confinement of Animals Without Food and Drink, Prohibited.

Any person who shall impound or confine or cause to be impounded or confined any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof shall be guilty of a misdemeanor. In case any domestic animal shall be impounded or confined as aforesaid and shall continue to be without necessary food and water for more than twenty-four consecutive hours, it shall be lawful for any person, from time to time, as it shall be deemed necessary to enter into and open any pound or place of confinement in which any domestic animal shall be confined, and supply it with necessary food and water so long as it shall be confined. Such person shall not be liable to action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall be subject to attachment therefor and shall not be exempt from levy and sale upon execution issued upon a judgment therefor. [L. '01, p. 305, § 12.]

§ 3196. [3278.] Old or Diseased Animals, Unlawful to Abandon.

Every owner, driver, or possessor of any old, maimed or diseased horse, cow, mule, or other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot or place of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall be guilty of a misdemeanor: Provided, that this shall not apply to any such owner keeping any old or diseased animal belonging to him on his own premises with proper care. Every sick, disabled, infirm or crippled horse, ox, mule, cow or other domestic animal, which shall be abandoned on the public highway, or in any open or inclosed space in any city or township, may, if, after search by a peace officer or officer of such society no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment. [L. '01, p. 305, § 13.]

§ 3197. [3279.] Prosecutions.

Any member of such society authorized as provided in section 3185, may appear and prosecute in any court of competent jurisdiction for any violation of any of the provisions of this act, whether or not he be an attorney or counselor at law: Provided, that all such prosecution shall be conducted in the name of the people of the state of Washington. [L. '01, p. 306, § 14.]

"Act" refers to §§ 3184—3201.

§ 3198. [3280.] Punishment—Disposition of Fines Collected.

Every person convicted of any misdemeanor under this act, shall be punished as is by law provided for the punishment of misdemeanors and all fines imposed or collected in any county under the provisions of this act, shall inure to the society in said county, organized and incorporated as in section 3184 provided, in aid of the benevolent object for which it is incorporated, and shall be paid out of the county treasury to such society and the county auditor shall draw warrants in favor of such society upon the county treasurer therefor. [L. '01, p. 306, § 15.]

"Act" refers to §§ 3184—3201.

§ 3199. [3281.] Fine and Term of Imprisonment.

Every person convicted of any misdemeanor under this act, shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution. [L. '01, p. 306, § 16.]

"Act" refers to §§ 3184—3201.

§ 3200. [3282.] Terms Defined.

In this act, the singular shall include the plural; the word "animal" shall be held to include every living creature, except man; the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations in regard to animals transported, owned, or employed by, or in the custody of such corporations, shall be held to be the act and knowledge of such corporations as well as of such agents or employees. [L. '01, p. 306, § 17. Cf. L. '93, p. 41, § 31; Bal. Code, § 7402.]

"Act" refers to §§ 3184—3201.

§ 3201. [3283.] Application of Act.

No part of this act, shall be deemed to interfere with any of the laws of this state known as the "Game laws," nor shall this act be deemed to interfere with the right to destroy any venomous reptile or any known as dangerous to life, limb or property, or to interfere with the right to kill animals to be used for food or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be

performed only under the authority of the faculty of some regularly incorporated college or university of the state of Washington. [L. '01, p. 307, § 18.]

"Act" refers to §§ 3184—3201.

§ 3202. [3284.] Forfeiture of Fighting Animals—Sale of.

After such seizure of said fowls, birds, dogs, or other animals as provided for in section 5 of this act, application shall be made to a trial justice or municipal court for an order of forfeiture of the same, and if upon the hearing of the same, such notice having been given of the hearing as the court shall order, it shall be found that such fowls, birds, dogs or other animals, or any of them, at the time of such seizure, were engaged in fighting at an exhibition thereof, or were owned, kept, possessed or trained by any person with intent that they should be so engaged, all such fowls, birds, dogs or other animals shall be adjudged forfeit, and such justice or court shall thereupon issue an order for selling the same at auction to the highest bidder within twenty-four hours, the proceeds to be paid into the common school fund of the county where such seizure is made. Any fowls, birds, dogs or other animals seized as hereinbefore provided which are not adjudged forfeit, shall be delivered to the owner or the person entitled to the possession thereof. The necessary costs in the aforesaid proceedings shall be allowed and paid as costs in criminal prosecutions are paid. [L. '93, p. 42, § 7.]

"Section 5" was repealed by § 2304, supra. It provided for complaint and search-warrants for seizure of fighting animals to be used in exhibitions. See Remington & Ballinger's Code, § 2982.

§ 3203. [3285.] Wanton Cruelty to Fowls, etc.

Whosoever shall wantonly or cruelly pluck, maim, torture, deprive of necessary food or drink, or wantonly kill any fowl or insectivorous bird, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding twenty dollars. [L. '93, p. 43, § 8.]

§ 3204. [3286.] Arrest Without Warrant, When.

Any judge, justice of the peace, police judge, sheriff, constable or police officer may arrest any person found committing any of the cruelties hereinbefore enumerated, without a warrant for such arrest, and any officer or member of any humane society, or society for the prevention of cruelty to animals, may cause the immediate arrest of any person engaged in, or who shall have committed such cruelties, upon making oral complaint to any sheriff, constable, or police officer, or such officer or member of such society may himself arrest any person found perpetrating any of the cruelties herein enumerated: Provided, that said person making such oral complaint or making such arrest shall file with a proper officer a written complaint, stating the act or acts complained of, within twenty-four hours, excluding Sundays and legal holidays, after such arrest shall have been made. [L. '93, p. 43, § 9.]

The application of this section may be somewhat limited by later acts superseding parts of the act of 1893. See supra, § 3194, same authority conferred.

§ 3205. [3287.] Disposition of Fines.

All fines herein provided for shall be paid into the common school fund of the county in which such fine shall be imposed. [L. '93, p. 43, § 10.]

§ 3206. [3288.] Unlawful Mutilation of Domestic Animals.

It shall not be lawful for any person to cut off more than one-half of the ear or ears of any domestic animal, such as an ox, cow, bull, calf, sheep, goat, or hog, and any person cutting off more than one-half of the ear or ears of any such animals shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum less than twenty dollars. [L. '71, p. 103; Cd. '81, § 840; 2 H. P. C., § 61.]

§ 3207. [3289.] Malicious Injury to Animals.

If any person maliciously kill, maim, or disfigure any horse, cattle, dog, or other domestic animal of another, or maliciously administer poison to any such animal or animals, or expose any poisonous substance with intent that the same should be taken by it or them, he shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding three hundred dollars. [Cf. Cd. '81, § 838; 2 H. P. C., § 59; L. '93, p. 236, § 1.]

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BANKS AND BANKING AND TRUST COMPANIES.

TITLE XVIII.

BANKS AND BANKING AND TRUST COMPANIES.

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CHAPTER I.

STATE BANKING LAW.

§ 3208. Titles of State Officers.

The official title of the state bank examiner is hereby changed to “bank commissioner.” The term “state bank examiner” whenever used in the laws of this state shall be held and construed to mean the bank commissioner. The terms “bank examiner” and “examiner” wherever used in the laws of this state where from the context of the law is meant the state bank examiner shall be held and construed to mean the bank commissioner. The terms “deputy state bank examiner,” “deputy examiner,” or “deputy” and “deputy state bank examiners,” “deputy examiners,” or “deputies” wherever used in the laws of this state shall be held and construed to mean bank examiner and bank examiners respectively. The terms “examiner” and “examiners” wherever used in the laws of this state where from the context of the law is meant the deputy state bank examiner or deputy state bank examiners shall be held and construed to mean bank examiner and bank examiners respectively. [L. '19, p. 727, § 1.]

See *infra*, § 10807, division of banking.

See *infra*, § 10809, supervisor of division of banking.

See *infra*, § 10812, duties devolve upon director of taxation and examination.

See *infra*, § 10893, bank commissioner abolished.

§ 3209. Deputy Bank Commissioner and Bank Examiners.

The bank commissioner may appoint a deputy bank commissioner and one or more bank examiners, removable by him at will, who shall have the same qualifications and, subject to the supervision of said bank commissioner, possess the same powers. He may also employ other necessary assistance. In the case of the absence or inability to act, or vacancy in the office of the bank commissioner for thirty consecutive days, the deputy bank commissioner shall have all the powers and duties of bank commissioner until the inability of the bank commissioner shall be removed or

until a new bank commissioner shall have been appointed by the governor. [L. '19, p. 728, § 2. Cf. L. '17, p. 271, § 2.]

See *infra*, § 10809, assistant to be known as supervisor of banking.

See *infra*, § 10809, appointment of examiners and inspectors.

See *infra*, § 10812, duties devolve upon director of taxation and examination.

§ 3210. Salaries—Oaths and Bonds—Liabilities.

. . . . Each bank examiner may receive a salary of three thousand dollars (\$3,000) a year.

Before entering upon his office, each bank examiner shall take and subscribe an oath faithfully to discharge the duties of his office and shall each execute to the state a bond to be approved by the governor in the sum of twenty-five thousand dollars (\$25,000), with a surety company authorized to do business in this state, as surety, conditioned for the faithful performance of his duties. The premiums on such bonds shall be paid by the state. Such oaths and bonds shall be filed with the secretary of state. Neither the bank commissioner, the deputy bank commissioner nor any bank examiner shall be personally liable for any act done by him in good faith in the performance of his duties. [L. '19, p. 728, § 3. Cf. L. '17, p. 271, § 3.]

This section is in part superseded by § 10893, abolishing the office of bank commissioner.

§ 3211. Seal and Records.

The state bank examiner shall maintain an office at the state capitol, but may with the consent of the governor also maintain an office at some other convenient banking center in this state. He shall keep books of record of all moneys received or disbursed by him. He shall adopt an official seal. [L. '17, p. 272, § 4.]

"State bank examiner" means state bank commissioner. See § 3208, *supra*.

§ 3212. Bank and Trust Company Reports.

Every bank and trust company shall make at least three regular reports each year to the bank commissioner, as of the dates which he shall designate, according to form prescribed by him, verified by the president, manager or cashier and attested by at least two directors, which shall exhibit under appropriate heads the resources and liabilities of such corporation. The dates designated by the bank commissioner shall be the dates designated by the comptroller of the currency of the United States for reports of national banking associations. Each such report in condensed form, to be prescribed by the bank commissioner, shall be published once in a newspaper of general circulation, published in a place where the corporation is located, or if there be no newspaper published in such place, then in some newspaper published in the same county.

Every such corporation shall also make such special reports as said bank commissioner shall call for. [L. '19, p. 729, § 4. Cf. L. '17, p. 272, § 5.]

§ 3213. Reports and Proofs of Publication—Time of Filing—Penalty.

Every regular report shall be filed with the state bank examiner within twelve days from the date of issuance of the notice therefor and

proof of publication of such report shall be filed with said examiner within twenty days from such date. Every special report shall be filed with said examiner within such time as shall be specified by him in the notice therefor.

Every bank and trust company which fails to file any report, required to be filed as aforesaid, or to file proof of publication of any report required to be published, within the time herein specified, shall be subject to a penalty of \$10 per day for each day's delay. A civil action for the recovery of any such penalty may be brought by the attorney general in the name of the state. [L. '17, p. 272, § 6.]

"Bank examiner" means bank commissioner. See § 3208, *supra*.

See *infra*, § 10812, duties devolve upon director of taxation and examination.

§ 3214. Examination of Banks and Trust Companies.

It shall be the duty of the bank commissioner, the deputy bank commissioner or a bank examiner without previous notice to visit each bank and each trust company at least once in each year and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee or agent of such corporation. Said bank commissioner may make such other full or partial examinations as he deems necessary. The bank commissioner may, in his discretion, accept in lieu of the examinations required in this section the examinations required under the terms of the federal reserve act for banks which are, or may become, members of a federal reserve bank. Any willful false swearing in any examination shall be perjury. [L. '19, p. 729, § 5. Cf. L. '17, p. 272, § 7.]

See *infra*, § 10812, duties devolve upon director of taxation and examination.

Examination and supervision of banks by public officers as impairment of charter rights. 8 A. L. B. 898.

§ 3215. Fees for Examinations.

The director of taxation and examination, through and by means of the division of banking, shall collect from each bank, mutual savings bank, or trust company for each complete examination of its condition the following fees: From each bank or trust company, having a capital of less than \$20,000 the sum of \$30; having a capital of \$20,000 and less than \$50,000 the sum of \$40; having a capital of \$50,000 or more, the sum of \$50; and from each mutual savings bank the sum of \$50; and in addition thereto one one-hundredth (1/100%) of one per cent on all deposits, at the time of examination. For each examination other than a complete examination he shall charge and collect the cost thereof but not less than \$25; Provided, that as to a trust company not doing a banking business the charge of an examination shall be the cost thereof but not less than \$50. [L. '21, p. 211, § 1. Cf. L. '17, p. 273, § 8.]

§ 3216. Disclosure of Information—Penalty.

Neither the bank commissioner nor any person connected with his office shall disclose any information obtained from any bank or trust company to any person not connected with such office, except federal, federal reserve bank, state or clearing-house bank examiners, or to proper officials

legally empowered to investigate criminal charges, or except as is otherwise required by law. Every person who shall violate any provision of this section shall forfeit his office or employment and shall also be guilty of a gross misdemeanor. [L. '19, p. 730, § 6. Cf. L. '17, p. 273, § 9.]

§ 3217. Bank Employees—Removal.

Whenever the state bank examiner shall find that any officer or employee of any bank or trust company is dishonest, reckless or incompetent, or fails to perform any duty of his office, he shall notify the board of directors of such corporation, in writing, of his objections to such officer or employee, and such board shall within twenty days after receiving such notification, meet and consider such objections, first giving notice to the state bank examiner of the time and place of such meeting. If the board shall find the objections to be well founded, such officer or employee shall be immediately removed. [L. '17, p. 273, § 10.]

"Bank examiner" means bank commissioner. See § 3208, *supra*.

§ 3218. Borrowing Money by Examiner or Employees.

It shall be unlawful for the state bank examiner or any deputy or employee of his office to borrow money from any bank or trust company, under his jurisdiction. Every person who shall violate any provision of this section shall forfeit his office or employment and also be guilty of a gross misdemeanor. [L. '17, p. 274, § 11.]

See note to last section.

§ 3219. Schedule of Fees.

The state bank examiner shall collect in advance the following fees:

For filing articles of incorporation, or amendments thereof, or certified copies of articles of incorporation or other certificates required to be filed in his office.....	\$10.00
For issuing a certificate of authority or of increase or decrease.	10.00
For issuing each renewal certificate of authority.....	10.00
For furnishing copies of papers filed in his office, per folio.....	.20

Every bank and trust company shall also pay to the secretary of state for filing any instrument with him the same fees as are required of general corporations for filing corresponding instruments, and also the same license fees as are required of general corporations. [L. '17, p. 274, § 12.]

See note to § 3217.

§ 3220. Examiner's Reports—Filing—Publication.

The state bank examiner shall file in his office all reports required to be made to him, prepare and furnish to banks and trust companies blank forms for such reports as are required of them and on or before the first day of February of each year make a report for the preceding year to the governor showing:

1. A summary of the conditions of the banks and trust companies at the date of their last report.
2. A list of those organized or closed during the year.
3. The amount of money collected and expended by him.

He shall publish annually at the expense of his department, in pamphlet form, at least five hundred copies of such report and shall furnish a copy of the same free to each bank and trust company, and, in his discretion, to other interested persons. He shall publish such other statements, reports and pamphlets as he shall deem advisable. [L. '17, p. 274, § 13.]

See note to § 3217.

§ 3221. Definitions.

The term "banking" shall include the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business.

The term "bank," where used in this act, unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in banking, other than a trust company, or a mutual savings bank.

The term "branch bank," where used in this act, means any office of deposit or discount maintained by any bank or trust company, domestic or otherwise, other than its principal place of business, regardless of whether it be in the same city or locality.

The term "trust business" shall include the business of doing any or all of the things specified in subdivisions 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of section 3231.

The term "trust company," where used in this act, unless a different meaning appears from the context, means any corporation, organized under the laws of this state, engaged in trust business.

The term "savings bank," shall include any bank which as a regular part or the whole of its banking business solicits or receives deposits for which a pass-book, or its equivalent, is issued containing rules and regulations regarding the withdrawal of such deposits.

The term "commercial bank" shall include any bank other than a savings bank.

The term "person," where used in this act, unless a different meaning appears from the context, includes a person, firm, association, partnership and corporation, and the plural thereof, whether resident, nonresident, citizen or not.

The term "foreign bank" and "foreign banker" shall include:

1. Every corporation not organized under the laws of the territory or state of Washington, doing a banking business, except a national bank.

2. Every unincorporated company, partnership, or association of two or more individuals organized under the laws of another state or country, doing a banking business.

3. Every other unincorporated company, partnership or association of two or more individuals, doing a banking business, if the members thereof owning a majority interest therein, or entitled to more than one-half of the net assets thereof, are not residents of this state.

4. Every nonresident of this state doing a banking business in his own name and right only. [L. '17, p. 275, § 14.]

What is Banking Business: See Remington's Digest, Banks, § 10; Kiggins v. Munday, 19 Wash. 233, 52 Pac. 855; Union Savings & Trust Co. of Seattle v. Krumm, 88 Wash. 20, 152 Pac. 681.

Branch Banks: See Remington's Digest, Banks, § 11; Ames v. Farmers &

Mechanics' Bank, 48 Wash. 328, 93 Pac. 530; State ex rel. Flumerfelt v. Engle, 50 Wash. 207, 96 Pac. 1045; Union Sav. & Trust Co. v. Krumm, 88 Wash. 20, 152 Pac. 681.

Acts constituting doing "banking business." 18 Ann. Cas. 829.

§ 3222. Banks Excluded from Act—Federal Reserve Membership.

No person shall engage in banking except in compliance with and subject to the provisions of this act, except it be a national bank or except in so far as it may be authorized so to do by the laws of this state relating to mutual savings banks, nor shall any corporation engage in a trust business except in compliance with and subject to the provisions of this act, nor shall any bank engage in a trust business, except as herein authorized, nor shall any bank or trust company establish any branch. The practice of collecting or receiving deposits or cashing checks at any place or places other than the place where the usual business of a bank or trust company and its operations of discount and deposits are carried on shall be held and construed to be establishing a branch: Provided, however, that any bank or trust company may participate in membership in the federal reserve banking system of the United States and may to that end comply with any requirements or laws of the United States or any rules or regulations duly promulgated pursuant thereto, anything elsewhere in this act to the contrary notwithstanding. [L. '19, p. 730, § 7. Cf. L. '17, p. 276, § 15.]

Cited in 103 Wash. 252; 104 Wash. 52—55.

This section did not impliedly repeal section 3810, authorizing corporations generally to hold stock in other corporations: Moore v. Fremont State Bank, 103 Wash. 249, 173 Pac. 1089.

A foreign corporation, whose articles designate trust or agency powers is not entitled to file its articles with the Secretary of State unless it is incorporated

in compliance with the laws relating to trust companies: State ex rel. Amalgamated Republic Mines Co. v. Nichols, 47 Wash. 117, 91 Pac. 632.

The provision prohibiting the use of the word "trust" in the name of other corporations is germane to the general purposes of an act entitled "An act providing for the incorporation of trust companies, and defining their powers and duties": State ex rel. Osborne etc. Co. v. Nichols, 38 Wash 309, 80 Pac. 462.

§ 3223. National Banks Doing Trust Business.

A national bank located within this state and having a paid-up capital of fifty thousand (\$50,000) dollars or more, when authorized or permitted so to do, by or under any act of the congress of the United States, may exercise any of the powers conferred upon trust companies by this act. [L. '17, p. 276, § 16.]

§ 3224. National Banks Subject to State Restrictions.

Before any such national bank shall engage in such trust business, it shall file a certificate with the state bank examiner, wherein it agrees to conform to all the regulations and restrictions of this act relating to trust companies and trust business, including the examination of its trust business by said examiner and the payment of the fees therefor, herein prescribed for the examination of banks and trust companies. Upon the filing of such a certificate in a form to be approved by said examiner, such

national bank shall be subject to all the regulations and restrictions of this act relative to trust companies and trust business. [L. '17, p. 277, § 17.]

"Bank examiner" means bank commissioner. See § 3208, *supra*.

§ 3225. Use of Names "Bank" and "Trust"—Penalty.

The name of every bank shall contain the word "bank," and the name of every trust company shall contain the word "trust." No person except:

1. A national bank;
2. A bank or trust company authorized by the laws of this state;
3. A foreign corporation authorized by this act so to do, shall,

1. Use as a part of his or its name or other business designation or in any manner as if connected with his or its business or place of business any of the following words or the plural thereof, to wit: "bank," "banking," "banker," "trust."

2. Use any sign at or about his or its place of business or use or circulate any advertisement, letterhead, billhead, note, receipt, certificate, blank, form, or any written or printed or part written and part printed paper, instrument or article whatsoever, directly or indirectly indicating that the business of such person is that of a bank or trust company.

Every person who, and every director and officer of every corporation which, to the knowledge of such director or officer violates any provision of this section shall be guilty of a gross misdemeanor. [L. '17, p. 277, § 18.]

Cited in 104 Wash. 53, 57, 59, 60.

Under Rem. & Bal. Code, § 3346, a pre-existing corporation cannot change its name to include therein the word "trust," without complying with the other provisions of the act regulating trust companies, since the change in name is to that extent the creation of a new corporation: *State ex rel. Osborne etc. Co. v. Nichols*, 38 Wash. 309, 83 Pac. 462.

A corporation, the articles of which authorized it to engage in a trust business cannot lawfully use the word "trust" in its corporate name, although it does not actually engage in a trust business, without complying with this act; since the act was intended to put banks and

trust companies in a distinct class with limited powers and new safeguards: *Union Trust Co. v. Moore*, 104 Wash. 50, 175 Pac. 565.

The words "Trust Company," in this section, are not ambiguous, and the phrase "authorized by laws of the state" was merely intended to differentiate between trust companies organized under the act and foreign trust companies authorized by the act to engage in a trust business, and not to authorize existing companies to continue the use of the trust name, if not engaged in a trust business without complying with the law: *Union Trust Co. v. Moore*, 104 Wash. 50, 175 Pac. 565.

§ 3226. Incorporators — Capital Paid in — Business Districts — Additional Subscriptions.

Five or more natural persons, citizens of the United States, may incorporate a bank or trust company in the manner herein prescribed. No bank shall incorporate for a less amount, nor commence business unless it have a paid-in capital, as follows:

In cities, villages or communities having a population of less than 1,000	\$15,000
In cities having a population of 1,000 and less than 5,000.....	25,000
In cities having a population of 5,000 and less than 25,000.....	50,000
In cities having a population of 25,000 and less than 100,000..	100,000
In cities having a population of 100,000 or more.....	150,000

Provided that on request of any persons desiring to incorporate a bank in a city having a population of 25,000 or over the bank examiner shall

make an order defining the boundaries of the central business district of such city, which shall include the contiguous district in which is carried on the principal retail, financial and office business of such city and extending at least one-half mile in all directions from the business center of such city, and banks may be incorporated with a paid-up capital of not less than \$50,000 to be located in such city outside of the central business district of such city as defined by the order of the bank examiner, which shall be stated in its articles of incorporation, but any such bank which shall be hereafter incorporated to be located outside such central business district, which shall thereafter change its location into such central business district without increasing its capital stock and surplus to the amount required by then existing laws to incorporate a bank within such central business district, shall forfeit its charter and right to do business. Any such bank incorporated to be located outside the central business district of such a city shall not receive deposits to exceed in the aggregate ten times the amount of its paid-up and unimpaired capital stock and surplus.

No trust company shall incorporate for a less amount, nor commence business unless it has a paid-in capital as follows:

In cities, villages or communities having a population of less than 25,000	\$50,000
In cities having a population of 25,000 and less than 100,000..	100,000
In cities having a population of 100,000 or more.....	200,000

In addition to the foregoing, each bank and trust company shall before commencing business have subscribed and paid in to it in the same manner as is required for capital stock, an additional amount equal to at least ten per cent of the capital stock above required. Such additional amount shall be carried in the undivided profit account and may be used to defray organization and operating expenses of the company. Any sum not so used shall be transferred to the surplus fund of the company before any dividend shall be declared to the stockholders. [L. '17, p. 277, § 19.]

Under Rem. & Bal. Code, § 3346, the original incorporators are liable to a subscriber for the amount paid on his subscription upon their abandonment of the enterprise for failure to secure full subscriptions of the stock, regardless of fraud or conspiracy in the soliciting of the subscription, and although the same was solicited by and paid to only one of their number: *Miller v. Denman*, 49 Wash. 217, 95 Pac. 67, 16 L. R. A. (N. S.) 348.

banks and placing the administration in the hands of the state bank examiner, with power to determine the necessity and amount of assessments and to liquidate its affairs, the state cannot claim a preference on assets in the hands of the examiner, especially in view of *Id.*, § 3303-12, providing that, upon complete liquidation, proceeds shall be delivered to the stockholders, and the debtor bank is not re-vested therewith: *Aetna Casualty & Surety Co. v. Moore*, 107 Wash. 99, 181 Pac. 40.

Under Rem. Code, §§ 3303-1 to 3303-19, abolishing receiverships of insolvent

§ 3227. Articles Executed in Quadruplicate.

Persons desiring to incorporate a bank or trust company shall execute articles of incorporation in quadruplicate, one copy of which shall be filed for record with the county auditor of the county in which such bank or trust company is to be located, one filed with the state bank examiner, one with the secretary of state and one retained by the corporation. [L. '17, p. 279, § 20.]

"Bank examiner" means bank commissioner. See § 3208, *supra*.
Duties devolve upon director of taxation and examination. See § 10812, *infra*.

§ 3228. Contents of Articles.

Articles of incorporation shall state:

1. The name of such bank or trust company.
2. The city, village or locality and county where such corporation is to be located.
3. The nature of its business, whether that of a commercial bank, a savings bank or both or a trust company.
4. The amount of its capital stock, which shall be divided into shares of \$100.00 each.
5. The period for which such corporation is organized, which shall not exceed fifty years.

Such articles shall be acknowledged before an officer authorized to take acknowledgments. [L. '17, p. 279, § 21.]

§ 3229. Certificates of Authority—Refusal to Grant—Appeals.

When articles of incorporation, complying with the foregoing requirements, have been filed with the state bank examiner and the incorporators shall have notified him that all provisions of law authorizing such bank or trust company to commence business have been complied with, he shall investigate the proposed corporation. If he shall determine that any provision of law in the premises has not been complied with or that any of the incorporators are lacking in responsibility or general fitness, he shall refuse to grant a certificate of authority and shall forthwith so notify the incorporators; otherwise, he shall grant such certificate.

The refusal of the examiner to grant a certificate of authority shall be conclusive, unless the incorporators within ten days of the issuance of such notice of refusal shall appeal to the superior court of the county in which such corporation is proposed to be located, which said appeal shall be triable de novo in said court.

No bank or trust company shall transact any business except as is necessarily preliminary to its organization until it has received a certificate of authority. [L. '17, p. 280, § 22.]

See note to § 3227, supra.

§ 3230. Corporate Powers of Banks.

Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

- (1) To adopt and use a corporate seal.
- (2) To have succession for the term of years mentioned in its articles of incorporation.
- (3) To make contracts.
- (4) To sue and be sued, the same as a natural person.
- (5) To elect directors who, subject to the provisions of the corporation's by-laws, shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation.

(6) To prescribe by its stockholders by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors and officers elected or appointed, its stockholders convened for general or special meetings, its property transferred, its general business conducted and the privileges granted to it by law exercised and enjoyed.

(7) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money on real or personal security, to buy and sell bullion, coins and bills of exchange.

(8) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property.

(9) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. [L. '19, p. 731, § 8. Cf. L. '17, p. 280, § 23.]

§ 3231. Corporate Powers of Trust Companies.

Upon the issuance of a certificate of authority to a trust company, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

(1) To execute all the powers and possess all the privileges conferred on banks.

(2) To act as fiscal or transfer agent of the United States or of any state, municipality, body politic or corporation and in such capacity to receive and disburse money.

(3) To transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness and to act as attorney in fact or agent of any corporation, foreign or domestic, for any purpose, statutory or otherwise.

(4) To act as trustee under any mortgage, or bonds, issued by any municipality, body politic, or corporation, foreign or domestic, or by any individual firm, association or partnership, and to accept and execute any municipal or corporate trust.

(5) To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between such corporation and those dealing with it.

(6) To collect coupons on or interest upon all manner of securities, when authorized so to do by the parties depositing the same.

(7) To accept trusts from and execute trusts for married women in respect to their separate property and to be their agent in the management of such property and to transact any business in relation thereto.

(8) To act as receiver or trustee of the estate of any person, or to be appointed to any trust by any court, to act as assignee under any assignment for the benefit of creditors of any debtor, whether made pursuant to statute or otherwise, and to be the depository of any moneys paid into court.

(9) To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as guardian of the estates of lunatics, idiots, persons of unsound mind, minors and habitual drunkards: Provided, however, the power hereby granted to trust companies to act as guardian or administrator, with or without the will annexed, shall not be construed to deprive parties of the prior right to have issued to them letters of guardianship, or of administration, as such right now exists under the law of this state: And, be it further provided, that no trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, shall be permitted to act as executor, administrator or guardian; and any trust company or other corporation whose officers or agents shall solicit legal business or personally solicit the appointment of such trust company or corporation as executor, administrator or guardian shall be ineligible for a period of one year thereafter to be appointed executor, administrator or guardian in any of the courts of this state.

Any trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, and any officer, agent or employee of any trust company or corporation who shall solicit legal business or personally solicit the appointment of such trust company or corporation as executor, administrator or guardian shall be guilty of a gross misdemeanor.

(10) To execute any trust or power of whatever nature or description that may be conferred upon or intrusted or committed to it by any person or by any court or municipality, foreign or domestic corporation and any other trust or power conferred upon or intrusted or committed to it by grant, assignment, transfer, devise, bequest or by any authority and to receive, take, use, manage, hold and dispose of, according to the terms of such trusts or powers any property or estate, real or personal, which may be the subject of any such trust or power.

(11) Generally to execute trusts of every description not inconsistent with law.

(12) To purchase, invest in and sell stocks, promissory notes, bills of exchange, bonds, debentures and mortgages and other securities and when moneys are borrowed or received for investment, the bonds or obligations of the company may be given therefor, but no trust company hereafter organized shall issue such bonds: Provided, that no trust company which receives money for investment and issues the bonds of the company therefor shall engage in the business of banking or receiving of either savings or commercial deposits: And, provided, that it shall not issue any bond covering a period of more than ten years between the date of its issuance and its maturity date: And provided, further, that if, for any cause, the holder of any such bond upon which one or more annual rate installments have been paid, shall fail to pay the subsequent annual rate installments provided in said bond such holder shall, on or before the maturity date of said bond, be paid not less than the full sum which he has paid in on account of said bond. [L. '21, p. 245, § 1. Cf. L. '17, p. 281, § 24.]

Cited in 104 Wash. 52—55.

§ 3232. Reports of Bond Liabilities—Deposits to Pay Bond Liabilities.

Any trust company receiving moneys for investment, and for which it shall give its bonds as in subdivision 12 of section 3231 provided, shall within ten days after any regular report is called for from banks or trust companies by the state bank examiner, make a statement of its total liability, on all bonds issued and then in force, certified by its board of directors, and shall at the same time deposit with the state treasurer, for the benefit of the holders of such bonds or obligations, sufficient securities or money so that it will have on deposit with said state treasurer a sufficient amount of said securities, which may be exchanged for other securities as necessity may require, or money to, at any time, pay all of said liability. In the event of its failure to make such deposits, it shall cease doing such business: Provided, that whenever money shall have been deposited with the treasurer, it may be withdrawn at any time upon a like amount of securities being deposited in its stead: And provided further, that the securities deposited shall consist of such securities as are by this act permitted for the investment of trust funds. [L. '17, p. 284, § 25.]

§ 3233. Capital Stock—Increase—Reduction.

Any bank or trust company may increase its capital stock or otherwise amend its articles of incorporation, in any manner not inconsistent with the provisions of this act, by a vote of the stockholders representing two-thirds of its capital, at any regular meeting, or special meeting duly called for that purpose, in the manner prescribed by its by-laws: Provided, that notice of a meeting called to increase capital stock shall first be published once a week for four weekly issues in a newspaper published in the county in which such corporation is located. A certificate of the fact and the terms of the amendment shall be executed by a majority of the directors and filed as required herein for articles of incorporation. No increase of capital stock shall be valid, until the amount thereof shall have been subscribed and actually paid in and a certificate of increase received from the state bank examiner. No reduction of the capital stock shall be made to an amount less than is required for capital, nor be valid, nor warrant the cancellation of stock certificates, nor diminish the personal liabilities of the stockholders until such reduction has been approved by said examiner, nor shall any reduction relieve any stockholder from any liability of the corporation incurred prior thereto. No amendment shall be made whereby a bank becomes a trust company unless such bank shall first receive permission from said examiner, nor unless such bank shall amend its name so that it shall include the word "trust" as a part thereof. [L. '17, p. 284, § 26.]

See notes to § 3227, supra.

§ 3234. Extension of Existence—Application—Certificate of Authority—Amended Articles.

At any time not less than one year nor more than two years prior to the expiration of the time of the existence of any bank or trust company, it may by written application to the state bank examiner, signed and verified by a majority of its directors and approved in writing by the owners

of not less than two-thirds of its capital stock, apply to the state bank examiner for leave to file amended articles of incorporation, extending its time of existence. The examiner shall forthwith make a complete examination of such applicant. If he determines that the applicant is in sound condition, that it is conducting its business in a safe manner and in compliance with law and that no reason exists why it should not be permitted to continue, he shall issue to the applicant a certificate authorizing it to file amended articles of incorporation extending the time of its existence for a term not longer than fifty years from the end of its original term. Otherwise he shall notify the applicant that he refuses to grant such certificate. The applicant may appeal from such refusal in the same manner as in the case of a refusal to grant an original certificate of authority. Otherwise the determination of the examiner shall be conclusive.

Upon receiving a certificate, as hereinabove provided, the applicant may file amended articles of incorporation, extending the time of its existence for the term authorized, to which shall be attached a copy of the certificate of the examiner. Such articles shall be filed in the same manner and upon payment of the same fees as for original articles of incorporation.

Should any bank or trust company fail to continue its existence in the manner herein provided and be not previously dissolved, the state bank examiner shall at the end of its original term of existence immediately take possession thereof and wind up the same in the same manner as in the case of insolvency. [L. '17, p. 285, § 27.]

§ 3235. State Bank—Reorganization as National Bank.

A state bank or trust company may, upon first notifying the bank commissioner of such intention, reorganize under the laws of the United States as a national bank. As soon as it shall have obtained a certificate authorizing it to commence business under the United States banking laws, it shall retain and hold all the assets, real and personal, which it acquired during its existence under this act, and shall hold the same subject to all existing liabilities against such bank or trust company at the time of its reorganization and it shall supply the bank commissioner with a copy of its certificate of authority as a national banking association certified to by its president and cashier. [L. '19, p. 732, § 10. Cf. L. '17, p. 286, § 28.]

§ 3236. State Organization of Dissolved National Bank.

Whenever any bank existing under the laws of the United States and located within this state is authorized to dissolve and shall have taken the necessary steps to effect dissolution, a majority of its directors, upon the authority in writing of the owners of three-fourths of its capital stock, and the approval of the state bank examiner, may execute and file articles of incorporation, as provided in this act, together with a certificate setting forth the authority derived from the stockholders as aforesaid. Upon the receipt of a certificate of authority from said examiner, such corporation shall become a bank or trust company under the laws of this state, and thereupon all assets of such dissolved national bank shall be vested in and become the property of such state bank or trust company, subject to

all liabilities of such national bank not liquidated under the laws of the United States before such reorganization. [L. '17, p. 286, § 29.]

See note to § 3227, *supra*.

§ 3237. Directors, Election and Meetings—Stockholders' Meetings—Oath of Directors—Vacancies in Board.

Every bank and trust company shall be managed by not less than five directors, excepting that a bank having a capital of \$50,000 or less may have only three directors. Directors shall be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. In the first instance the directors shall be elected at a meeting held before the bank or trust company is authorized to do business by the state bank examiner and afterwards at the annual meeting of the stockholders to be held on the second Tuesday in January in each year. If for any cause no election is held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's by-laws. The directors shall meet at least once each month and whenever required by the state bank examiner. A majority of the board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote. Any stockholder may vote in person or by written proxy. Every director must be the beneficial owner of at least ten shares of stock, excepting that a director of a bank having a capital stock of \$50,000 or less, need be the owner of only five shares of stock.

Immediately upon election, each director shall take, subscribe, swear to and file with the examiner an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any provision of law applicable to such corporation and that he is the beneficial owner in good faith of the number of shares of stock required by this section, and that the same is fully paid, is not hypothecated or in any way pledged as security for any loan or debt. Vacancies in the board of directors shall be filled by the board. [L. '17, p. 287, § 30.]

§ 3238. Meeting of Directors and Stockholders — Stock Records — Corporate Books.

All meetings of the directors or stockholders of any bank or trust company, except organization meetings, must be held in the town or city in which the corporation is located. Every such corporation shall keep a book in which shall be recorded the names and residences of the stockholders thereof, the number of shares held by each, when each person became a stockholder and also the transfers of stock, showing the time when made, the number of shares and by whom transferred. In all actions, suits and proceedings, said book shall be prima facie proof of the facts shown therein. All of the corporate books, including the certificate book, stockholders' ledger and minute book shall be kept at the corporation's principal place of business and not elsewhere. [L. '17, p. 288, § 31.]

§ 3239. Surety Bonds of Officers and Employees.

The board of directors of each bank and trust company shall require its active officers and employees and such other officers as they shall desig-

nate, each to give a surety company bond, in such sum as the board shall specify and the state bank examiner shall approve, conditioned for the faithful and honest discharge of his duties and for the faithful application of all moneys, funds and valuables which shall come into his possession, or under his control. [L. '17, p. 288, § 32.]

§ 3240. Dividends—Surplus.

The directors of any bank or trust company may declare a dividend of so much of the net profits, after providing for all expenses, interest and taxes accrued, or due, as they shall judge expedient, but before any such dividend is declared not less than one-tenth of the net profits for the preceding half year or for such period as is covered by the dividend, shall be carried to a surplus, until such surplus shall amount to twenty per cent of its capital stock. Accrued and uncollected interest shall not be distributed as a part of the profits, nor carried on the books as such. [L. '17, p. 288, § 33.]

§ 3241. Stock—Levy of Assessments and Collection of Installments—Repairing Reductions.

Whenever the state bank examiner shall notify the board of directors of a bank or trust company to require the payment of an installment or to levy an assessment upon the stock of such corporation, such board shall within ten days from the issuance of such notice adopt a resolution for the collection of such installment or the levy of such assessment and shall immediately upon the adoption of such resolutions serve notice upon each stockholder personally or by mail at his last known address to pay such installment or assessment and that if the same be not paid within twenty days from the date of the issuance of such notice, his stock shall be subject to sale, and all amounts previously paid thereon will be subject to forfeiture. At any time after the expiration of said twenty-day period, the board may proceed by action at law or otherwise to collect the installment or assessment from any delinquent stockholder, or it may, whether any action has been commenced or not, at any time before the installment or assessment is actually paid, sell the stock of such stockholder and forfeit all amounts previously paid thereon. At any time after the expiration of sixty days from the expiration of said twenty-day period, the examiner may require any stock upon which the installment or assessment remains unpaid to be canceled and deducted from the capital of the corporation. If such cancellation shall reduce the capital of the corporation below the minimum required by this act, or its articles of incorporation, the capital shall, within thirty days thereafter, be increased to the required amount by original subscription, in default of which the examiner may take possession of such corporation in the manner provided by law in case of insolvency.

If any stock be sold prior to cancellation, there shall be returned to the original stockholder, his heirs or assigns, any surplus which remains after deducting from the amount realized at such sale, the amount of the installment or assessment due upon such stock, together with all costs incurred in connection with the sale of such stock, and interest upon the

installment or assessment from the date of the notice to the stockholder. In the event of the failure of any board of directors to adopt the resolution herein required within the time specified, or to collect any installment or assessment, or to forfeit the stock of any delinquent stockholder, as herein provided, the examiner may, himself, in his discretion, at any time, issue the notice herein provided for on behalf of such corporation, and bring any appropriate action in his own name, but for the benefit of such corporation, for the collection of any installment or assessment, declare the forfeiture of any stock, or perform any other act herein referred to with the same force and effect as if such act were performed by the board of directors, and in the event that the examiner shall have brought any proceeding for the collection of any installment or assessment, the board of directors shall thereafter have no power to cancel the stock involved or continue such proceeding, except as permitted by said examiner. [L. '17, p. 288, § 34.]

See notes to § 3227, *supra*.

§ 3242. Stockholders' Individual Liability—Enforcement.

The stockholders of every bank and trust company shall be individually and personally liable, equably and ratably, and not one for another, for all contracts, debts and engagements of such corporation accruing while they remain as stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares. Persons holding stock as executors, administrators, guardians or trustees, if such relation of trust shall appear in the stock certificate and on the books of the corporation, or as collateral security or in pledge, shall not be personally liable as stockholders, but the assets and funds in the hands of such trustees constituting the trust shall be liable to the same extent as the testator, intestate, ward, or person interested in such funds would be, if living or competent to act, and the person pledging such stock shall be deemed a stockholder and liable under this section. Such liability may be enforced by the examiner as soon after taking possession of any bank or trust company as in his judgment the same may be necessary. The failure of the stockholders of any bank or trust company immediately upon possession being taken by the examiner to make good all impairment of its assets shall be conclusive evidence that the enforcement of double liability is necessary. [L. '17, p. 290, § 35.]

See notes to § 3227, *supra*.

Cited in 105 Wash. 262.

Liability for Debts and Acts of Bank—In General: See Remington's Digest, Banks, § 1; Wilson v. Book, 13 Wash. 676, 43 Pac. 939; Watterson v. Masterson, 15 Wash. 511, 46 Pac. 1041; Bennett v. Thorne, 36 Wash. 253, 78 Pac. 936, 68 L. R. A. 113; Shuey v. Holmes, 21 Wash. 223, 57 Pac. 813; Shuey v. Adair, 24 Wash. 378, 64 Pac. 536.

When Liability Accrues and Conditions Precedent: See Remington's Digest, Banks, § 2; Kiggins v. Munday, 19 Wash. 233, 62 Pac. 855; Bennett v. Thorne, 36 Wash. 253, 78 Pac. 936, 68 L. R. A. 113.

Actions and Proceedings to Enforce:

See Remington's Digest, Banks, § 3; Wilson v. Book, 13 Wash. 676, 43 Pac. 949; Watterson v. Masterson, 15 Wash. 511, 46 Pac. 1041; Shuey v. Adair, 24 Wash. 378, 64 Pac. 536; Dunlap v. Rauch, 24 Wash. 620, 64 Pac. 807; Bennett v. Thorne, 36 Wash. 253, 78 Pac. 936, 68 L. R. A. 113.

Under Rem. Code, § 3327, of the banking act, which provides that the state bank examiner may if necessary to pay debts, enforce the individual liability of stockholders, the bank examiner has authority to determine the necessity and amount of an assessment upon stock-

holders of an insolvent bank without resorting to a judicial inquiry: *Hanson v. Soderberg*, 105 Wash. 255, 177 Pac. 827.

The same would be true of this section, which gives the state bank examiner power to enforce the stockholders' liability as soon after taking possession as in his judgment may be necessary and making the failure of the stockholders to make good any impairment of the assets conclusive evidence that the double liability is necessary: *Hanson v. Soderberg*, 105 Wash. 255, 177 Pac. 827.

This section bears upon the remedy only, and is accordingly applicable to an

assessment upon a bank in liquidation under the act of 1915: *Hanson v. Soderberg*, 105 Wash. 255, 177 Pac. 827.

Conferring authority upon the state bank examiner to make and enforce an assessment upon the stockholders of an insolvent bank is not objectionable as conferring judicial power upon a ministerial officer: *Hanson v. Soderberg*, 105 Wash. 255, 177 Pac. 827.

Necessity of exhausting remedy against corporation before enforcing stockholder's liability. 2 *Ann. Cas.* 28; 16 *Ann. Cas.* 1152.

§ 3243. Purchase of Its Own Capital Stock—Other Bank Stock.

The shares of stock of every bank and trust company shall be deemed personal property. No such corporation shall make any loan or discount on the security of its own capital stock, or be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of, within ninety days from the time of its purchase or acquisition. Nor shall any such corporation subscribe for or purchase the stock of any other banking-house or trust company, except a federal reserve bank, of which such corporation shall become a member, and then only to the extent required by such federal reserve bank. [L. '17, p. 291, § 36.]

Banking corporations could purchase and hold stock in general corporations, under § 3810, *infra*, which was not impliedly repealed, except as to certain classes named by § 3222, *supra*, prohibiting a banking corporation from holding

its own stock or the stock of any other banking corporation, excepting the stock of federal reserve banks and trust companies: *Moore v. Fremont State Bank*, 103 Wash. 249, 173 Pac. 1089.

§ 3244. Real Estate Holdings of Banks.

A bank or trust company may purchase, hold and convey real estate for the following purposes and no other:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other apartments in the same building to rent as a source of income: Provided, that as to any corporation hereafter organized not to exceed thirty per cent of its capital and surplus and undivided profits may be so invested: And provided further, any bank or trust company heretofore organized shall not hereafter invest in the aggregate to exceed thirty per cent of its capital, surplus and undivided profits in a bank building without the approval of the state bank examiner.

(2) Such as shall be purchased or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of its business.

(3) Such as it shall purchase at sale under judgments, decrees, liens or mortgage foreclosures, against securities held by it.

(4) Such as a trust company receives in trust or acquires pursuant to the terms or authority of any trust.

No real estate specified in subdivision four shall be considered an asset of the corporation holding the same in trust nor shall any real estate ex-

cept that specified in subdivision one be carried as an asset on the corporation's books for a longer period than five years from the date title is acquired thereto, unless an extension of time be granted by the state bank examiner. [L. '17, p. 291, § 37.]

Cited in 104 Wash. 52—55.

It being unlawful, under Rem. & Bal. Code, § 3330, for a bank to carry real estate on its books longer than three years, the value of such real estate cannot be considered and deducted from the value of its capital stock, in fixing its

assessment for taxation pursuant to section 11143, and a bank seeking a deduction must allege and prove the status of the realty: *Scandinavian American Bank of Tacoma v. Pierce County*, 93 Wash. 671, 161 Pac. 469.

§ 3245. Savings Deposits—Repayment.

Any bank or trust company which shall do business as a savings bank shall repay all deposits to the depositor or his lawful representative when required, at such time or times and with such interest as the regulations of the corporation shall prescribe. A pass-book shall be issued to each savings depositor, containing the rules and regulations prescribed by the corporation governing such deposits, in which shall be entered each deposit by and each payment to such depositor. No payment to such depositor, and no payment or checks against any savings account shall be made, unless accompanied by and entered in the pass-book issued therefor, except for good cause and assurance satisfactory to the corporation. [L. '17, p. 292, § 38.]

Deposits, In General: See Remington's Digest, Banks, §§ 20—22; *Commercial Bank of Tacoma v. Chilberg*, 14 Wash. 247, 44 Pac. 264, 53 Am. St. Rep. 873; *Merchants' Bank v. Superior Candy & Cracker Co.*, 41 Wash. 653, 84 Pac. 604; *Blake v. State Savings Bank*, 12 Wash. 619, 41 Pac. 909; *Dearborn v. Washing-*

ton Savings Bank, 13 Wash. 345, 42 Pac. 1107; *Richards v. Jefferson*, 20 Wash. 166, 54 Pac. 1123; *Fishburne v. Merchants' Bank of Pt. Townsend*, 42 Wash. 473, 85 Pac. 38, 7 Ann. Cas. 848.

What transactions deemed to be deposit and the control of equity over. 57 Am. Rep. 97.

§ 3246. Separate Accounts for Savings and Commercial Business.

Any bank or trust company combining the business of a commercial bank and a savings bank shall keep with the respective depositors separate books of account for each kind of business. [L. '17, p. 292, § 39.]

§ 3247. Foreign Companies—Banking or Trust Business.

A foreign corporation, whose name contains the words "bank," "banker," "banking," or "trust," or whose articles of incorporation empower it to do a banking or trust business and which desires to engage in the business of loaning money on mortgage securities or in buying and selling exchange, coin, bullion or securities in this state may do so, but only upon filing with the bank commissioner and with the secretary of state a certified copy of a resolution of its governing board to the effect that it will not engage in banking or trust business in this state, which copy shall be duly attested by its president and secretary. Such corporation shall also comply with the general corporation laws of this state relating to foreign corporations doing business herein. [L. '19, p. 733, § 14. Cf. L. '17, p. 292, § 40.]

§ 3248. Foreign Bank Branches—Regulations—Forfeiture for Violations.

A branch of any foreign bank or banker actually and publicly engaged in banking in this state in full compliance with the laws hereof, which were in force immediately prior to the time when this law becomes operative and which branch has a capital not less in amount than that required for the organization of a state bank as provided in this act at the time and place when and where such branch was established, may continue its said business, subject to all of the regulations and supervision provided for banks. The amount upon which it pays taxes shall be prima facie evidence of the amount and existence of such capital. No such bank or banker shall set forth on its or his stationery or in any manner advertise in this state a greater capital, surplus and undivided profits than are actually maintained at such branch. Every foreign corporation, bank and banker, and every officer, agent and employee thereof who violates any provision of this section or which violates the terms of the resolution filed as required by the preceding section, shall for each violation forfeit and pay to the state of Washington the sum of one thousand dollars. A civil action for the recovery of any such sum may be brought by the attorney general in the name of the state. [L. '17, p. 293, § 41.]

§ 3249. Joint Deposits—Payment.

When a deposit has been or shall hereafter be made, in any bank or trust company in the name of two or more persons, payable to any of such persons, such deposit or any part thereof, or any interest, or dividend thereon, may be paid to any of said persons, whether the other be living or not, and the receipt or acquittance of the person so paid shall be valid and sufficient release and discharge of such corporation for any payment so made. [L. '17, p. 293, § 42.]

Relation Between Bank and Depositor for Collection: See Remington's Digest, Banks, § 31; Bowman v. First Nat. Bank, 9 Wash. 614, 38 Pac. 211, 43 Am. St. Rep. 870; Hallam v. Tillinghast, 19 Wash. 20, 52 Pac. 329; Morris-Miller Co. v. Von Pressentin, 63 Wash. 74, 114 Pac. 912; Belsheim v. First National Bank of White Salmon, 77 Wash. 552, 137 Pac. 1055; Mott Iron Works v. Metropolitan Bank, 78 Wash. 294, 139 Pac. 36;

American Savings Bank & Trust Co. v. Dennis, 90 Wash. 547, 156 Pac. 559.

A banker holding a depositor's promissory note due on demand may offset the note against deposits, but is not obligated to do so under penalty of having the note considered paid: Bank of California v. Starrett, 110 Wash. 231, 188 Pac. 410.

Rights of parties to joint deposit in bank. Ann. Cas. 1916D, 519, 529, 533.

§ 3250. Payment of Deposits of Persons Under Disability.

When any deposit has been or shall hereafter be made in any bank or trust company in his or her own name, by any minor, married woman or person under disability, such corporation may disregard such disability and pay such money on a check or order of such person, the same as in other cases. [L. '17, p. 293, § 43.]

§ 3251. Checks—Certification.

No director, officer, agent or employee of any bank or trust company shall certify a check unless the amount thereof actually stands to the credit of the drawer on the books of such corporation and when certified must be charged to the account of the drawer. Every violation of this

provision shall be a gross misdemeanor. Any such check so certified by a duly authorized person shall be a good and valid obligation of the bank or trust company in the hands of an innocent holder. [L. '17, p. 294, § 44.]

Effect of certification of check on liability of indorser or drawer. 11 Ann. Cas. 245.

§ 3252. Forged Checks—Liability.

No bank or trust company shall be liable to a depositor for the payment by said corporation of a forged or raised check, unless within sixty days after the return to the depositor of the voucher of such payment, such depositor shall notify said corporation that the check so paid was raised or forged. [L. '17, p. 294, § 45.]

Liability on Payment of Forged Paper, in General: See Remington's Digest, Banks, §§ 24, 25; Crane v. Dexter Horton & Co., 5 Wash. 479, 32 Pac. 223; Heim v. Neubert, 48 Wash. 587, 94 Pac. 104; Goodfellow v. First National Bank, 71 Wash. 554, 129 Pac. 90, 44 L. R. A. (N. S.) 580; Denbigh v. First Nat. Bank, 102 Wash. 546, 174 Pac. 475; Canadian Bank of Commerce v. Bingham, 30 Wash. 484, 71 Pac. 43, 60 L. R. A. 955.

In view of this section, limiting a bank's liability to depositors on forged checks, unless notice be given the bank within sixty days, a shorter limitation by contract will not be assumed from

the fact of printed notice on the pass-book requiring notice to be given within ten days, where the same was not specially called to the depositor's attention: Denbigh v. First Nat. Bank, 102 Wash. 546, 174 Pac. 475.

Liability of bank paying check on forged indorsement to true holder or payee. Ann. Cas. 1917D, 1058; 14 A. L. R. 764.

Liability of bank paying certified check which has been forged. 1 Ann. Cas. 632.

Right of drawee bank to charge back a credit given on a forged check. 5 A. L. R. 1566.

§ 3253. Available Funds of Banks and Trust Companies.

Every bank and trust company shall have on hand at all times in available funds, not less than fifteen per cent (15%) of its total deposits and 100% of its uninvested trust funds; such sums may consist of balances due it from such banks or trust companies as the state bank examiner may approve, and actual cash or checks on solvent banks located in the same city. This section shall not apply to a corporation which is a member of the federal reserve banking system and duly complies with all of the reserve and other requirements of that system. [L. '17, p. 294, § 46.]

§ 3254. Bad Debts—Judgments as Assets.

Any debt due a bank or trust company on which interest is one year or more past due and unpaid, unless such debt be well secured and in course of collection by legal process or probate proceedings, shall be considered a bad debt, and shall be charged off of the books of such corporation. A judgment held by a bank or trust company shall not be considered an asset of the corporation after two years from the date of its rendition unless with the written permission of the bank commissioner specifying an additional period: Provided, that time consumed by any appeal shall be excluded. [L. '19, p. 733, § 15. Cf. L. '17, p. 294, § 47.]

§ 3255. Securities for Trust Fund Investment—Classes.

Funds held in trust by a corporation doing a trust business may be invested in the following classes of securities only:

(a) Bonds or notes constituting the direct and general obligation of the United States, or of any state thereof, or bonds, payment of which, both principal and interest, is guaranteed by the United States or any state thereof.

(b) Direct and general obligation bonds or notes issued by any municipality or political subdivision of the state of Washington having the power to levy taxes for the payment of principal and interest thereof.

(c) Direct and general obligation bonds or notes issued by any municipality or political subdivision of any other state of the United States having the power to levy taxes for the payment of principal and interest thereof: Provided, that such bonds are acceptable by the United States government as security for deposits of postal savings funds.

(d) In the first mortgage bonds listed on the New York stock exchange of any railroad corporation: Provided, that at no time within five years last preceding the date of any such investment such railroad corporation shall have failed regularly and punctually to pay the maturing principal and interest on all its indebtedness, and in addition thereto regularly and punctually to have paid in dividends to its stockholders, during each of said five years, an amount at least equal to four per cent upon all its outstanding capital stock: And provided further, that at the date of every such dividend the outstanding capital stock of such railroad corporation shall have been equal to at least one-third of the total mortgage indebtedness of such railroad corporation, including all bonds issued, or to be issued under any mortgage securing any bonds in which investment shall be made.

(e) In the legally issued bonds and mortgages on improved unincumbered real property in this state: Provided, that such encumbrance does not exceed fifty per cent of the reasonable cash value of such real property at the time of said loan; and where buildings or other improvements constitute a material part of the value of the mortgaged premises, they shall be kept insured against loss or damage by fire in a reasonable amount for the benefit of the mortgagee. Such loan shall be accompanied by an application therefor signed by the borrower and an abstract of title and a legal opinion showing good title, or by a certificate of title; also by a signed report of the officer or officers approving the loan certifying to the value of the premises mortgaged according to his or their judgment, all of which shall be filed and preserved among the records of the corporation.

(f) Such other securities of a character possessing a substantial market value and general circulation among state and national banks within this state having an approving legal opinion as to their issuance, and having the approval of the state bank examiner: Provided, however, that none of the bonds, notes or other securities hereinbefore mentioned shall be eligible for purchase for trust funds during any default in payment of either principal or interest thereof: And provided further, that nothing herein shall prevent investment of trust funds in any manner specifically authorized by the instrument creating the trust, or create a greater liability upon the part of the corporation than assumed under such instrument. [L. '17, p. 294, § 48.]

§ 3256. Separate Books for Trust Business—Securities Labeled—Penalty for Commingling Funds.

Every corporation doing a trust business shall maintain in its office a trust department in which it shall keep books and accounts of its trust business, separate and apart from its other business. Such books and accounts shall specify the cash, securities and other properties, real and personal, held in each trust, and such securities and properties shall be at all times segregated from all other securities and properties. Such corporation shall also cause each bond, warrant, note, mortgage, deed or other security of any nature to be labeled to indicate the trust to which it belongs. Any person connected with a bank or trust company who shall commingle any funds or securities of any kind held by such corporation in trust, for safekeeping or as agent for another, with the funds or assets of the corporation shall be guilty of a felony. [L. '19, p. 734, § 16. Cf. L. '17, p. 296, § 49.]

§ 3257. Oath by Officer for Company as Executor or Guardian.

When any trust company shall be appointed executor, administrator, or trustee of any estate or guardian of the estate of any infant or other incompetent, it shall be lawful for any duly authorized officer of such corporation to take and subscribe for such corporation any and all oaths or affirmations required of such an appointee. [L. '17, p. 296, § 50.]

§ 3258. Loans to One Person—Limit—Discounts.

The total liability to any bank or trust company of any person for money borrowed, including in the liabilities of a firm or association the liabilities of the several members thereof shall not at any time exceed twenty per cent of the capital stock and surplus of such bank or trust company, actually paid in and unimpaired; but the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper upon solvent parties and actually owned by the person negotiating the same, shall not be considered as money borrowed: Provided, that loans secured by collateral security having an ascertained market value of at least fifteen per cent more than the amount of the loans secured, shall not be limited by this section. [L. '17, p. 297, § 51.]

§ 3259. Loans to Officers or Employees—Liability and Penalty.

No bank or trust company shall, nor shall any officer or employee thereof on behalf of such corporation, directly or indirectly, loan any sum of money to any director, officer or employee of such corporation, unless a resolution authorizing the same and approved by a majority of the directors, at a meeting at which no director, officer or employee to whom the loan is to be made shall be present, shall be entered in the corporate minutes.

Every director and officer of any bank or trust company who shall borrow or shall knowingly permit any of its directors, officers or employees to borrow, any of its funds in an excessive amount or in violation of the provisions of this section, shall be personally liable for any loss or damage which the corporation, its shareholders or any person may sus-

tain in consequence thereof, and shall also be guilty of a felony. [L. '17, p. 297, § 52.]

§ 3260. Trusts Funds—Loans to Officers or Employees—Penalty.

No corporation doing a trust business shall make any loan to any officer, or employee from its trust funds, nor shall it permit any officer, or employee to become indebted to it in any way out of its trust funds. Every officer, director, or employee of any such corporation, who knowingly violates any provision of this section, or who aids or abets any other person in any such violation, shall be guilty of a felony. [L. '17, p. 297, § 53.]

§ 3261. Pledge of Bank's Securities—Rediscounts—Penalty.

No bank or trust company shall pledge or hypothecate any of its securities to any depositor or creditor except that it may qualify as depository for United States deposits, postal savings funds or other public funds deposited by any public officer by virtue of his office and may give such security for such deposits as are required by law or by the officer making the same: Provided, that any bank or trust company may borrow, for temporary purposes, not to exceed in the aggregate amount the paid-in capital and surplus thereof, and may pledge, as security therefor, assets of such corporation, not exceeding one and one-half times the amount borrowed. When it shall appear to the state bank examiner that any bank or trust company is habitually borrowing for the purpose of re-lending, he may require such corporation to pay off such borrowed money. Nothing herein shall prevent any bank or trust company from rediscounting in good faith and indorsing any of its negotiable notes, but all such moneys borrowed and all such rediscounts shall at all times show on its books and in its reports. No certificates of deposit shall be issued for the purpose of borrowing money. No officer of any bank or trust company shall issue the note of such corporation for money borrowed or rediscount any of its notes except when authorized by resolution of its board of directors or by an authorized committee thereof. Violation of any provision of this section shall constitute a felony. [L. '17, p. 298, § 54.]

Power of bank to make pledge of assets to secure deposit. *Ann. Cas.* 1915C, 171.

§ 3262. Preference by Insolvent Bank—Penalty.

Every transfer of its property or assets by any bank or trust company in this state, made in contemplation of insolvency, or after it shall have become insolvent within the meaning of this act, with a view to the preference of one creditor over another, or to prevent the equal distribution of its property and assets among its creditors, shall be void. Every director, officer or employee making any such transfer shall be guilty of a felony. [L. '17, p. 298, § 55.]

. Trust fund deposit as preferred claim against insolvent bank. *Ann. Cas.* 1913D, 391; 1 *L. R. A. (N. S.)* 252.

Deposit of public funds as preferred claim on insolvency of bank. 8

Ann. Cas. 116; *Ann. Cas.* 1916B, 1264; 5 *L. R. A. (N. S.)* 886; 16 *L. R. A. (N. S.)* 918; *L. R. A.* 1917A, 683.

§ 3263. False Statements or Entries as to Assets—Penalty.

Every person who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any bank or trust company or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any bank or trust company or shall make, state or publish any false statement of the amount of the assets or liabilities of any bank or trust company shall be guilty of a felony. [L. '17, p. 299, § 56.]

§ 3264. Mutilation or Secretion of Books and Papers—Penalty.

Every officer, director or employee or agent of any bank or trust company who, for the purpose of concealing any fact or suppressing any evidence against himself, or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any bank or trust company, or of the state bank examiner, or of anyone connected with his office, shall be guilty of a felony. [L. '17, p. 299, § 57.]

Criminal Responsibility: See Remington's Digest, Banks, § 4-1; State v. Pier-son, 101 Wash. 318, 172 Pac. 236.

§ 3265. Rules for Bank Examinations and Reports—Court Review.

The state bank examiner shall have the power to adopt and promulgate uniform rules and regulations to govern the examination and reports of banks and trust companies and the form in which such corporations shall report their assets and liabilities and reserves, charge off bad debts and otherwise keep their records and accounts and otherwise to govern the administration of this act. Every such rule and regulation shall be served upon each bank and trust company by mailing a copy thereof to each such corporation at its principal place of business. The person making such service shall file an affidavit thereof in the office of the examiner. Any such corporation deeming any such rule or regulation unreasonable or contrary to law may within thirty days after the service thereof, as aforesaid, apply to the superior court of Thurston county for a writ of review for the purpose of having its reasonableness or lawfulness inquired into and determined. In every such hearing the burden shall be upon the corporation to establish the rule or regulation to be unreasonable or unlawful. Appeal shall lie from such court to the supreme court, as in other actions. The pendency of such a writ of review shall not of itself stay the operation of the rule or regulation, but the superior court may in its discretion restrain or suspend the same in whole or in part. Any rule or regulation promulgated by the examiner shall be effective and conclusive at the expiration of thirty days from the mailing thereof, as aforesaid, except as it may be restrained or suspended, as herein provided.

Every bank or trust company and every director, officer, agent and employee thereof shall comply with every rule and regulation promulgated, as aforesaid, so long as the same shall remain in force.

Every violation of this section shall, in addition to any other penalty provided in this act, subject the offender to a penalty of \$100 for each offense, to be recovered by the attorney general in a civil action in the name of the state. In case of a continuing violation, every day's con-

tinuance thereof shall be a separate and distinct offense. [L. '17, p. 299, § 58.]

See notes to § 3227, *supra*.

§ 3266. Possession Taken by Examiner for Delinquencies.

Whenever it shall in any manner appear to the state bank examiner that any bank or trust company has violated any provision of law or is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection or that any director or officer thereof refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of an examiner, the state bank examiner may give notice to the bank or trust company so offending or delinquent or whose director or officer is thus offending or delinquent to correct such offense or delinquency and if such bank or trust company fails to comply with the terms of such notice within thirty days from the date of its issuance or within such further time as said examiner may allow, then the examiner may take possession of such bank or trust company as in case of insolvency. [L. '17, p. 300, § 59. Cf. L. '15, p. 279, § 1.]

See notes to § 3227, *supra*.

§ 3267. Levy of Assessment Ordered by Examiner.

Whenever it shall in any manner appear to the state bank examiner that any offense or delinquency referred to in the preceding section renders a bank or trust company in an unsound or unsafe condition to continue its business or that its capital or surplus is reduced or impaired below the amount required by its articles of incorporation or by this act, or that it has suspended payment of its obligations or is insolvent, said examiner may notify such bank or trust company to levy an assessment on its stock or otherwise to make good such impairment or offense or other delinquency within such time and in such manner as he may specify or if he deem necessary he may take possession thereof without notice. [L. '17, p. 301, § 60.]

See notes to § 3227, *supra*.

§ 3268. Examiner's Possession—Notice.

Upon taking possession of any bank or trust company, the examiner shall forthwith give written notice thereof to all persons having possession of any assets of such corporation. No person knowing of the taking of such possession by the examiner shall have a lien or charge for any payment thereafter advanced or clearance thereafter made or liability thereafter incurred against any of the assets of such corporation. [L. '17, p. 301, § 61. Cf. L. '15, p. 280, § 2.]

See notes to § 3227, *supra*.

§ 3269. Powers and Duties of Examiner in Possession.

Upon taking possession of any bank or trust company, the examiner shall proceed to collect the assets thereof and to preserve, administer and liquidate the business and assets of such corporation. With the approval of the superior court of the county in which such corporation is

located, he may sell, compound or compromise bad or doubtful debts and upon such terms as the court shall direct sell all real estate and personal property of such corporation. He shall deliver to each purchaser an appropriate deed or other instrument of title. If real estate is situated outside of said county, a certified copy of the orders authorizing and confirming the sale thereof shall be filed for record in the office of the auditor of the county in which such property is situated. He may appoint special deputy examiners and other necessary agents to assist in the administration and liquidation of such corporation, a certificate of such appointment to be filed with the clerk of the county in which such corporation is located. He shall require each special deputy to give a surety company bond, conditioned as he shall provide, the premium of which shall be paid out of the assets of such corporation. He may also employ an attorney for legal assistance in such administration and liquidation. [L. '17, p. 301, § 62. Cf. L. '15, p. 280, § 3.]

See notes to § 3227, *supra*.

§ 3270. Notice to Creditors—Rejection of Claims—Delayed Claims.

The examiner shall publish once a week for four consecutive weeks in a newspaper which he shall select, a notice requiring all persons having claims against such corporation to make proof thereof at the place therein specified not later than ninety days from the date of the first publication of said notice, which date shall be therein stated. He shall mail similar notices to all persons whose names appear as creditors upon the books of the corporation. He may approve or reject any claim, but shall serve notice of rejection upon the claimant by mail or personally. An affidavit of service of such notice shall be *prima facie* evidence thereof. No action shall be brought on any claim after three months from the date of service of notice of rejection.

Claims may be presented after the expiration of the time fixed in the notice, and if approved, shall be entitled to their proportion of prior dividends, if there be funds sufficient therefor, and shall share in the distribution of the remaining assets. [L. '17, p. 302, § 63. Cf. L. '15, p. 281, § 4.]

§ 3271. Examiner's Expenses a Charge on Assets.

All expenses incurred by the examiner in taking possession, administering and winding up any such corporation, including the expenses of deputies and other assistance and reasonable fees for any attorney who may be employed by him in connection therewith, and the reasonable compensation of any special deputy placed in charge of such corporation shall be a first charge upon the assets thereof. Such charges shall be fixed by the examiner, subject to the approval of the court. [L. '17, p. 302, § 64. Cf. L. '15, p. 282, § 5.]

§ 3272. Inventory of Assets and List of Claims.

Upon taking possession of such corporation, the examiner shall make an inventory of the assets thereof in duplicate and file one in his office and one in the office of the county clerk. Upon the expiration of the time fixed for the presentation of claims, he shall make a duplicate list of claims presented, segregating those approved and those rejected, to

be filed as aforesaid. He shall also make and file a supplemental list of claims at least fifteen days before the declaration of any dividend, and in any event at least every six months. [L. '17, p. 303, § 65. Cf. L. '15, p. 282, § 6.]

See notes to § 3227, *supra*.

§ 3273. Dividends.

At any time after the expiration of the date fixed for the presentation of claims, the examiner, subject to the approval of the court, may declare one or more dividends out of the funds remaining in his hands after the payment of expenses. [L. '17, p. 303, § 66. Cf. L. '15, p. 283, § 7.]

§ 3274. Objections to Approved Claims.

Objection may be made by any interested person to any claim approved by the examiner, which objection shall be determined by the court upon such notice to the claimant and objector as the court shall prescribe. [L. '17, p. 303, § 67. Cf. L. '15, p. 283, § 8.]

§ 3275. Court Review of Examiner's Right to Possession.

Within ten days after the examiner takes possession thereof, a bank or trust company may serve a notice upon said examiner to appear before the superior court of the county wherein such corporation is located at a time to be fixed by said court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why such corporation should not be restored to the possession of its assets. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it be found that possession was taken by the examiner in good faith and for cause, but if it find that no cause existed for the taking possession of such corporation, it shall require the examiner to restore such bank or trust company to possession of its assets and enjoin him from further interference therewith without cause. [L. '17, p. 303, § 68.]

See notes to § 3227, *supra*.

§ 3276. Receiverships and Assignments for Creditors Prohibited.

No receiver shall be appointed by any court for any bank or trust company nor shall any assignment of any bank or trust company for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of such corporation. Immediately upon any such appointment, the clerk of such court shall notify the state bank examiner by telegraph and mail of such appointment and the examiner shall forthwith take possession of such bank or trust company, as in case of insolvency, and such temporary receiver shall upon demand of the examiner surrender up to him such possession and all assets which shall have come into the hands of such receiver. The examiner shall in due course pay such receiver out of the assets of such corporation such amount as the court shall allow. [L. '17, p. 304, § 69. Cf. L. '15, p. 283, § 9.]

Transfers and Preferences Affected by Insolvency: See Remington's Digest, Banks, § 5; Roberts v. Washington Nat. Bank, 9 Wash. 12, 37 Pac. 26; Kies v. Wilkinson, 101 Wash. 340, 172 Pac. 351. See, also, Aetna Cas. & Sur. Co. v. Moore, 107 Wash. 99, 181 Pac. 40.

§ 3277. Winding Up After Liquidation of Claims.

When all proper claims of depositors and creditors (not including stockholders) have been paid, as well as all expenses of administration and liquidation and proper provision has been made for unclaimed or unpaid deposits and dividends, and assets still remain in his hands, the examiner shall call a meeting of the stockholders of such corporation, giving thirty days' notice thereof, by one publication in a newspaper published in the county where such corporation is located. At such meeting, each share shall entitle the holder thereof to a vote in person or by proxy. A vote by ballot shall be taken to determine whether the examiner shall wind up the affairs of such corporation or the stockholders appoint an agent to do so. The examiner, if so required, shall wind up such corporation and distribute its assets to those entitled thereto. If the appointment of an agent is determined upon, the stockholders shall forthwith select such agent by ballot. Such agent shall file a bond to the state of Washington in such amount and so conditioned as the examiner shall require. Thereupon the examiner shall transfer to such agent the assets of such corporation then remaining in his hands, and be relieved from further responsibility in reference to such corporation. Such agent shall convert the assets of such corporation into cash and distribute the same to the parties thereunto entitled, subject to the supervision of the court. In case of his death, removal or refusal to act, the stockholders may select a successor with like powers. [L. '17, p. 304, § 70.]

See notes to § 3227, supra.

§ 3278. Unclaimed Dividends and Deposits—Disposition.

Dividends and unclaimed deposits remaining in the hands of the examiner for six months after order of final distribution, shall be deposited in a bank or trust company to his credit in trust for the benefit of the person thereunto entitled, and, subject to the supervision of the court shall be paid by him to them upon receipt of satisfactory evidence of their right thereto. [L. '17, p. 305, § 71.]

See notes to § 3227, supra.

§ 3279. Examiner's Possession—Posting Notice.

Any bank or trust company may place itself under the control of the examiner to be liquidated as herein provided by posting a notice on its door as follows: "This bank (trust company) is in the hands of the state bank examiner."

Immediately upon the posting of such notice, the officers of such corporation shall notify the examiner thereof by telegraph and mail. The posting of such notice or the taking possession of any bank or trust company by the examiner shall be sufficient to place all of its assets and property of every nature in his possession and bar all attachment proceedings. [L. '17, p. 305, § 72.]

See notes to § 3227, supra.

§ 3280. Reopening Bank—Permit by Examiner.

Whenever the examiner shall have taken possession of a bank or trust company for any cause, he may wind up such corporation and cancel its certificate of authority, unless enjoined from so doing, as herein provided. Or if at any time within ninety days after taking possession, he shall determine that all impairment and delinquencies have been made good, and that it is safe and expedient for such corporation to reopen, he may permit such corporation to reopen upon such terms and conditions as he shall prescribe. Before being permitted to reopen, every such corporation shall pay all of the expenses of the examiner, as herein elsewhere defined. [L. '17, p. 305, § 73.]

See notes to § 3227, *supra*.

§ 3281. Voluntary Liquidation.

Any bank or trust company may, upon receipt of written permission from the examiner, go into voluntary liquidation by a vote of its stockholders owning two-thirds of its capital stock. When such liquidation is authorized, the directors of such corporation shall publish in a newspaper published in the place where such corporation is located, once a week for four consecutive weeks, a notice requiring creditors of such corporation to present their claims against it for payment. [L. '17, p. 306, § 74.]

§ 3282. Transfer of Assets and Liabilities—Revocation of Authority.

A bank or trust company may for the purpose of consolidation or voluntary liquidation transfer its assets and liabilities to another bank or trust company, by a vote of the stockholders owning two-thirds of its capital stock, but only with the written consent of the commissioner and upon such terms and conditions as he may prescribe. Upon any such transfer being made, or upon the liquidation of any such corporation for any cause whatever, or upon its being no longer engaged in the business of a bank or trust company, the commissioner shall terminate its certificate of authority, which shall not thereafter be revived or renewed. When the certificate of authority of any such corporation shall have been revoked, it shall forthwith collect and distribute its remaining assets, and when that is done the bank commissioner shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note that fact upon his records. [L. '19, p. 734, § 17. Cf. L. '17, p. 306, § 75.]

Duties devolve upon director of taxation and examination. See § 10812, *infra*.

§ 3283. Bank Examiner to Complete Term.

Whoever may hold the office of state bank examiner at the time this act becomes operative may, unless sooner removed, hold such office under this act for the term for which appointed and the increase in salary herein provided for shall not be effective as to him during such term. [L. '17, p. 306, § 76.]

§ 3284. Existing Transactions not Affected.

Nothing in this act shall be construed to affect the legality of investments, heretofore made, or of transactions heretofore had, pursuant to

any provisions of law in force when such investments were made or transactions had. [L. '17, p. 306, § 77.]

§ 3285. Continuance Under Former Laws—Capital Stock—Amendment of Articles.

Every corporation, which at the time this law becomes operative, is actually and publicly engaged in banking or trust business in this state in full compliance with the laws hereof, which were in force immediately prior to the time when this law becomes operative, may, if it otherwise complies with the provisions of this act, continue its said business, subject to the terms and regulations hereof and without amending its articles of incorporation, although its name and the amount of its capital stock, the number or length of terms of its directors or the form of its articles of incorporation do not comply with the requirements of this act: Provided:

(1) That any such bank, which was by the state bank examiner lawfully permitted to operate, although its capital stock was not fully paid in, shall pay in the balance of its capital stock at such times and in such amounts as said examiner may require.

(2) That any bank or trust company which shall amend its articles of incorporation must in such event comply with all the requirements of this act.

(3) That the directors of trust companies at the time this act becomes operative may continue to hold such office for the terms for which elected, but the terms of all directors hereafter elected shall be governed by this act. [L. '17, p. 306, § 78.]

§ 3286. Corporate Name—Change.

Any corporation existing at the time this act becomes operative, the name of which contains any word, the use of which by such corporation is prohibited by this act, may nevertheless continue the use of such name for a period of time not exceeding ninety days from the time this act becomes operative. Any such corporation may file supplemental articles of incorporation within such period changing its corporate name to comply with the requirements of this act without the payment of any filing fee for so doing but such supplemental articles shall contain no other amendment. [L. '17, p. 307, § 79.]

§ 3287. Penalty Where not Otherwise Prescribed—Convictions—Effect.

Every person who shall violate, or knowingly aid or abet the violation of any provision of this act for which no penalty has been prescribed, and every person who fails to perform any act which it is made his duty to perform herein and for which failure no penalty has been prescribed, shall be guilty of a misdemeanor. No person who has been convicted for the violation of the banking laws of this or any other state or of the United States shall be permitted to engage in or become an officer or official of any bank or trust company organized and existing under the laws of this state. [L. '19, p. 735, § 18; L. '17, p. 307, § 80.]

§ 3288. Insolvent Banks Receiving Deposits—Penalty.

The owners or officers of any bank who shall fraudulently receive any deposit, knowing that such bank is insolvent, shall be deemed guilty

of a felony, and punished upon conviction thereof, by a fine not exceeding one thousand dollars (\$1,000), or imprisoned in the state penitentiary not exceeding ten years, or both such fine and imprisonment, at the discretion of the court. [L. '17, p. 307, § 81.]

See, also, *supra*, § 2640.

Intent as element of crime of receiving deposit in insolvent bank. *Ann. Cas.* 1917B, 1081.

Criminal liability of officer for receiving deposit in insolvent bank as dependent on his receiving the

deposit in person. *Ann. Cas.* 1912B, 316.

When is bank insolvent within statute making it an offense to receive further deposits. *Ann. Cas.* 1916C, 85; 20 *L. B. A. (N. S.)* 444.

§ 3289. Loans Below Required Minimum.

No loan shall be made by a bank or trust company unless it has on hand more than the minimum of available funds required by section 3253, and no loan shall be made if thereby its available funds be reduced to less than such minimum. [L. '19, p. 735, § 19.]

§ 3290. Officer Receiving Bonus from Bank's Clients—Penalty.

Every officer, director, agent, employee or stockholder of any bank or trust company who shall, directly or indirectly, receive a bonus, commission, compensation, remuneration, gift, speculative interest or gratuity of any kind from any person, firm or corporation for granting, procuring or endeavoring to procure, for any person, firm or corporation, any loan by or out of the funds of such bank or trust company or the purchase or sale of any securities or property for or on account of such bank or trust company or for granting or procuring permission for any person, firm or corporation to overdraw any account with such bank or trust company, shall be guilty of a felony. [L. '19, p. 735, § 20.]

§ 3291. [3344.] Unclaimed Deposits in Saving Banks — Annual Statement.

The cashier or secretary of every saving bank, [savings] and loan society, and every institution in which deposits of money are made, shall, within fifteen days after the first day of December, in the year one thousand nine hundred and five, and within fifteen days of the first day of December, of each and every second succeeding year thereafter, return to the secretary of state of the state of Washington a sworn statement showing the amount standing to his credit, the last known place of residence or postoffice address, and the fact of death if known to said cashier or secretary of every depositor who shall not have made a deposit therein, or withdrawn therefrom any part of his deposit, or any part of the interest thereon, for the period of more than ten years next preceding; and the cashiers and secretaries of such savings banks, savings and loan societies and institutions for deposit of savings shall give notice of these deposits in one or more newspapers published in or nearest to the city, county or town where such banks are situated at least once a week for four successive weeks, the cost of such publications to be paid pro rata out of said unclaimed deposits: Provided however, that this section shall not apply to or affect the deposit made by or in the name of any person known to the said cashier or secretary to be living. The secretary of state shall annually turn over all reports made by him to the attorney

general for proceedings for forfeiture, if he shall be so advised. [L. '05, p. 244, § 1.]

§ 3292. [3345.] Penalty for Failure to Report.

Any cashier or secretary of any of the banking institutions mentioned in section 3291 neglecting or refusing to make the sworn statement required by said section 3291 shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than fifty dollars nor more than one thousand dollars or confined in the county jail not less than ten days nor more than ninety days or both such fine and imprisonment. [L. '05, p. 245, § 2.]

CHAPTER II.

GUARANTY OF BANK DEPOSITS.

§ 3293. Definitions.

The term "bank," wherever used in this act, shall be held and construed to mean and include any corporation organized under the laws of this state authorizing the organization of banks or trust companies, except mutual savings banks, and engaged in the banking business in this state; the terms "guaranty fund" and "fund," wherever used in this act, shall be held and construed to mean the "Washington bank depositors' guaranty fund" created under the provisions of this act; the term "board," wherever used in this act, shall be held and construed to mean the "guaranty fund board," created under the provisions of this act; the term "examiner," wherever used in this act, shall be held and construed to mean the state bank examiner; the terms "member," "member bank" and "guaranteed bank" wherever used in this act, shall be held and construed to mean any bank that shall be admitted to, and assume the duties and participate in the benefits of, the guaranty fund; the terms "deposits eligible to guaranty," "eligible deposits" and "guaranteed deposits," wherever used in this act, shall be held and construed to mean money deposited, in a bank, subject to check or other form of withdrawal, and not specifically secured. [L. '17, p. 308, § 1.]

§ 3294. Depositors' Guaranty Fund—Contingent Fund.

There shall be created for the protection and security of depositors in banks, a fund which shall be known as the "Washington Bank Depositors' Guaranty Fund" and shall consist of cash equal to one per cent of the total amount of annual average deposits, eligible to guaranty, of all such member banks, to be deposited with the fund by such member banks in proportion to their respective annual average deposits eligible to guaranty.

There shall also be created a fund to be called the contingent fund from which shall be paid the expenses incurred by the guaranty fund board and also any losses which may be sustained through the failure of any member bank. An assessment of not to exceed one-tenth ($1/10$) of one per cent of the average deposits eligible for guaranty for the preceding year shall be levied by the board on or before the 30th of January of each year, until such time as the contingent fund shall equal

three (3%) per cent of all of the deposits eligible for guaranty in all member banks: Provided, however, that within thirty days from the date upon which this act takes effect the guaranty fund board shall levy an assessment of one-tenth (1/10) of one per cent of the deposits eligible for guaranty for the preceding year, which assessment shall be the only assessment made for the benefit of the contingent fund for the calendar year 1921. The guaranty fund board may appropriate from the contingent fund such funds as it may deem necessary to cover the authorized expenses of the board. [L. '21, p. 283, § 1; L. '17, p. 309, § 2.]

Validity of statute levying assessment on banks for guaranty fund.

Ann. Cas. 1912A, 490; 32 L. R. A. (N. S.) 1065.

§ 3295. Guaranty Fund Board—Oath.

The fund provided for in the preceding section shall be administered by a board consisting of the governor and the state bank examiner, ex-officio, and three members to be appointed by the governor, two of whom, except the members first appointed under this act, shall be officers or directors of member banks, and none of whom shall be an officer or director of a national bank, which board shall be known as "the guaranty fund board." Within fifteen (15) days after the taking effect of this act the governor shall appoint the members of said board, and the members so appointed shall serve until and for the term of one, two and three years, respectively, from and after the first day of January, 1919, and until their successors are appointed and qualified, and thereafter one member of said board shall be appointed annually on the first day of January, for the term of three years. The appointive members of said board shall serve without compensation, but shall be entitled to receive their actual and necessary expenses incurred in the performance of their duties. The governor shall be, ex-officio, the chairman, and the state bank examiner shall be, ex-officio, the secretary and executive officer, of the board. The attorney general shall be the legal adviser of the board. Each appointive member of the board shall, before entering upon his duties under the provisions of this act, take and subscribe an oath to faithfully perform such duties. [L. '17, p. 309, § 3.]

§ 3296. Powers and Duties of Board.

Within thirty (30) days after the taking effect of this act, the board shall meet at the state capitol and organize, and shall have power from time to time to adopt, publish and enforce reasonable rules and regulations governing the admission of banks as members of the fund, and prescribing the duties of member banks, not inconsistent with the provisions of this act or the laws relating to banks, and defining the boundaries of banking districts and regulating the rate of interest to be paid by member banks in such districts, and shall have power to provide the necessary books, records and other supplies, and the necessary assistance, and pay the necessary expenses for carrying out the provisions of this act, and for the protection and development of the Washington bank depositors' guaranty fund, and the cost of all such supplies, assistance and expenses shall be paid out of the contingent fund by resolution of the board authorizing the same and entered upon its minutes, and upon vouchers approved by the chairman of the board. And the board shall

have power to designate guaranteed banks as depositaries for all moneys in the funds provided for by this act, or to invest the contingent fund in such securities as are eligible for the security of postal savings funds, under such rules and regulations as the board may from time to time, adopt: Provided, that income derived from the investments made under the provisions of this act shall be credited to the contingent fund. [L. '21, p. 284, § 2. Cf. L. '17, p. 310, § 4.]

§ 3297. Duty of Bank Examiner.

Immediately upon the organization of the board and the adoption of the rules and regulations as provided in the preceding section, it shall be the duty of the examiner to cause to be printed in pamphlet form, this act and the rules and regulations adopted by the board, and to transmit a copy of such pamphlet, together with blank forms of application for membership in the fund, to each bank in the state. [L. '17, p. 311, § 5.]

“Bank examiner” means State bank commissioner. See § 3208, *supra*.

Duties devolve upon director of taxation and examination. See § 10812, *infra*.

§ 3298. Bank Applications for Membership—Examination.

All applications for membership in the fund shall be made by resolution of the board of directors of the bank applying, duly certified by its president and secretary, in the form prescribed by the guaranty fund board, and shall contain an agreement on the part of the applicant, that, in case the application is approved and the bank admitted to membership in the fund, it will comply with all the provisions of this act and the rules and regulations adopted by the board, and shall be filed with the state bank examiner as secretary of the board. Upon the filing of any such application, the examiner, if it shall appear therefrom that the applicant is apparently eligible to membership in the fund under the provisions of this act, shall make a complete and rigid examination of the affairs of such bank in the manner provided by law, and at the expense of such bank, and submit such application, together with a report of the result of his examination, to the board at its next regular meeting, or at a called meeting, in case no regular meeting is to be held within thirty (30) days from the date of such application: Provided, however, that in case the examiner has within ninety (90) days prior to the receipt of any such application, made a complete examination of the affairs of the applicant bank in the manner provided by law, he may submit such application, together with the report of the result of such previous examination, without further examination, unless directed by the board to make a further examination. [L. '17, p. 311, § 6.]

See notes to § 3297, *supra*.

§ 3299. Records of Bank Examiner—Penalty for Divulging Information.

The state bank examiner, as secretary of the board, shall keep proper books of record of all acts, matters and things done by him under the provisions of this act, as records of his office as secretary of the board. It shall be unlawful for any member of the board, or any deputy or clerk of the examiner, or any assistant examiner appointed by the board under the provisions of this act, to disclose any fact or information with reference to the affairs of any bank, obtained in the performance of his

duties under the provisions of this act, to any other person than a member of the board, the state bank examiner, or his deputies, or a United States or clearing house bank examiner, except so far as the law makes it his duty to make public records and publish the same, and any violation of the provisions of this section shall subject the state bank examiner, or any appointive member of the board, or any deputy or clerk of the examiner, or any assistant examiner appointed by the board under the provisions of this act, to prosecution for misdemeanor in any court of competent jurisdiction, and to punishment by a fine of not exceeding one thousand dollars, with imprisonment in the county jail until the same is paid; and such conviction shall subject the offender to the forfeiture of his office or employment. [L. '17, p. 312, § 7.]

See notes to § 3297, *supra*.

§ 3300. Approval of Application.

If the board shall be satisfied with the report of the director of taxation and examination and with the condition and management of said bank and shall find that said applicant bank is conducting its business in strict accordance with the law under which it is organized, and the provisions of this act, and has an unimpaired surplus equal to ten per cent of its capital, it shall cause the secretary of the board to notify the applicant bank that its application has been approved, and that it will be admitted to membership in the fund, upon making with the board the deposits required by this act, and complying with all requirements made by the board, but no bank shall be eligible for membership in the fund unless it shall have been actively engaged in the banking business for at least one year prior to the date of its application for membership. [L. '21, p. 285, § 3. Cf. L. '17, p. 312, § 8.]

§ 3301. Admission Withheld Until Compliance With Conditions—Appeal to Courts.

If the board shall find from any such application for membership, and from the report of the director of taxation and examination that the applicant has not the required unimpaired surplus, or is not in sound financial condition, or is not conducting its business in accordance with the provisions of this act or that its method of conducting its business is, in the opinion of the board, reckless or unsafe, the board shall cause the secretary to notify the applicant of the conditions upon which it may be admitted to membership. Any bank which shall fail or neglect for a period of sixty days, to comply with the conditions imposed by the board and furnish proof of such compliance to the satisfaction of the board, may have its application for membership rejected. Any bank which has been refused membership in the fund may within thirty days from the date of such refusal by the board, appeal therefrom to the superior court of Thurston County, by filing with the clerk of said court a notice of appeal, and serving a copy thereof upon the secretary of the board, and such appeal shall be heard *de novo* by said court. [L. '21, p. 285, § 4; L. '17, p. 314, § 9.]

§ 3302. Certificate of Guaranty—Extent.

Upon the admission of any bank to membership in the fund, the secretary of the board shall issue to such bank a certificate stating in substance that said bank has complied with the provisions of this act, and that its deposits not otherwise secured are guaranteed by the Washington bank depositors' guaranty fund, and from and after the issuance of such certificate such bank shall be governed by the rules and regulations adopted by the board, prescribing the duties of guaranteed banks, and shall be entitled to participate in the benefits of the guaranty fund, and to advertise that it is a member of said fund, and that its deposits are guaranteed thereby, but no such bank shall advertise that its deposits are guaranteed by the state of Washington. The guaranty provided for in this act shall not apply to a bank's obligation as an indorser upon bills rediscounted, nor to bills payable, nor to money borrowed from its correspondents or others, nor deposits of public funds in excess of its capital and surplus. Every such guaranteed bank shall be entitled to act as a depository of any public funds of, or under the control of, the state, or any county or municipality within the state, and the guaranty of the guaranty fund shall extend to such public funds, so deposited to an amount equal to, but not in excess of, the capital and surplus of such bank, if the custodian of such funds shall elect to deposit the same under the guaranty of such fund, but as to any amount of such public funds deposited in excess of the capital and surplus of such bank, and as to any public funds deposited, in case the custodian making the deposit shall so elect, such guaranteed bank shall be required to give a surety company bond, in the amount provided by law as security therefor. [L. '17, p. 315, § 10.]

See notes to § 3297, *supra*.

§ 3303. Annual Bank Reports as to Deposits—Adjustments—Losses Recovered Credited.

On or before the tenth day of January of each year, each guaranteed bank shall certify under oath to the secretary of the board, the amount of deposits eligible to guaranty under the provisions of this act, and the amount of deposits not eligible to guaranty, in such bank at the close of business as of the dates during the preceding year, upon which official calls for reports were made by the director of taxation and examination and the average deposits eligible to guaranty, and the average deposits not eligible to guaranty, for the preceding calendar year shall be based upon the average of the amounts shown upon call dates. On or before the 30th of January of each year, the guaranty fund board shall determine the amount which shall be deposited to the credit of the board for the current calendar year which amount shall be equal to one (1%) per cent of the average eligible deposits for the preceding calendar year, unless such fund has been impaired by losses which are not replaced by assessments as hereinafter provided. When the member bank shall be advised of the amount which it shall deposit to the credit of the guaranty fund board, it shall at once enter such credit to the account of the guaranty fund board upon its individual ledger and shall charge a like amount on its general ledger, which account shall be known

as Interest in Guaranty Fund, and shall be so shown and reported at all times. The guaranty fund shall be adjusted each year, the member banks being charged or credited according to the amount of increase or decrease in deposits eligible to guaranty for the preceding year. Should this fund be impaired through losses or otherwise, the board may in its discretion levy an assessment of not to exceed one-half ($\frac{1}{2}$) of one per cent per annum of the deposits eligible for guaranty for the preceding year; such assessments for the benefit of the guaranty fund may be made only for the purpose of making good impairments of such fund. Any funds in the guaranty fund may be used in paying the owners of guaranteed deposits in member banks, but not until the contingent fund shall have been depleted.

Any losses which may be recovered from the converting of the assets of failed banks into cash, shall be credited first to the contingent fund, until the amount of such fund shall have reached the proportions it would have reached at that time, had there been no payments made from said fund on account of losses, the balance of such sums so realized from the assets of failed banks shall be credited to the guaranty fund: Provided, that no bank shall receive a benefit from any recoveries made from the collection of assets of failed banks in excess of the amount which such bank shall have contributed to the guaranty fund because of such failure. [L. '21, p. 286, § 5. Cf. L. '17, p. 316, § 11.]

§ 3304. Cancellation of Membership—Forfeiture of Deposits—Penalty.

If after the passage of this act, any guaranteed bank, or the board of directors, or any officer thereof, shall pay interest on any form of deposits on different terms than those, or at a rate in excess of that, approved by the guaranty fund board from time to time, and that shall be uniform within each district; shall be deemed to be reckless, and its certificate as a member of the guaranty fund, may, in the discretion of the board, be canceled: Provided, however, that any existing contract for higher rates of interest, entered into before the passage of this act, may be carried out unimpaired, and such existing contract shall not disqualify such bank from becoming a member of the fund, if it is, in the opinion of the board, otherwise eligible. If any managing officer of any guaranteed bank, or any person acting in its behalf or for its benefit, shall pay, or promise to pay any depositor in such bank, either directly or indirectly, any interest, on different terms than those, or a rate in excess of, or in addition to the maximum rate, approved by the board for the district in which such bank is engaged in business, or shall, with intent to evade any of the provisions of this act, pledge the time certificate, or other obligation of such bank, as security for the personal obligation of himself or any other person, or shall display or publish any card or other advertisement, tending to convey the impression that the deposits of such bank are guaranteed by the state of Washington, either directly or indirectly, the certificate of such bank as a member of the guaranty fund shall be canceled, and its cash deposited for the benefit of the guaranty fund shall be forfeited. Any managing officer of any bank or any person acting in its behalf or for its benefit, who shall display any card, or publish any advertisement, or make any statement, to the effect that its depositors are guaranteed by the Washington bank

depositors' guaranty fund, when such bank is not a member of such fund, or is not authorized so to do under the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred, nor more than one thousand dollars. [L. '21, p. 287, § 6. Cf. L. '17, p. 318, § 13.]

§ 3305. Violations of Act by Member Bank.

If at any regular or special examination of a guaranteed bank made by or under the direction of the director of taxation and examination or the board, it shall be found that such bank is violating any of the provisions of this act, the laws relating to banks, or any of the rules and regulations, that the guaranty fund board may from time to time adopt, the director of taxation and examination shall notify such bank of such violations, and require the same to comply with the provisions of this act within thirty days from the date of such notice; and if at the expiration of thirty days, such provisions have not been complied with, the certificate of membership of such bank in the guaranty fund, may in the discretion of the board be canceled and all or any part of its deposits with the guaranty fund board forfeited. Any deposits so forfeited shall be collected by the director of taxation and examination and shall be transferred to the contingent fund. [L. '21, p. 289, § 7. Cf. L. '17, p. 319, § 14.]

§ 3306. Failure of Bank to Remit Assessments Due—Withdrawal—Public Notice.

If any guaranteed bank shall fail or neglect, for a period of thirty days after any assessment has been made against such bank, as provided in this act, to remit or credit, as the case may be, the amount of such assessment to the secretary of the guaranty fund board, there shall be added to such assessment a penalty of not to exceed fifty per cent of the amount thereof, and such assessments shall constitute a first lien on all of the assets of said bank. Upon the failure of any guaranteed bank to remit, or credit, as the case may be, any assessment made against it in accordance with the provisions of this act, the director of taxation and examination shall immediately cause such bank to be examined, and if it is found to be insolvent, he shall take charge of and liquidate such bank according to law. Whenever the certificate of any guaranteed bank, as a member of the guaranty fund, shall be canceled as hereinabove provided, the secretary of the board shall cause to be displayed in a conspicuous place in the banking rooms of such bank, continuously for six months, a card not smaller than twenty by thirty inches, containing in large plain type the following words: "This bank has withdrawn from the bank depositors' guaranty fund, and the guaranty of its deposits will cease on and after the — day of —, 19—." The date on such card shall be a date six months after the first posting of such card. [L. '21, p. 289, § 8. Cf. L. '17, p. 319, § 15.]

§ 3307. Increase of Capital Stock.

Whenever the deposits in a guaranteed bank shall have, for a period of ninety days continuously, exceeded twenty times its capital and surplus the secretary of the board shall notify such bank that it must

within ninety days from the date of such notice, increase its capital to such an amount that its combined capital and surplus shall equal or exceed one-twentieth of its average daily deposits for the preceding ninety days, and in case such bank shall fail and neglect for a period of ninety days from and after such notice to so increase its capital, its certificate as a member of the guaranty fund shall be canceled. [L. '17, p. 321, § 16.]

§ 3308. Voluntary Withdrawal.

Any guaranteed bank may withdraw from the guaranty fund upon giving notice to that effect in writing to the secretary of the guaranty fund board; upon displaying a card in a conspicuous place in its banking rooms as provided in section 3306, for a period of six months from the date of notice of withdrawal; upon paying all assessments and obligations made against it for the benefit of the guaranty and contingent funds, and upon depositing with the secretary of the guaranty fund board, in addition to the amount to the credit of the guaranty fund board in said bank, an amount equal to one-half of one per cent of its annual average deposits eligible to guaranty for the preceding year, which sum shall be retained as a guaranty for the payment of any assessments made for the benefit of the guaranty fund, for a period of twelve months from and after the date notice of withdrawal shall have been received by the secretary of the guaranty fund board, for which said assessments said bank shall be liable. Upon the expiration of the said twelve months' period, said bank shall be entitled to a refund of any unused portion of any deposits made for the benefit of the guaranty fund. [L. '21, p. 290, § 9; L. '17, p. 321, § 17.]

§ 3309. Guaranty Warrants to Depositors in Insolvent Banks.

Whenever the state bank examiner shall take charge of and proceed to wind up the affairs of any guaranteed bank, as provided by law, he shall as soon as possible issue to each guaranteed depositor, upon proof of claim, a warrant, drawn upon and payable out of the guaranty fund, for the amount of the depositor's claim, which warrant, if there be not sufficient money in the guaranty fund to pay the same, shall bear interest at the rate of five per cent per annum from date until called. [L. '17, p. 322, § 18.]

§ 3310. Subrogation of Director of Taxation.

Whenever the director of taxation and examination shall have issued warrants in payment of claims for guaranteed deposits of any failed bank, such claims and all rights of action and remedies of the depositors therefor, shall inure to the director of taxation and examination for the benefit of the contingent and guaranty funds, and all sums realized therefrom shall be paid into such funds. [L. '21, p. 291, § 10. Cf. L. '17, p. 322, § 19.]

§ 3311. Associations Formed by Guaranteed Banks.

Any number of guaranteed banks, may form an association, under such distinctive name as they shall choose, by making and adopting articles of association and by-laws, and filing copies thereof with the secre-

tary of the guaranty fund board, and such association shall have power to examine the associated banks at such times, and by such methods, as may be determined by the by-laws of the association, and approved by the secretary of the board, and may make such examination either independently of or in conjunction with the state bank examiner. [L. '17, p. 322, § 20.]

§ 3312. Admission of National Banks.

Whenever by act of congress, or by ruling of the treasury department, national banking associations located and doing business within this state, are permitted to avail their depositors of the protection of the guaranty fund provided for in this act, any such association, after examination at its expense by the state bank examiner, and upon the approval of the guaranty fund board, may become a member of the guaranty fund upon the terms and conditions provided in this act. [L. '17, p. 322, § 21.]

CHAPTER III.

MUTUAL SAVINGS BANKS.

§ 3313. [3345-1.] Authority to Organize—Incorporators—Certificate.

When authorized by the state bank examiner, as hereinafter provided by this act, not less than nine or more than thirty persons may form a corporation to be known as a "Mutual Savings Bank." Such persons must be citizens of the United States; at least four-fifths of them must be residents of this state, and at least two-thirds of them must be residents of the county where the bank is to be located and its business transacted, they shall subscribe and acknowledge an incorporation certificate in triplicate which shall specifically state:

(1) The name by which the savings bank is to be known, which name shall include the words "mutual savings bank";

(2) The place where the bank is to be located, and its business transacted, naming the city or town and county;

(3) The name, occupation, residence and postoffice address of each incorporator;

(4) The sums which each incorporator will contribute in cash to the initial guaranty fund, and to the expense fund respectively, as provided in sections 3319 and 3320.

(5) A declaration that each incorporator will accept the responsibilities and faithfully discharge the duties of a trustee of the savings bank, and is free from all the disqualifications specified in section 3357. [L. '15, p. 549, § 1. Cf. L. '05, p. 245, § 2.]

"State bank examiner" means bank commissioner. See *supra*, § 3208.

Duties devolve upon director of taxation and examination. See *infra*, § 10812.

§ 3314. [3345-2.] Notice of Intention.

At the time of executing the incorporation certificate, the proposed incorporators shall sign a notice of intention to organize the mutual savings bank, which shall specify their names, the name of the proposed corporation, and its location as set forth in the incorporation certificate. The

original of such notice shall be filed in the office of the state examiner within sixty days after the date of its execution, and a copy thereof shall be published at least once a week for four successive weeks in a newspaper designated by the state bank examiner, the publication to be commenced within thirty days after such designation. At least fifteen days before the incorporation certificate is submitted to the examiner for examination, as provided in the section next following, a copy of such notice shall be served upon each savings bank doing business in the city or town named in the incorporation certificate, by mailing such copy (postage prepaid) to such bank. [L. 15, p. 550, § 2.]

§ 3315. [3345-3.] Submission of Certificate—Proof of Notice.

After the lapse of at least twenty-eight days from the date of the first due publication of the notice of intention to incorporate, and within ten days after the date of the last publication thereof, the incorporation certificate executed in triplicate shall be submitted for examination to the state examiner at his office in Olympia, with affidavits showing due publication and service of the notice of intention to organize prescribed in section 3314. [L. '15, p. 550, § 3.]

§ 3316. [3345-4.] Examination—Approval—Appeal—Filing Certificates.

When any such certificate shall have been filed for examination the state examiner shall thereupon ascertain from the best source of information at his command, and by such investigation as he may deem necessary, whether the character, responsibility and general fitness of the person or persons named in such certificate are such as to command confidence and warrant belief that the business of the proposed bank will be honestly and efficiently conducted in accordance with the intent and purpose of this act, and whether the public convenience and advantage will be promoted by allowing such proposed bank to be incorporated and engage in business, and whether greater convenience and access to a savings bank would be afforded by any considerable number of depositors by opening a mutual savings bank in the place designated, whether the population in the neighborhood of such place, and in the surrounding country, affords a reasonable promise of adequate support for the proposed bank, and whether the contributions to the initial guaranty fund and expense fund have been paid in cash. After the state examiner shall have satisfied himself by such investigation whether it is expedient and desirable to permit such proposed bank to be incorporated and engage in business, he shall within sixty days after the date of the filing of such certificate for examination indorse upon each of the triplicates thereof over his official signature the word "Approved" or the word "Refused," with the date of such indorsement. In case of refusal he shall forthwith return one of the triplicates so indorsed to the proposed incorporators from whom such certificate was received. From the state examiner's refusal to issue a certificate of authorization, the applicants or a majority of them, may within thirty days from the date of the filing of the certificate of refusal with the secretary of state, appeal to a board of appeal composed of the governor, the attorney general and the state examiner, by filing in the office of the state examiner

a notice that they appeal to such board from his refusal. The procedure upon the appeal shall be such as the board may prescribe, and its determination shall be certified, filed and recorded in the same manner as the state examiner's, and shall be final. In case of approval, he shall forthwith give notice thereof to the proposed incorporators, and file one of the triplicate certificates in his own office, shall transmit another triplicate to the county auditor of the county in which such bank is to be located and shall transmit the third triplicate to the secretary of state. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other incorporation certificates, the county auditor and the secretary of state shall file said certificate in their respective offices, and the secretary of state shall record the same. Upon the filing of said incorporation certificate in triplicate approved as aforesaid in the offices of the state bank examiner, the secretary of state and county auditor as hereinbefore directed, the persons named therein and their successors shall thereupon become and be a corporation, which corporation shall have the powers and be subject to the duties and obligations prescribed in this act, and its corporate existence shall continue for the period of fifty years from the date of the filing of such certificates, unless sooner terminated pursuant to law, but such corporation shall not receive deposits or engage in business until authorized so to do by the state examiner as provided in the next section following. [L. '15, p. 550, § 4.]

See notes to § 3313, supra.

§ 3317. [3345-5.] Authorization Certificates—Issuance and Filing.

Before any mutual savings bank shall be authorized to do any business the state examiner shall be satisfied that such corporation has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this act. If satisfied that such corporation has in good faith complied with all the requirements of law, and fulfilled all the conditions precedent to commencing business imposed by this act, the state examiner shall within six months after the date upon which such proposed organization certificate was filed with him for examination, but in no case after the expiration of that period, issue under his hand and official seal in quadruplicate an authorization certificate to such corporation. Such authorization certificate shall state that the corporation therein named has complied with all the requirements of law, that it is authorized to transact at the place designated in its certificate of incorporation, the business of a mutual savings bank. One of the quadruplicate authorization certificates shall be transmitted by the state examiner to the corporation therein named, and the other three authorization certificates shall be filed by the state examiner in the same public offices where the certificate of incorporation is filed, and shall be attached to said incorporation certificate. [L. '15, p. 552, § 5.]

§ 3318. [3345-6.] Reception of Deposits—Conditions Precedent.

Before such corporation shall be authorized to receive deposits or transact business other than the completion of its organization, the state examiner shall be satisfied that:

(1) The incorporators shall have made the deposit of the initial guaranty fund required by this act.

(2) That the incorporators have made the deposit of the expense fund required by section 3320, and if the state examiner shall so require, shall have entered into the agreement or undertaking with the state examiner, and shall have filed the same and the security therefor as prescribed in said section.

(3) That said corporation has transmitted to the state examiner the name, residence and postoffice address of each officer of the corporation.

(4) That its certificate of incorporation in triplicate has been filed in the respective public offices designated in this act. [L. '15, p. 553, § 6.]

§ 3319. [3345-7.] Guaranty Fund.

Before any mutual savings bank shall be authorized to do business, its incorporators shall create a guaranty fund for the protection of its depositors against loss on its investments whether arising from depreciation in the market value of its securities or otherwise:

(1) Such guaranty fund shall consist of payments in cash made by the original incorporators and of all sums credited thereto from the earnings of the savings bank as hereinafter required.

(2) The incorporators shall deposit to the credit of such savings bank in cash as an initial guaranty fund at least five thousand dollars.

(3) Prior to the liquidation of any such savings bank such guaranty fund shall not be in any manner encroached upon, except for losses and the repayment of contributions made by incorporators or trustees as hereinafter provided, until such fund together with undivided profits exceeds twenty-five per centum of the amount due depositors.

(4) The amounts contributed to such guaranty fund by the incorporators or trustees shall not constitute a liability of the savings bank, except as hereinafter provided, and any loss sustained by the savings bank in excess of that portion of the guaranty fund created from earnings may be charged against such contributions pro rata. [L. '15, p. 553, § 7.]

§ 3320. [3345-8.] Expense Fund—Security.

Before any mutual savings bank shall be authorized to do business, its incorporators shall create an expense fund from which the expense of organizing such savings bank and its operating expenses may be paid, until such time as its earnings are sufficient to pay its operating expenses in addition to such dividends as may be declared and credited to its depositors from its earnings. The incorporators shall deposit to the credit of such savings bank in cash as an expense fund the sum of five thousand dollars. They shall also enter into such an agreement or undertaking with the state examiner as trustee for the depositors with the savings bank as he may require to make such further contributions in cash to the expense fund of such savings bank as may be necessary to pay its operating expenses until such time as it can pay them from its earnings, in addition to such dividends as may be declared and credited to its depositors. Such agreement or undertaking shall fix the maximum liability assumed thereby which shall be a reasonable amount approved by the state ex-

aminer and the same shall be secured to his satisfaction, which security in his discretion may be by a surety bond executed by a domestic or foreign corporation authorized to transact within this state the business of surety. The agreement or undertaking and security shall be filed in the office of the state examiner. Such agreement or undertaking and such security need not be made or furnished unless the state examiner shall require the same. The amounts contributed to the expense fund of said savings bank by the incorporators or trustees shall not constitute a liability of such savings bank except as hereinafter provided. [L. '15, p. 554, § 8.]

See notes to § 3313, *supra*

§ 3321. [3345-9.] Repayment of Contributions.

Contributions made by the incorporators or trustees to the expense fund may be repaid pro rata to the contributors from that portion of the guaranty fund created from earnings whenever such payments will not reduce the guaranty fund below five per centum of the total amount due depositors:

(1) In case of the liquidation of the savings bank before such contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended after the payment of the expenses of liquidation may be repaid to the contributors pro rata.

(2) Whenever the contributions of the incorporators or trustees to the expense fund of such savings bank have been returned to them, the contributions made to the guaranty fund by incorporators or trustees may be returned to them pro rata from that portion of the guaranty fund created from the earnings of the savings bank; Provided, that such repayments will not reduce the earned portion of the guaranty fund below five per centum of the amount due depositors. In case of liquidation of the savings bank before such contributions to the guaranty fund have been repaid, any portion of such contributions not needed for the payment of the expenses of liquidation, and the payment of depositors in full, and the repayment of contributions to the expense fund, may be repaid to the contributors pro rata. [L. '15, p. 554, § 9.]

§ 3322. [3345-10.] Powers of Bank.

Every mutual savings bank incorporated under this act shall have, subject to the restrictions and limitations contained in this act, the following powers:

(1) To receive deposits of money, to invest the same in the property and securities prescribed in this act, to declare dividends in the manner prescribed in this act, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank.

(2) To issue transferable certificates showing the amounts contributed by any incorporator, or trustee, to the guaranty fund of such bank, or for the purpose of paying its expenses. Every such certificate shall show that it does not constitute a liability of such savings bank, except as otherwise provided in this act.

(3) To purchase, hold and convey real property as prescribed in section 3338.

(4) To pay depositors as hereinafter provided, and when requested by them, by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge current rates of exchange for such drafts.

(5) To borrow money in an emergency for the purpose of repaying depositors, and to pledge or hypothecate securities as collateral for loans so obtained, under the conditions prescribed in this act.

(6) To collect or protest promissory notes or bills of exchange owned by such bank or held by it as collateral, and remit the proceeds of the collections by drafts upon deposits to the creditor of the savings bank in any city in the United States, and to charge the usual rates or fees for such collection and remittance for such protest.

(7) To sell gold or silver received in payment of interest or principal of obligations owned by the savings bank, or from depositors in the ordinary course of business.

(8) To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards and committees, to fix their compensation, subject to the provisions of this act, and to define their powers and duties, and to remove them at will.

(9) To make and amend by-laws consistent with law for the management of its property and the conduct of its business.

(10) To wind up and liquidate its business in accordance with this act.

(11) To adopt and use a common seal and to alter the same at pleasure.

(12) To do all other acts authorized by this act. [L. '15, p. 555, § 10.]

Section "3338" in this section is "in lieu of" Rem. Code, § 3345-11. See L. '21, p. 607, § 1.

§ 3323. Investment of Moneys.

A mutual savings bank may invest the moneys deposited therein, the sums credited to the guaranty fund thereof and the income derived therefrom in the property and securities, and no others, and subject to the restrictions, specified in the following sections numbered 3324 to 3340, inclusive. [L. '21, p. 607, § 1. Cf. L. '19, p. 690, § 1; L. '15, p. 556, § 11.]

§ 3324. United States Bonds.

The bonds or interest bearing notes or obligations of the United States or those for which the faith of the United States is pledged to provide for the payment of the interest and principal, including bonds of the District of Columbia. [L. '21, p. 607, § 1 (a).]

§ 3325. State Bonds.

The bonds or interest bearing obligations of this state issued pursuant to the authority of any law of this state. [L. '21, p. 607, § 1 (b).]

§ 3326. Other State Bonds.

The bonds or interest bearing obligations of any other state of the United States upon which there is no default, and upon which there has been no default for more than ninety days: Provided, that within ten

years immediately preceding the investment such state has not been in default for more than ninety days in the payment of any part of the principal or interest of any debt duly authorized by the legislature of such state to be contracted by such state since January 1, 1878. [L. '21, p. 608, § 1 (c).]

§ 3327. State Municipal Bonds.

The valid bonds of any city, town, county, school district or port district in the state of Washington issued pursuant to law, and for the payment of which the faith and credit of such municipality, county or district is pledged, or valid warrants of such municipality, county or district drawing interest, and for which payment such municipality, county or district is liable. [L. '21, p. 608, § 1 (d).]

§ 3328. Adjoining State Municipal Bonds.

The bonds of any incorporated city, county, village or town, situated in one of the states of the United States which adjoins the state of Washington. If at any time the indebtedness of any such city, town or village, together with the indebtedness of any district or other municipal corporation or subdivision, except a county, which is wholly or in part included within the boundaries or limits of said city, town or village less its water debt and sinking fund, or the indebtedness of any such county, less its sinking fund shall exceed seven per centum of the valuation of said city, county, town or village for the purposes of taxation, its bonds shall thereafter, until such indebtedness shall be reduced to seven per centum of the valuation for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks. [L. '21, p. 608, § 1 (e).]

§ 3329. Other State Municipal Bonds.

Bonds of any incorporated city situated in any other state of the United States: Provided, such city has a population as shown by the federal census next preceding the investment, of not less than forty-five thousand inhabitants, and was incorporated as a city at least twenty-five years prior to the making of the investment, and has not since January 1, 1907, defaulted for more than ninety days in the payment of any part of principal or interest of any bond, note or other indebtedness, or effected any compromise of any kind with the holders thereof. If at any time the indebtedness of any such city, together with the indebtedness of any district (other than local improvement district) or other municipal corporation or subdivision, except a county, which is wholly or in part included within the bounds or limits of said city, less its water debt and sinking fund, shall exceed seven per centum of the valuation of such city for purposes of taxation, its bonds shall thereafter, and until such indebtedness shall be reduced to seven per centum of such valuation, cease to be an authorized investment of the moneys of mutual savings banks. [L. '21, p. 609, § 1 (f).]

§ 3330. Commercial Waterway Bonds.

Bonds of any commercial waterway district in this state: Provided, the total obligations of such district by bonds, warrants or otherwise do

not exceed ten per cent of the assessed valuation of the lands and improvements within such districts: And provided further, that this authorization does not extend to the thirty per cent in amount of such bond issue last callable for payment. [L. '21, p. 609, § 1 (g).]

§ 3331. Local Improvement Bonds.

Bonds of any local improvement district of any city or town of this state (except bonds for an improvement consisting of grading only) and bonds of any irrigation, diking, drainage, diking improvement or drainage improvement district of this state, unless the total indebtedness of the district after the completion of the improvement for which the bonds are issued, plus the amount of all other assessments of a local or special nature against the land assessed or liable to be assessed to pay the bonds, exceed fifty per cent of the value of the benefited property, exclusive of improvements, at the time the bonds are purchased or taken by the bank, according to the actual valuation last placed upon the property for general taxation. Before any such bonds are purchased or taken as security the condition of the district's affairs shall be ascertained and the property of the district examined and appraised by at least two trustees who shall report in writing their findings and recommendations; and no bonds shall be taken unless such report be favorable, nor unless the executive committee of the board of trustees after careful investigation is satisfied of the validity of the bonds and of the validity and sufficiency of the assessment or other means provided for payment thereof: Provided, that no city or town local improvement bonds falling within the twenty-five per cent in amount of any issue last callable for payment, shall be acquired or taken as security. [L. '21, p. 609, § 1 (h).]

§ 3332. Railroad Mortgage Bonds.

The mortgage bonds of any railroad corporation incorporated under the laws of the United States or any of the states thereof which actually owns in fee not less than five hundred miles of standard gauge railway, exclusive of sidings, within the United States: Provided, that at no time within five years next preceding the date of any such investment such railroad corporation shall have failed regularly and punctually to pay the matured principal and interest of all its mortgaged indebtedness, and in addition thereto regularly and punctually to have paid in dividends to its stockholders during each of said five years, an amount at least equal to four per centum upon all its outstanding capital stock: And provided further, that during said five years the gross earnings in each year from the operation of said company, including therein the gross earnings of all railroads leased and operated or controlled and operated by said company, and also including in said earnings the amount received directly or indirectly by said company from the sale of coal from mines owned or controlled by it, shall not have been less in amount than five times the amount necessary to pay the interest payable during that year upon its entire outstanding indebtedness, and the rentals for said year of all leased lines: And provided further, that all bonds authorized for investment by this paragraph shall be secured by a mortgage which is at the time of

making such investment, or was at the date of the execution of said mortgage (one) a first mortgage upon not less than seventy-five per centum of the railway owned in fee by the company issuing such bonds, exclusive of sidings at the date of such mortgage, or (two) a refunding mortgage issued to retire all prior lien mortgage debts of such company outstanding at the time of such investment and covering at least seventy-five per centum of the railway owned in fee by such company at the date of such mortgage. But no one of the bonds so secured shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which, together with all outstanding prior debts of such company, after deducting therefrom in case of a refunding mortgage the bonds reserved under the provisions of such mortgage to retire prior debts at maturity, shall exceed three times the outstanding capital stock of such company at the time of making such investment. And no mortgage is to be regarded as a refunding mortgage under the provisions of this section unless the bonds which it secures mature at a later date than any bond which it is given to refund, nor unless it covers a mileage at least twenty-five per centum greater than is covered by any one of the prior mortgages so to be refunded. [L. '21, p. 610, § 1 (i).]

§ 3333. Same.

Any railway mortgage bonds which would be a legal investment under the provisions of section 3332, except for the fact that the railroad corporation issuing such bonds actually owns in fee less than five hundred miles of road: Provided, that during five years next preceding the date of any such investment the gross earnings in each year from the operations of said corporation, including the gross earnings of all lines leased and operated or controlled and operated by it, shall not have been less than ten hundred thousand dollars (\$1,000,000). [L. '21, p. 612, § 1 (j).]

§ 3334. Same.

The mortgage bonds of a railroad corporation described in the foregoing sections 3332 and 3333 or the mortgage bonds of a railroad owned by such corporation assumed or guaranteed by it by indorsement on such bonds, provided such bonds are prior to and are to be refunded by a general mortgage of such corporation, the bonds secured by which are made a legal investment under the provisions of said sections 3332 and 3333: And provided further, that said general mortgage covers all the real property upon which the mortgage securing such underlying bonds is a lien. Bonds which have been or shall become legal investments for mutual savings banks under any of the provisions of this and the two preceding sections shall not be rendered illegal as investments though the property upon which they are secured has been or shall be conveyed to another corporation, if the consolidated or purchasing corporation shall assume the payment of such bonds, and shall continue to pay regularly interest or dividends or both upon the securities issued against, or in exchange for or to acquire the stock of the company consolidated to an amount at least equal to four per centum per annum upon the capital stock (outstanding at the time of such consolidation or purchase) of the corporation which has issued or assumed such bonds. Not more than twenty-five per centum

of the assets of any savings banks shall be loaned or invested in railroad bonds, and not more than five per cent of the assets of any savings bank shall be invested in the bonds of any one railroad corporation. In determining the amount of the assets of any savings bank under the provisions of this section its securities shall be estimated in the manner prescribed by section 3355. Street railroad corporations shall not be considered railroad corporations within the meaning of this act. [L. '21, p. 612, § 1 (k).]

§ 3335. Savings Bank Notes.

Promissory notes payable to the order of the savings bank upon demand, secured by the pledge or assignment of any bonds, warrants, or interest bearing obligations lawfully purchasable by a savings bank, or secured by pledge or assignment of one or more real estate mortgages of the class described in section 3337, but no such loan shall exceed ninety per centum of the cash market value of such securities so pledged. Should any of the securities so held in pledge depreciate in value after the making of such loan, the savings bank shall require an immediate payment of such loan, or of a part thereof, or additional security therefor, so that the amount loaned thereon shall at no time exceed ninety per cent of the market value of the securities so pledged for such loan. [L. '21, p. 613, § 1 (l).]

§ 3336. Savings Bank Notes Payable Within Ninety Days.

Promissory notes made payable to the order of the savings bank within ninety days from the date thereof, secured by the pledge and assignment of the pass-book of any mutual savings bank in the state of Washington as collateral security for the payment thereof. No such loan shall exceed ninety per centum of the balance due the holder of such pass-book as shown therein. [L. '21, p. 613, § 1 (m).]

§ 3337. First Mortgage Real Estate Loans.

Loans secured by first mortgage on real estate subject to the following restrictions: In all cases of loans upon real property, a note or bond secured by a mortgage on the real estate upon which the loan is made, together with a complete abstract of title for such real estate signed by the person or corporation furnishing such abstract of title (which abstract shall be examined by a competent attorney at law selected by the bank, and his opinion furnished approving the title and showing that the mortgage is a first lien), or a policy of title insurance of a reliable title insurance company authorized to insure titles within this state, or a duplicate certificate of ownership issued by a registrar of titles, shall be furnished to the savings bank by the borrower. The real estate subject to such first mortgage must be improved to such extent that the net annual income thereof, or reasonable annual rental value thereof in the condition existing at the time of making the loan, is sufficient to pay the annual interest accruing on such loan in addition to taxes and insurance, and all accruing charges and expenses. No loan on real estate shall be for an amount greater than fifty per cent of the value of such real estate including improvements. The mortgage shall contain provisions requiring the mort-

gagor to maintain insurance on the buildings on the mortgaged premises to such reasonable amount as shall be stipulated in the mortgage, the policy to be payable in case of loss to the savings bank, and to be deposited with it. A loan may be made on real estate which is to be improved by a building or buildings to be constructed with the proceeds of such loan, if it is arranged that such proceeds will be used for that purpose and that when so used the property will be improved to the extent required by this section. Not more than seventy-five per cent of the assets of any savings bank shall be invested in mortgage loans. No mortgage loan or renewal or extension thereof shall be made except upon written application showing the date, name of applicant, amount of loan requested, and the security offered, nor except upon the written report of at least two members of the board of investment of the bank certifying on such application according to their best judgment the value of the property to be mortgaged and recommending the loan, and the application and written report thereon shall be filed and preserved with the savings bank records. Every mortgage and every assignment of a mortgage taken or held by a savings bank shall be taken and held in its own name, and shall immediately be recorded in the office of the county auditor of the county in which the mortgage property is located. [L. '21, p. 614, § 1 (n).]

§ 3338. Real Estate.

Real estate as follows:

(1) A tract of land whereon there is or may be erected a building or buildings suitable for the convenient transaction of the business of the savings bank, from portions of which not required for its own use a revenue may be derived. The investment in such tract of land to be subject to the conditions prescribed in section 3341.

(2) Such as shall be conveyed to such savings bank in satisfaction of debts previously contracted in the course of its business.

(3) Such as it shall purchase at sales under judgments, decrees or mortgages held by it. [L. '21, p. 615, § 1 (o).]

§ 3339. Acceptances and Bills of Exchange.

Acceptances of the kind and character following:

(1) Bankers' acceptances and bills of exchange of the kind and maturities made eligible by law for rediscount with federal reserve banks, provided the same are accepted by a bank or trust company incorporated under the laws of this state, or under the laws of the United States.

(2) Bills of exchange drawn by the seller on the purchaser of goods and accepted by such purchaser, of the kind and maturities made eligible by law for rediscount with federal reserve banks, provided the same are indorsed by a national bank or by a bank or trust company incorporated under the laws of this state. Not more than twenty per cent of the assets of any mutual savings bank shall be invested in such acceptances. The aggregate amount of the liability of any bank or trust company or of any national bank to any mutual savings bank, whether as principal or indorser, for acceptances held by such savings banks and deposits made

with it, shall not exceed twenty-five per cent of the paid up capital and surplus of such bank or trust company or national bank, and not more than five per centum of the aggregate amount credited to the depositors of any mutual savings bank shall be invested in the acceptance of or deposited with a bank or trust company or a national bank of which a trustee of such mutual savings bank is a director. [L. '21, p. 615, § 1 (p).]

§ 3340. Equipment Obligations.

In equipment obligations or equipment trust certificates which comply with the following requirements.

(a) They must mature not later than fifteen years from their date.

(b) They must be issued or guaranteed by a corporation to which a loan or loans for the construction, acquisition, purchase or lease of equipment have been made or approved by the interstate commerce commission, under authority conferred by act of congress of the United States of America.

(c) They must be the whole or part of any issue maturing serially, annually, or semi-annually.

(d) They must be secured by or be evidence of a prior or preferred lien upon or interest in, or of reservation of title to the equipment in respect of which they have been issued or sold, and or by an assignment of or prior interest in the rent or purchase notes given for the hiring or purchase of such equipment.

(e) The total amount of principal of such issue of equipment obligations or trust certificates shall not exceed sixty per centum of the cost or purchase price of the equipment in respect of which they were issued:

(f) The remaining forty per centum of said cost or purchase price shall be paid by or for the account of the railroad so constructing, acquiring, purchasing or leasing said equipment, or by funds loaned or advanced for the purpose by the government of the United States or one of its agencies or instrumentalities and subordinated in the event of default, in respect of the lien or interest thereof, upon or in such equipment and or in such equipment or rent or purchase notes, to the lien or interest of said prior or preferred equipment obligations or equipment trust certificate.

Not more than twenty-five per centum of the assets of any savings bank, less the amount invested by said bank in railroad bonds, shall be invested in said equipment obligations or certificates. In determining the amount of the assets of any savings bank under the provisions of this section the value of its securities shall be estimated in the manner prescribed for determining the per centum of par value surplus by section 3355. [L. '21, p. 616, § 1 (q).]

§ 3341. [3345-12.] Bank Building—Real Estate.

The cost of the land and building or buildings for the transaction of the business of a savings bank shall in no case exceed twenty-five per centum of the guaranty fund of such savings bank, except with the approval of the state examiner; and before the purchase of such property is made, or the erection of a building or buildings is commenced, the esti-

mate of the cost thereof and completion of the building or buildings shall be submitted to and approved by the state examiner.

All real estate purchased by any such bank, or taken by it in satisfaction of debts due it, shall be conveyed to it directly by name, and the conveyance shall be immediately recorded in the office of the proper recording officer of the county in which such real estate is located.

Every parcel of real estate purchased or acquired by any such bank shall be sold by it within five years from the date on which it shall have been acquired (the time of acquisition in the case of real estate subject to redemption being understood to be the date on which the right of redemption expires) unless

(1) There shall be a building thereon occupied by the saving bank as its offices, or

(2) The state examiner on application of the board of trustees shall have extended the time within which such sale shall be made. [L. '15, p. 563, § 12.]

§ 3342. [3345-13.] Merchandising—Exchange—Borrowing—Certificates of Deposit.

(1) Such bank shall not purchase, deal or trade in any goods, wares, merchandise or commodities whatsoever except such personal property as may be necessary for the transaction of its authorized business.

(2) Such bank shall not, nor shall any officer thereof in his attendance upon the business of such bank, in any manner buy or sell exchange on other banks or bankers or buy or sell gold or silver except as in this act expressly authorized.

(3) Such banks shall not

(1) Borrow money or pledge or hypothecate any of its securities as collateral for the repayment of money borrowed except with the written approval of the state examiner, and in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon their minutes whereon shall be recorded by ayes and noes the vote of each trustee, a certified copy of such minutes being filed with the state examiner;

(2) Make or issue any certificate of deposit payable either on demand or at a fixed day. [L. '15, p. 564, § 13.]

Authority of savings banks to indorse and transfer commercial paper. 12 A. L. R. 143.

§ 3343. [3345-14.] Depositaries.

No such bank shall deposit any of its funds with any other moneyed corporation unless the latter has been designated as a depositary for the saving bank's funds by vote of a majority of the trustees of the savings bank, exclusive of any trustee who is an officer, director or trustee of the depositary so designated. [L. '15, p. 564, § 14.]

§ 3344. [3345-15.] Officing With Other Banks—Place of Business.

(1) A savings bank shall not do business or be located in the same room with, or in a room connecting with any other bank, trust company or national banking association.

(2) No savings bank or any officer or director thereof shall receive deposits or transact any of its usual business at any place other than its principal place of business. [L. '15, p. 564, § 15.]

§ 3345. [3345-16.] Wrongful Entry of Assets—Bookkeeping.

(1) No bank shall by any system of accounting, or any device of bookkeeping, directly or indirectly, enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association, or corporation, or under any title or designation that is not in accordance with the actual facts.

(2) The bonds, notes, mortgages or other interest bearing obligations purchased or acquired by a savings bank, shall not be entered on its books at more than the actual cost thereof, and shall not thereafter be carried upon its books for a longer period than until the next declaration of dividends, or in any event for more than one year, at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such security purchased for a sum in excess of the amount payable thereon at maturity and charging to "profit and loss" a sufficient sum to bring it to par at maturity, or adding to the cost of any such security purchased at less than the amount payable thereon at maturity and crediting to "profit and loss" a sufficient sum to bring it to par at maturity.

(3) No such bank shall enter, or at any time carry on its books the real estate and the building or buildings thereon used by it as its place of business at a valuation exceeding their actual cost to such bank.

(4) Every such bank shall conform its methods of keeping its books and records to such orders in respect thereof as shall have been made and promulgated by the state examiner. Any officer, agent, or employee of any savings bank who refuses or neglects to obey any such order shall be punished as hereinafter provided. [L. '15, p. 564, § 16.]

§ 3346. [3345-17.*] Limit on Individual Deposits.

(1) When the aggregate amount of deposits and dividends to the credit of any individual, including in such aggregate all deposits and dividends credited to him as trustee or beneficiary of any trust and all deposits and dividends credited to him and another or others in either joint or several form, is five thousand dollars (\$5,000) or more, such aggregate shall not be increased by the receipt from him of any deposit but may be increased to not more than ten thousand dollars (\$10,000) by the crediting of dividends. Additional accounts may, however, be maintained in the name of a parent as trustee for a dependent or minor child, and in the name of a child as trustee for a dependent parent, but not more than five hundred dollars (\$500) shall be deposited to any such additional account during any six month period.

(2) When the aggregate amount of deposits and dividends to the credit of any society or corporation is five thousand dollars (\$5,000) or more, such aggregate shall not be increased by the receipt of any deposit not made pursuant to order of a court of competent jurisdiction, but may be increased to not more than ten thousand dollars (\$10,000) by the crediting of dividends.

(3) Every such bank may further limit the aggregate amount which an individual or any corporation or society may have to his or its credit to such sum as such bank may deem expedient to receive; and may in its discretion refuse to receive a deposit, or may at any time return all or any part of any deposits or require the withdrawal of any dividend. [L. '21, p. 617, § 2. Cf. L. '19, p. 699, § 2; L. '15, p. 565, § 17.]

§ 3347. [3345-18.*] Payment of Deposits and Dividends.

The sums deposited with any such bank, together with any dividends credited thereto, shall be repaid to the depositors thereof respectively, or to their legal representatives, after demand in such manner, and at such times, and under such regulations, as the board of trustees shall prescribe, subject to the provisions of this and the next following section. Such regulations shall be posted in a conspicuous place in the room where the business of such savings bank shall be transacted, and shall be printed in the pass-books or other evidence of deposit furnished by it, and shall be evidence between such bank and the depositors holding the same of the terms upon which the deposits therein acknowledged are made.

(1) Such bank may at any time by a resolution of its board of trustees require a notice of not more than six months before repaying deposits, in which event no deposit shall be due or payable until the required notice of intention to withdraw the same shall have been personally given by the depositor: Provided, that such bank at its option may pay any deposit or deposits before the expiration of such notice. But no bank shall agree with its depositors or any of them in advance to waive the requirement of notice as herein provided.

(2) Except as provided in subdivision (3) of this section the savings bank shall not pay any dividend, or deposit, or portion thereof, or any cheque drawn upon it by a depositor unless the pass-book of the depositor be produced, and the proper entry be made therein at the time of the payment.

(3) The board of trustees of any such bank may by its by-laws provide for making payments in cases of loss of pass-book, or other exceptional cases where the pass-books cannot be produced without loss or serious inconvenience to depositors, the right to make such payments to cease when so directed by the state examiner upon his being satisfied that such right is being improperly exercised by any such bank; but payments may be made at any time upon the judgment or order of a court.

(4) If any person shall die leaving in any such bank an account on which the balance due him shall not exceed \$500 and no executor or administrator of his estate shall be appointed, such bank may in its discretion pay the balance of his account to his widow (or if the decedent was a married woman, then to her husband), next of kin, funeral director or other creditor who may appear to be entitled thereto. As a condition of such payment such bank may require proof by affidavit as to the parties in interest, the filing of proper waivers, the execution of a bond of indemnity with surety or sureties by the person to whom the payment is to be made, and a proper receipt and acquittance for such payment. For any such payment pursuant to this section such bank shall not be liable

to the decedent's executor or administrator thereafter appointed, unless the payment shall have been made within six months after the decedent's death, and an action to recover the amount shall have been commenced within six months after the date of payment. [L. '21, p. 618, § 3; L. '15, p. 566, § 18.]

Duties of savings banks to their depositors. 105 Am. St. Rep. 728.

§ 3348. [3345-19.] Deposits of Minors—Joint Deposits—Payment.

(1) When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with dividends thereon, to the person in whose name the deposit shall have been made, and his receipt or acquittance shall be a valid discharge.

(2) After any deposit shall be made by any person in the names of such depositor and another person and in form to be paid to either or the survivor of them, such deposit and any additions thereto made by either of such persons after the making thereof, shall become the property of such persons as joint tenants, and the same, together with all dividends thereon, shall be held for the exclusive use of such persons and may be paid to either during the lifetime of both or to the survivor after the death of one of them, and such payment and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to such savings bank for all payments made on account of such deposit prior to the receipt by such savings bank of notice in writing not to pay such deposit in accordance with the terms thereof. The making of the deposit in such form shall, in the absence of fraud or undue influence, be conclusive evidence, in any action or proceeding to which either such savings bank or the surviving depositor is a party, of the intention of both depositors to vest title to such deposit and the additions thereto in such survivor. [L. '15, p. 567, § 19.]

Joint account in savings bank. 31 L. R. A. 454.

§ 3349. [3345-20.] Reserve Fund—Deposit of Reserves.

(1) The trustees of every such bank shall as soon as practicable invest the moneys deposited with them in the securities prescribed in sections 3323 to 3340, except as hereinafter provided. For the purpose of paying withdrawals in excess of receipts, and meeting accruing expenses, or for the purpose of awaiting a more favorable opportunity for judicious investment, any such bank may keep on hand, or on deposit in any bank or trust company in this state organized under any law of this state, or of the United States, an available fund not exceeding twenty per centum of the aggregate amount credited to its depositors, but the sum deposited by any such savings bank in any one bank or trust company shall not exceed twenty-five per centum of the paid up capital and surplus of the bank or trust company in which the deposit is made, and no more than five per centum of the aggregate amount credited to the depositors of any such savings bank shall be deposited in a bank or trust company of which a trustee of such savings bank is a director. [L. '15, p. 568, § 20.]

Sections "3323 to 3340" supersede § 11 of the original act.

§ 3350. [3345-21.] Guaranty Fund—Purpose.

The contributions of the incorporators or trustees of any such savings bank under the provisions of section 3319, and the sums credited thereto from its net earnings under the provisions of section 3353 shall constitute a guaranty fund for the security of its depositors, and shall be held to meet any contingency or loss in its business from depreciation of its securities or otherwise, and for no other purpose except as provided in section 3321, hereof, and subdivision 5 of section 3354. [L. '15, p. 569, § 21.]

§ 3351. [3345-22.] Determination of Amount.

(1) To determine the amount of the guaranty fund of a savings bank its total liabilities due and accrued, its undivided profits and its net earnings since the last declaration of dividends shall be subtracted from its total assets. The value of its assets for the purpose of this calculation shall be stated as follows:

(a) Its interest bearing bonds, or other obligations shall not be valued above the estimated market value thereof as last determined by the state examiner.

(b) The value of its real estate shall not in any event be estimated above cost, and if such real estate has been acquired by foreclosure, judgment or decree the value of such real estate so acquired shall not be estimated above its actual cash value as determined by written appraisal signed by at least three trustees of such savings bank and filed with it.

(c) Such assets shall be excluded as have been disallowed by the state examiner or the trustees of such bank and also any debts owing to it which shall have remained due without prosecution and upon which no interest shall have been paid for more than one year, or on which a judgment has been recovered which shall have remained unsatisfied for more than two years, unless the state examiner upon application by such savings bank shall have fixed a valuation at which such debts may be carried as an asset, or unless such debts are secured by first mortgage upon real estate, in which latter case they may be carried at the actual cash value of such real estate as determined by written appraisal signed by at least three trustees of such savings bank and filed with it.

(2) The amount of the guaranty fund of a savings bank at the close of any dividend period may be determined by adding to the guaranty fund at the beginning of such period any appreciation in the estimated market value of its securities resulting from a revaluation thereof by the state examiner, the sums recovered on items previously charged to it and any amounts allowed by the state examiner on account of assets previously disallowed and charged to it, and deducting therefrom all losses sustained by the savings bank during such period. In the computation of losses all items shall be included which shall have been disallowed by its board of trustees or by the state examiner, together with any depreciation in the value of its securities below their estimated market value as last fixed by the state examiner, and all debts owing to it upon which no interest shall have been paid for one year or on which a judgment has been recovered which shall have remained unsatisfied for two years, unless the state examiner upon the application of the savings bank shall have fixed a value

at which such debts may be allowed or unless such debts are secured by first mortgage upon real estate, in either of which events only the amounts by which such debts exceed the value allowed by the state examiner or the cash value of the real estate securing them as determined by written appraisal signed by at least three trustees of such savings bank and filed with it, need be so deducted. [L. '15, p. 569, § 22.]

§ 3352. [3345-23.] Earnings—Determination.

(1) Gross Earnings. To determine the amount of gross earnings of a savings bank during any dividend period the following items may be included:

(a) All earnings actually received during such period, less interest accrued and unpaid included in the last previous calculation of earnings;

(b) Interest accrued and unpaid upon debts owing to it secured by collateral as authorized by this article, upon which there has been no default for more than one year, and upon corporate bonds, or other interest bearing obligations owned by it upon which there is no default;

(c) The sums added to the cost of securities purchased for less than par as a result of amortization;

(d) Any profits actually received during such period from the sale of securities, real estate or other property owned by it.

(2) Net Earnings. To determine the amount of its net earnings for such dividend period the following items shall be deducted from gross earnings:

(a) All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts and the management of its affairs, less expenses incurred and interest accrued upon its debts deducted at the last previous calculation of net earnings for dividend purposes;

(b) Interest paid or accrued and unpaid upon debts owing by it;

(c) The amounts deducted through amortization from the cost of bonds or other interest bearing obligations purchased above par in order to bring them to par at maturity;

(d) Any losses that may have been sustained by it in excess of its guaranty fund and undivided profits.

The balance thus obtained shall constitute the net earnings of such savings bank for such period. [L. '15, p. 570, § 23.]

§ 3353. [3345-24.] Deficit in Guaranty Fund—Replacement—Dividends.

If at the close of any dividend period the guaranty fund of any savings bank be less than ten per centum of the amount due to depositors there shall be deducted from its net earnings for such period and credited to its guaranty fund not less than five per centum and not more than ten per centum of its net earnings during the calendar year next preceding, or so much of such percentages as will not compel it to reduce its dividends to depositors below the rate of three and one-half per centum per annum. The amount of net earnings remaining after such deduction for the guaranty fund and its undivided profits shall be available for the declaration of dividends for such period. While the trustees of such a

savings bank are paying its expenses or any portion thereof the amounts to be credited to its guaranty fund shall be computed at the same percentage upon the total dividends credited to its depositors instead of upon its net earnings. If the guaranty fund accumulated from earnings shall equal or exceed ten per centum of the amount due to depositors, the minimum dividend shall be four per centum: Provided, that the net earnings for such period are sufficient therefor. [L. '15, p. 571, § 24.]

§ 3354. [3345-25.*] Dividends—Rate—Declaration—Liability.

Every savings bank shall regulate the rate of dividends not to exceed six per cent per annum upon the amounts to the credit of depositors therewith, in such manner that depositors shall receive as nearly as may be all the earnings of the savings bank after transferring the amount required by section 3353 and such further amounts as its trustees may deem it expedient and for the security of the depositors to transfer to the guaranty fund, which to the amount of ten per cent of the amount due its depositors the trustees shall gradually accumulate and hold. Such trustees may also deduct from its net earnings, and carry as undivided profits for the purpose of maintaining its rate of dividends, such additional sums as they may deem wise.

(2) Every savings bank may classify its depositors according to the character, amount or duration of their dealings with the savings bank, and may regulate the dividends in such manner that each depositor shall receive the same ratable portion of dividends as all others of his class.

(3) Unimpaired contributions to the initial guaranty fund and to the expense fund, made by the incorporators or trustees of such savings bank, shall be entitled to have dividends apportioned thereon, which may be credited and paid to such incorporators or trustees. Whenever the guaranty fund of any such savings bank is sufficiently large to permit the return of such contributions, the contributors may receive dividends thereon not theretofore credited or paid at the same rate paid to depositors.

(4) A savings bank shall not

(a) Declare, credit or pay any dividend except as authorized by a vote of a majority of the board of trustees duly entered upon their minutes, whereon shall be recorded the ayes and naves upon each vote.

(b) Pay any dividend other than the regular quarterly or semi-annual dividend, or the extra dividend prescribed in subdivision six of this section.

(c) Declare, credit or pay dividends on any amount to the credit of a depositor for a longer period than the same has been credited: Provided, however, that deposits made not later than the tenth business day of the month commencing any semi-annual or quarterly dividend period, or the fifth business day of any month, or withdrawn upon one of the last three business days of the month ending any quarterly or semi-annual dividend period, may have dividends declared upon them for the whole of the period or month when they were so deposited or withdrawn: And provided further, that, if the by-laws so provide, accounts closed between dividend periods may be credited with dividends at the rate of the last dividend, computing from the first dividend period to the date when closed.

(5) Whenever any dividend shall, except as provided in subdivision six of this section, be declared and credited in excess of profits earned and appearing to the credit of the savings bank since the last declaration of dividends, after making the deduction for expenses, for amortization and for the guaranty fund as provided in sections 3345, 3353 and 3354, the trustees voting for such dividend shall be jointly and severally liable to such savings bank for the amount of such excess so declared and credited.

(6) The trustees of any savings bank whose undivided profits and guaranty fund, determined in the manner prescribed in section 3352, amount to more than twenty-five per cent of the amount due its depositors, shall at least once in three years divide equitably the accumulation beyond such twenty-five per cent as an extra dividend to depositors in excess of the regular dividend authorized. A notice posted conspicuously in a savings bank of a change in the rate of dividends shall be equivalent to a personal notice. [L. '21, p. 620, § 4; L. '19, p. 700, § 3; L. '15, p. 572, § 25.]

§ 3355. [3345-26.] Surplus, How Determined.

In determining the per centum of par value surplus held by any savings bank, its interest bearing bonds shall not be estimated above their par value or above their market value if below par. Its bonds, notes and mortgages on which there are no arrears of interest for a longer period than six months shall be estimated at their face, and its real property at not above cost. But the value of such bonds, notes and mortgages, as are in arrears of interest for six months or more, and of all other investments not herein enumerated, shall be estimated according to the valuation placed thereon by the state examiner as provided in section 3351. [L. '15, p. 574, § 26.]

§ 3356. [3345-27.] Misleading Advertisement of Surplus or Guaranty.

No savings bank shall put forth any sign or notice or publish or circulate any advertisement or advertising literature upon which or in which it shall be stated that such savings bank has a surplus or guaranty fund in excess of its market value surplus or guaranty fund as determined under the provisions of this act, unless the nature of the same be clearly made to appear. [L. '15, p. 574, § 27.]

§ 3357. [3345-28.] Trustees—Qualifications.

(1) There shall be a board of trustees who shall have the entire management and control of the affairs of the savings bank. The persons named in the certificate of authorization shall be the first trustees. The board shall consist of not less than nine members nor more than thirty members.

(2) A person shall not be a trustee of a savings bank, if he

(a) Is not a resident of this state;

(b) Has been adjudicated a bankrupt or has taken the benefit of any insolvency law, or has made a general assignment for the benefit of creditors;

(c) Has suffered a judgment recovered against him for a sum of money to remain unsatisfied of record or unsecured on appeal for a period of more than three months;

(d) Is a trustee, officer, clerk or other employee of any other savings bank.

(3) Nor shall a person be a trustee of a savings bank solely by reason of his holding public office. [L. '15, p. 574, § 28.]

§ 3358. [3345-29.] Oath of Trustee—Declarations of Incumbency.

(1) Each trustee, whether named in the certificate of authorization or elected to fill a vacancy, shall, when such certificate of authorization has been issued, or when notified of such election, take an oath that he will, so far as it devolves on him, diligently and honestly administer the affairs of the savings bank, and will not knowingly violate, or willingly permit to be violated any of the provisions of law applicable to such savings bank. Such oath shall be subscribed by the trustee making it and certified by the officer before whom it is taken, and shall be immediately transmitted to the state examiner and filed and preserved in his office.

(2) Prior to the first day of March in each year, every trustee of every savings bank shall subscribe a declaration to the effect that he is, at the date thereof, a trustee of the savings bank, and that he has not resigned, become ineligible, or in any other manner vacated his office as such trustee. Such declaration shall be acknowledged in like manner as a deed to be entitled to record and shall be transmitted to the state examiner and filed in his office prior to the tenth day of March in each year. [L. '15, p. 575, § 29.]

§ 3359. [3345-30.] Officers.

The board of trustees shall elect from their number or otherwise, a president and two vice-presidents and such other officers as they may deem fit. [L. '15, p. 575, § 30.]

§ 3360. [3345-31.] Quorum—Meetings—Statements.

(1) A quorum at any regular or special or adjourned meeting of the board of trustees shall consist of not less than five of whom the president shall be one, except when he is prevented from attending by sickness or other unavoidable detention, when he may be represented in forming a quorum by the first vice-president, or in case of his absence for like cause, by the second vice-president; but less than a quorum shall have power to adjourn from time to time until the next regular meeting.

Regular meetings of the board of trustees shall be held at least once a month.

(2) The board of trustees shall by resolution duly recorded in the minutes, designate an officer or officers whose duty it shall be to prepare and submit to each trustee at each regular meeting of the board, or to an executive committee of not less than five members of such board, a written statement of all the purchases and sale of securities, and of every loan, made since the last regular meeting of the board, describing the collateral to such indebtedness as of the date of meeting at which such statement is submitted; but such officer or officers may omit from such statement loans of less than one thousand dollars, except as hereinafter provided. Such statement shall also contain a list giving the aggregate

of loans to each individual partnership, unincorporated association or corporation whose liability to the savings bank has been increased one thousand dollars or more since the last regular meeting of the board, together with a description of the collateral to such indebtedness held by the savings bank at the date of the meeting at which such statement is submitted. A copy of such statement, together with a list of the trustees present at such meeting, verified by the affidavit of the officer or officers charged with the duty of preparing and submitting such statement shall be filed with the records of the savings bank within one day after such meeting, and shall be presumptive evidence of the matters therein stated. [L. '15, p. 575, § 31.]

§ 3361. [3345-32.] Compensation of Trustees.

(1) A trustee of a savings bank shall not directly or indirectly receive any pay or emolument for his attendance at meetings of the board, or for any other services as trustee, except as provided in this section.

(2) Trustees acting as officers of the savings bank, whose duties require and receive their regular and faithful attendance at the institution, and the trustees appointed as a committee to examine the vouchers and assets pursuant to section 3367, to perform the duties required by subdivision 2, of section 3360, or to render other special services as members of committees provided for in the by-laws, may receive such compensation as in the opinion of a majority of the board of trustees shall be just and reasonable; but such majority shall be exclusive of any trustee to whom such compensation shall be voted.

(3) An attorney for a savings bank, although he be a trustee thereof, may receive a reasonable compensation for his professional services, including examinations and certificates of title to real property on which mortgage loans are made by the savings bank; or if the savings bank requires the borrowers to pay all expenses of searches, examinations and certificates of title, including the drawing, perfecting and recording of papers, such attorney may collect of the borrower and retain for his own use and the usual fees for such services, excepting any commissions as broker or on account of placing or accepting such mortgage loans.

(4) If an officer or attorney of a savings bank shall receive, on any loan made by the savings bank, any commission which he is not authorized by this section to retain for his own use, he shall immediately pay the same over to the savings bank. [L. '15, p. 576, § 32.]

§ 3362. [3345-33.] Changing Number of Trustees.

The board of trustees of every savings bank may, by resolution incorporated in its by-laws, increase or reduce the number of trustees named in the original charter or certificate of authorization.

(1) The number may be increased to a number designated in the resolutions and not exceeding thirty: Provided, that reasons therefor are shown to the satisfaction of the state examiner and his written consent thereto is first obtained.

(2) The number may be reduced to a number designated in the resolution but not more than thirty or less than nine. The reduction shall be

effected by omissions to fill vacancies occurring in the board. [L. '15, p. 577, § 33.]

§ 3363. [3345-34.] Restrictions on Trustees.

(1) A trustee of a savings bank shall not

(a) Have any interest, direct or indirect, in the gains or profits of the savings bank, except to receive dividends upon the amounts contributed by him to the guaranty fund and the expense fund of the savings bank as provided in sections 3319 and 3320.

(b) Become a member of the board of directors of a bank, trust company or national banking association of which board enough other trustees of the savings bank are members to constitute with him a majority of the board of trustees.

(2) Neither a trustee nor an officer of a savings bank shall

(a) For himself or as agent or partner of another, directly or indirectly use any of the funds or deposits held by the savings bank, except to make such current and necessary payments as are authorized by the board of trustees.

(b) Receive directly or indirectly and retain for his own use any commission on or benefit from any loan made by the savings bank, or any pay or emolument for services rendered to any borrower from the savings bank in connection with such loan, except as authorized by section 3361.

(c) Become an indorser, surety or guarantor, or in any manner an obligor, for any loan made by the savings bank.

(d) For himself or as agent or partner of another, directly or indirectly borrow any of the funds or deposits held by the savings bank, or become the owner of real property upon which the savings bank holds a mortgage. A loan to or a purchase by a corporation in which he is a stockholder to the amount of fifteen per centum of the total outstanding stock, or in which he and other trustees of the savings bank hold stock to the amount of twenty-five per centum of the total outstanding stock, shall be deemed a loan to or a purchase by such trustee within the meaning of this section; except when the loan to or purchase by such corporation shall have occurred without his knowledge or against his protest. A deposit in a bank shall not be deemed a loan within the meaning of this section. [L. '15, p. 577, § 34.]

§ 3364. [3345-35.] Removal of Trustee—Proceedings.

(1) Whenever, in the judgment of three-fourths of the trustees, the conduct and habits of a trustee of any savings bank are of such character as to be injurious to such savings bank, or he has been guilty of acts that are detrimental or hostile to the interests of such savings bank, he may be removed from office, at any regular meeting of the trustees, by the affirmative vote of three-fourths of the total number thereof: Provided, however, that a written copy of the charges made against him shall have been served upon him personally at least two weeks before such meeting, that the vote of such trustees by ayes and nays shall be entered in the record of the minutes of such meeting, and that such removal shall receive the written approval of the state examiner, which shall be attached to the minutes of such meeting and form a part of the record.

(2) The office of a trustee of a savings bank shall immediately become vacant whenever he

(a) Shall fail to comply with any of the provisions of section 3358, relating to his official oath and declaration;

(b) Shall become disqualified for any of the reasons specified in subdivision 2 of section 3357;

(c) Shall have failed to attend the regular meetings of the board of trustees, or to perform any of his duties as trustee, for a period of six successive months, unless excused by the board of [for] such failure;

(d) Shall violate any of the provisions of section 3363 hereof imposing restrictions upon trustees and officers, except paragraph (c) of subdivision two hereof.

(3) A trustee who has forfeited or vacated his office shall not be eligible to re-election, except when the forfeiture or vacancy occurred solely by reason of his

(a) Failure to comply with the provisions of section 3358, relating to his official oath and declaration; or

(b) Neglect of his official duties as prescribed in paragraph (c) of subdivision two of this section; or

(c) Disqualification through becoming a nonresident, or becoming a trustee, officer, clerk or other employee of another savings bank, or becoming a director of a bank, trust company or national banking association under the circumstances specified in paragraph (b) of subdivision one of section 3363, and such disqualification shall have been removed. [L. '15, p. 578, § 35.]

§ 3365. [3345-36.] Filling Vacancies.

A vacancy in the board of trustees shall be filled by the board as soon as practicable, at a regular meeting thereof. [L. '15, p. 580, § 36.]

§ 3366. [3345-37.] Surety Bonds of Officers and Employees.

The trustees of every savings bank shall have power to require from the officers, clerks and agents thereof such security for their fidelity and the faithful performance of their duties as the trustees shall deem necessary. Such security may be accepted from any company authorized to furnish fidelity bonds and doing business under the laws of this state, and the premiums therefor may be paid as a necessary expense of said savings bank. [L. '15, p. 580, § 37.]

§ 3367. [3345-38.] Semi-annual Examination of Books and Assets.

The trustees of every savings bank, by a committee of not less than three of their number, on or before the first days of January and July in each year, shall thoroughly examine books, vouchers and assets of such savings bank, and its affairs generally. The statement or schedule of assets and liabilities reported to the state examiner for the first of January and July in each year, as provided in the section next following, shall be based upon such examinations, and shall be verified by the oath of a majority of the trustees making it; and the trustees of any savings bank may require such examination at such other times as they shall pre-

scribe. The trustees shall, as often as once in each six months during each year, cause to be taken an accurate balance of their depositors' ledgers, and in their semi-annual report to the state examiner they shall state the fact that such balance has been taken, and the discrepancies, if any, existing between the amount due depositors, as shown by such balance, and the amount so due as shown by the general ledger. [L. '15, p. 580, § 38.]

§ 3368. [3345-39.] Reports to Bank Examiner.

(1) Semi-annual report. On or before the first day of February and the first day of August in each year every savings bank shall make written report to the state examiner which report shall be in the form prescribed by the state examiner and shall contain a statement of its condition on the morning of the first day of January and of the first day of July in the said year, respectively.

(2) Contents of report. Every such report shall state the amount loaned upon note or bond and mortgage, and a list of all notes, bonds and mortgages upon which money has been loaned that have not been previously reported, which list shall show the location of the mortgaged premises. It shall contain a list of all notes, bonds and mortgages previously reported that since have been paid wholly or in part or have been foreclosed and the amounts of such payments and the proceeds of such foreclosures. It shall state the original cost, date of purchase, date of maturity, stated rate of interest, the present cost after amortization, par value, and estimated market value, of all bond or warrant investments, designating each particular kind of bond or warrant; the amounts loaned upon promissory notes, upon the pledge of the different classes of securities authorized by this act, with a statement of the amount of the securities held as collateral for such loans; the amount invested in real estate, giving the cost of the same, and, in the case of real estate purchased at judicial sale or taken in satisfaction of debts due the savings bank, the actual cash value thereof as appraised by its trustees; the amount of cash on hand, and on deposit in banks or trust companies, and the amount deposited in each.

The present cost of bond investments shall be determined by amortization as provided in section 3345 hereof. The estimated market value of the bond investments shall be determined according to current values, subject to correction by the state examiner.

Such report shall state all the liabilities of the savings bank, the amount due to depositors, which shall include any dividend to be credited to them for the six months ending on the day as to which such report is made, and all other debts and claims against the savings bank, which are or may be a charge upon its assets.

Such report shall state the amount deposited and the amount withdrawn during the twelve months immediately preceding; the whole amount of profits or interest received or earned and the whole amount of dividends credited to depositors, together with the amount of each dividend and the rate at which it was declared, the number of accounts opened or reopened, the number closed during the preceding six months, the number

of open accounts at the end of the period for which said report is made, and such other information as may be required by the state examiner.

(3) Verification. Every such report shall be verified by the oaths of the two principal officers in charge of the affairs of the savings bank at the time of such verification, which shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the savings bank has been transacted at the location required by this act and not elsewhere.

(4) Special reports. Every savings bank shall also make such other special reports to the state examiner as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the state examiner and shall, if required by him, be verified in such manner as he may prescribe.

(5) Penalty. If any such savings bank shall fail to make any report mentioned by this section, on or before the day designated for the making thereof, or shall fail to include therein any matter required by the state examiner to be stated, such savings bank shall forfeit to the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the state examiner, which extension he may grant, by a written order only, for not exceeding twenty days. [L. '15, p. 580, § 39.]

See notes to § 3313, supra.

§ 3369. [3345-40.] Official Communications from Bank Examiner.

Each official communication directed by the state examiner or one of his deputies to such savings bank or to any officer thereof, relating to an investigation or examination conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the savings bank, shall be submitted by the officer receiving it to the board of trustees at the next meeting of such board, and duly noted in the minutes of the meetings of such board. [L. '15, p. 582, § 40.]

§ 3370. [3345-41.] Forfeiture for Delay in Organization—Extension.

Every corporation authorized by this act which shall not organize and commence business within one year after the certificate of authorization has been issued, shall forfeit its rights and privileges as a corporation, which fact the state examiner shall certify to the county auditor in whose office the certificate was filed, and to the secretary of state, and the certificate of forfeiture shall be filed in the office of the county auditor and filed and recorded in the office of the secretary of state in the same manner as the certificate of authorization: Provided, that the state examiner may for satisfactory cause to him shown by an order under his hand and official seal extend for not more than one year the time within which such organization may be effected, and business commenced, such order to be transmitted to the offices of such county auditor and the secretary of state and filed and recorded therein. [L. '15, p. 583, § 41.]

See notes to § 3313, supra.

§ 3371. [3345-42.*] Excess Deposits—Notice to Reduce.

The secretary of every such bank shall at least once each year send notice by mail to each depositor who has to his credit a sum in excess of the maximum permitted by section 3346, stating the amount of such excess, and notifying the depositors that such excess will not participate in dividends, and requiring him to reduce the amount so that the same shall not exceed the maximum. [L. '19, p. 702, § 4. Cf. L. '15, p. 583, § 42.]

§ 3372. [3345-43.] Calling Deposit-books.

Within two years after organization, and each third year thereafter, every such bank shall call in the books of deposit for verification under rules to be prescribed in its by-laws. [L. '15, p. 583, § 43.]

§ 3373. [3345-44.] Expenditure for Management and Operation.

No such bank shall in the course of any fiscal year (which fiscal year shall be deemed to expire on the last day of December in each year) pay or become liable to pay either directly or indirectly for expenses of management and operation more than two and one-half per centum of its average assets during such year. [L. '15, p. 583, § 44.]

§ 3374. [3345-45.] Dissolution and Liquidation.

If the trustees of any solvent mutual savings bank shall deem it necessary or expedient to close the business of such bank, they may, by affirmative vote of not less than two-thirds of the whole number of trustees, at a meeting called for that purpose, of which one month's notice has been given, either personally or by mailing such notice to the postoffice address of each trustee, declare by resolution their determination to close such business and pay the moneys due depositors and creditors and to surrender the corporate franchise. Subject to the approval and under the direction of the state examiner, such savings bank may adopt any lawful plan for closing up its affairs, as nearly as may be in accordance with the original plan and objects. [L. '15, p. 584, § 45.]

§ 3375. [3345-46.] Unpaid Depositors and Creditors—Transfer of Balances—Dissolution.

When the trustees, acting under the provisions of the preceding section, shall have paid the sums due respectively to all creditors and depositors, who, after such notice as the state examiner shall prescribe, claim the money due and their deposits, the trustees shall make a transcript or statement from the books in the bank of the names of all depositors and creditors who have not claimed or have not received the balance of the credit due them, and of the sums due them, respectively, and shall file such transcript with the state examiner and pay over and transfer all such unclaimed and unpaid deposits, credits and moneys to the state examiner. The trustees shall then report their proceedings duly verified, to the superior court of the county wherein the bank is located, and upon such report and the petition of the trustees, and after notice to the attorney-general and the state examiner, and such other notice as the court may deem necessary, the court shall adjudge the franchise surren-

dered and the existence of the corporation terminated, certified copies of which judgment shall be filed in the offices of the secretary of state, state examiner and auditor of the county wherein the bank is located where the same shall be filed, and in the office of the secretary of state recorded.

Nothing herein contained shall prevent the superior court from appointing a receiver of any such corporation for any cause authorizing the appointment of such receiver under the laws of the state. [L. '15, p. 584, § 46.]

See notes to § 3313, *supra*.

§ 3376. [3345-47.] Certified Copies as Evidence.

Copies from the records, books and accounts of a mutual savings bank shall be competent evidence in all cases, equal with originals thereof, if there is annexed to such copies an affidavit taken before a notary public or clerk of a court under seal, stating that the affiant is the officer of the bank having charge of the original records, and that the copy is true and correct and is full so far as the same relates to the subject matter therein mentioned. [L. '15, p. 585, § 47.]

§ 3377. [3345-48.] Changing Place of Business—Approval.

Any savings bank may make a written application to the state examiner for leave to change its place of business to another place in the same county. The application shall state the reasons for such proposed change, and shall be signed and acknowledged by a majority of its board of trustees. If the proposed place of business is within the limits of the town or city in which the present place of business of the savings bank is located, such change may be made upon the written approval of the examiner; if beyond such limits, notice of intention to make such application, signed by two principal officers of the savings bank, shall be published once a week for two successive weeks immediately preceding such application in a daily newspaper published in the city of Olympia and shall be published in like manner in a newspaper to be designated by the state examiner, published in the county in which the present place of business of such savings bank is located. If the state examiner shall grant his certificate authorizing the change of location, which in his discretion he may do, the savings bank shall cause such certificate to be published once in each week for two successive weeks in the newspapers in which the notice of application was published. When the requirements of this section shall have been fully complied with, the savings bank may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its principal place of business shall be the location so specified; and it shall have all the rights and powers in such new location which it possessed at its former location. [L. '15, p. 585, § 48.]

See notes to § 3313, *supra*.

§ 3378. [3345-49.] Definitions.

The use of the term "savings bank" in this act refers to mutual savings banks only.

The use of the words "mutual savings" as part of a name under which business of any kind is or may be transacted by any person, firm

or corporation, except such as are organized and in actual operation at the time of the passage of this act, or may be hereafter organized and operated under the requirements of this act, is hereby prohibited. [L. '15, p. 586, § 49.]

§ 3379. [3345-50.] Schedule of Existing Laws Applicable.

The provisions of sections 2640, 2641, 2642, . . . shall apply to the corporations authorized under this act. [L. '15, p. 586, § 50.]

Sections "2810, 2811," included in the above list, of Rem. & Bal. Code, relating to larceny of bank deposits, were repealed by § 2304, *supra*.

§ 3380. [3345-51.] Penalty.

Any person who shall do anything forbidden by this act for which a penalty is not provided in this act, or in some other law of the state, shall be guilty of a gross misdemeanor and be punished accordingly. [L. '15, p. 586, § 51.]

§ 3381. [3345-52.] Scope of Act Cumulative.

This act shall not be construed as amending or repealing any other law of the state authorizing the incorporation of banks or regulating the same, but shall be deemed to be additional legislation for the sole purpose of authorizing the incorporation and operation of mutual savings banks as herein prescribed. Savings banks incorporated on the stock plan and other stock banks having savings departments as authorized by sections 3336 and 3337 of Remington & Ballinger's Annotated Codes and Statutes of Washington, or by any other law of the state heretofore or hereafter enacted, shall not be in any manner affected by the provisions of this act, or any amendment thereto. [L. '15, p. 586, § 52.]

Sections 3336 and 3337 have since been repealed.

Barbers. See "Licenses," § 8277.

Baseball-playing. Bribery, see § 2321-1.

Bathing Beaches. See Parks, § 9319.

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Benevolent Institutions. See "Corporations," § 3863.

Bill of Exceptions. See §§ 381-397.

Billiards. See "Licenses," § 8289.

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BILLS AND NOTES.

TITLE XIX.

BILLS AND NOTES.

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CHAPTER I.

CHAPTER I.—NEGOTIABLE INSTRUMENTS.

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CHAPTER I.

NEGOTIABLE INSTRUMENTS.

The section numbers in this chapter correspond to the section numbers in Remington and Ballinger's Code.

§ 3392. Negotiability, What Constitutes.

An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;
2. Must contain an unconditional promise or order to pay a sum certain in money;
3. Must be payable on demand, or at a fixed or determinable future time;
4. Must be payable to order or to bearer; and,
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. [L. '99, p. 340, § 1.]

For former laws on the subject of negotiable bills and notes, see L. '54, pp. 400-402; L. '60, pp. 302, 303; L. '63, pp. 427-429; Cd. '81, §§ 2295-2309; 1 H. C., §§ 2383-2397; Bal. Code, §§ 3650-4664.

Negotiable bills of lading, etc., see two previous chapters of this title.

See supra, § 157, and notes, statute of limitations.

See supra, § 191, action by assignee of chose in action.

See supra, § 974 et seq., and notes, actions to protect sureties.

See supra, § 1116 et seq., foreclosure of mortgages.

See supra, § 1143, promissory note not to discharge statutory liens.

See infra, § 3825, and notes, private corporations.

See infra, § 7299, legal interest.

See infra, § 11148, notes, etc., made and drawn by telegraph.

Cited in 62 Wash. 443; 66 Wash. 263, 378; 66 Wash. 377; 72 Wash. 611; 74 Wash. 661; 81 Wash. 445-447; 91 Wash. 624; 94 Wash. 511, 515, 516; 96 Wash. 543.

Negotiability: See Remington's Digest, Bills & N., § 34; Kinkade v. Witherop, 29 Wash. 10, 69 Pac. 399; Barker v. Sartori, 66 Wash. 260, 119 Pac. 611; Quast v. Ruggles, 72 Wash. 609, 131 Pac. 202; Coolidge & McClaine v. Saltmarsh, 96 Wash. 541, 165 Pac. 508.

See, also, Bleitz v. Bryant Lbr. Co., 113 Wash. 455, 194 Pac. 550.

Limitation of Actions on Bills and Notes: See Remington's Digest, Bills & N., §§ 94, 95. **Time of Accrual:** Commercial Bank of Tacoma v. Hart, 10 Wash. 303, 38 Pac. 1114; George v. Butler, 26 Wash. 456, 67 Pac. 263, 90 Am. St. Rep. 756, 57 L. R. A. 396; Haggard v. Sanglin, 69 Wash. 151, 124 Pac. 373.

§ 95. — **Option of Holder:** Frank v. Pickle, 2 W. T. 55, 3 Pac. 584; Main v. Johnson, 7 Wash. 321, 35 Pac. 67.

Pleading Extension of Time and Agreement not to Sue: See Remington's Digest, Bills & N., § 113; Commercial Bank of Tacoma v. Hart, 10 Wash. 303, 38 Pac. 1114.

Parties to Actions: See Remington's Digest, Bills & N., §§ 100-102.

§ 100. **Parties Plaintiff—In General:** McDaniel v. Pressler, 3 Wash. 636, 29 Pac. 209; Riddell v. Prichard, 12 Wash. 601, 41 Pac. 905; Seattle Nat. Bank v. Emmons, 16 Wash. 585, 48 Pac. 262.

§ 101. — **Joinder:** Ritterhoff v. Puget Sound Nat. Bank, 37 Wash. 76, 79 Pac. 601, 107 Am. St. Rep. 791.

§ 102. **Joinder of Defendants in General:** Shuey v. Adair, 18 Wash. 188, 51 Pac. 388, 63 Am. St. Rep. 879, 39 L. R. A. 473; Commercial Bank of Vancouver v. Scott, 6 Wash. 499, 33 Pac. 829, 34 Pac. 434; McDonough v. Craig, 10 Wash. 239, 38 Pac. 1034; Clark v. Eltinge, 29 Wash. 215, 69 Pac. 736; Gund v. Parke, 15 Wash. 393, 46 Pac. 408.

Issues, Proof and Variance: See Remington's Digest, Bills & N., § 116; Tullis

v. Shannon, 3 Wash. 716, 29 Pac. 449; Hanson v. Tompkins, 2 Wash. 508, 27 Pac. 73; Hinchman v. Point Defiance R. Co., 14 Wash. 349, 44 Pac. 867; Commercial Bank of Tacoma v. Toklas, 21 Wash. 36, 56 Pac. 927; Bay View Brewing Co. v. Grubb, 24 Wash. 163, 63 Pac. 1091; German American Bank of Seattle v. Wright, 85 Wash. 460, 148 Pac. 769.

Plea or Answer—Traverses or Denials and Admissions in General: See Remington's Digest, Bills & N., § 109; Lamber-ton v. Shannon, 13 Wash. 404, 43 Pac. 336; Columbia Nat. Bank v. Western Iron etc. Co., 14 Wash. 162, 44 Pac. 145; Port Townsend Southern R. Co. v. Weir, 15 Wash. 507, 46 Pac. 1044; Adams v. Casey, 39 Wash. 37, 89 Pac. 853; O'Connor v. Slatter, 48 Wash. 493, 93 Pac. 1078; Citizens' Savings Bank v. Houtchens, 64 Wash. 275, 116 Pac. 866; First National Life Assurance Society of America v. Farquhar, 75 Wash. 667, 135 Pac. 619; Seattle National Bank v. Becker, 74 Wash. 431, 133 Pac. 613; Gwinn v. Ford, 85 Wash. 571, 148 Pac. 891.

An indorsement of a fictitious payment on the back of a note offered for discount, reducing the amount of the principal sum, as a condition precedent to discount or negotiation, is not made after "execution" of the note, and is therefore a material alteration, although the note had been signed, since it had not been delivered, and execution requires both signature and delivery of a note meeting all the requirements of the Negotiable Instruments Act, section 3392: Washington Finance Corporation v. Glass, 74 Wash. 653, 134 Pac. 480, 46 L. R. A. (N. S.) 1043.

The discounting of a "wheat" note obligating the maker to grow and deliver certain wheat is not usurious, within section 7299, infra, providing that the discounting of "commercial" paper, shall be considered as a loan within the usury laws; since it is not commercial paper, within sections 3392, 3396: Thomson v. Koch, 62 Wash. 438, 113 Pac. 1110.

TRIAL: See Remington's Digest, Bills & N., §§ 143-150. **Amount of Recovery—Interest:** Roeder v. Brown, 1 W. T. 112;

Cissna Loan Co. v. Gawley, 87 Wash. 438, 151 Pac. 792.

§ 145. **Trial—Conduct:** *Allen v. Chambers*, 13 Wash. 327, 43 Pac. 57.

§ 146. — **Questions for Jury:** *Wilkie v. Chandon*, 1 Wash. 355, 25 Pac. 464; *Wolverton v. Glascock*, 15 Wash. 279, 46 Pac. 253; *National Bank of Commerce v. Drewry*, 70 Wash. 577, 127 Pac. 102; *Angus v. Downs*, 85 Wash. 75, 147 Pac. 630, L. R. A. 1915E, 351; *Rohweder v. Titus*, 85 Wash. 441, 148 Pac. 583.

See, also, *Walcott v. Wood*, 109 Wash. 617, 187 Pac. 375.

§ 147. — **Instructions:** *Pilling v. Morze*, 5 Wash. 797, 32 Pac. 748; *Weeks v. Bussell*, 8 Wash. 440, 36 Pac. 265; *Bay*

View Brewing Co. v. Tecklenberg, 19 Wash. 469, 53 Pac. 724.

§ 148. — **Verdict and Findings:** *Marine Savings Bank v. Young*, 5 Wash. 394, 31 Pac. 864; *Riddell v. Prichard*, 12 Wash. 601, 41 Pac. 905; *Furth v. Baxter*, 24 Wash. 608, 64 Pac. 798; *Gleeson v. Lichty*, 2 Wash. 656, 114 Pac. 518.

§ 149. **Judgment:** *Main v. Johnson*, 7 Wash. 321, 35 Pac. 67; *Puget Sound Nat. Bank v. Levy*, 10 Wash. 499, 39 Pac. 142, 45 Am. St. Rep. 803.

§ 150. **Appeal and Error:** *Howard v. Shaw*, 10 Wash. 151, 38 Pac. 746; *Gould v. Gleason*, 10 Wash. 476, 39 Pac. 123.

What are negotiable instruments. 14 Am. Dec. 421; Ann. Cas. 1912D, 4.

§ 3393. "Sum Certain" Defined.

The sum payable is a sum certain within the meaning of this act, although it is to be paid—

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fees, in case payment shall not be made at maturity. [L. '99, p. 340, § 2.]

Cited in 66 Wash. 263; 81 Wash. 445—447.

Under this section, conditions in a note that if default be made in the payment of any of certain interest notes, as the same mature, for the space of thirty days, the whole amount of the note will

at once be due and payable, together with provisions for payment with exchange on New York and for a reasonable attorney's fee in case of suit, do not render the note non-negotiable: *Bright v. Offield*, 81 Wash. 442, 143 Pac. 159.

§ 3394. "Unconditional" Defined.

An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with—

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay only out of a particular fund is not unconditional. [L. '99, p. 340, § 3.]

Cited in 66 Wash. 379; 81 Wash. 445—447; 91 Wash. 624; 93 Wash. 383, 111 Wash. 312.

This section is but declaratory of the common law, and a note is negotiable if the general credit of the maker accompanies the note: *First National Bank v. Sullivan*, 66 Wash. 375, 119 Pac. 820, Ann. Cas. 1913C, 930.

A recital in a note that it is of even date with a mortgage securing the note, but without expressly adopting the conditions of the mortgage, renders the

mortgage ancillary thereto, the conditions of which alone do not change the character of the note as a negotiable instrument: *Bright v. Offield*, 81 Wash. 442, 143 Pac. 159.

Collateral Agreements and Securities: See *Remington's Digest*, Bills & N., §§ 26-1, 26-2; *Westbrook v. Chapman*, 1 W. T. 227; *Greely v. Newcomb*, 21 Wash. 357, 58 Pac. 216; *Pitt v. Little*, 58 Wash. 355, 108 Pac. 941; *Van Tassel v. McGrail*, 93 Wash. 380, 160 Pac. 1053; *Carey v. Hayz*, 41 Wash. 580, 84 Pac. 581; *Barker*

v. Sartori, 66 Wash. 260, 119 Pac. 611; German-American Bank of Seattle v. Wright, 85 Wash. 460, 148 Pac. 769.

See, also, Northern Bank & Trust Co. v. Coffin, 113 Wash. 326, 194 Pac. 404.

Reference to particular fund or account as affecting negotiability of note. 11 Ann. Cas. 599; Ann. Cas. 1913C, 932; 35 L. R. A. 647; 8 L. R. A. (N. S.) 231.

Contemporaneous written agreement as affecting negotiability of instrument. 5 Ann. Cas. 152; 30 L. R. A. (N. S.) 40; L. R. A. 1918B, 639.

Reference to extrinsic agreements as affecting negotiability of bill or note. 14 A. L. R. 1126.

§ 3395. "Determinable Future Time" Defined.

An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable—

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. [L. '99, p. 341, § 4.]

Cited in 81 Wash. 445—447; 94 Wash. 511.

A provision in a note accelerating maturity by nonpayment of taxes and assessments on property mortgaged to secure the note does not render the note non-negotiable, when considered only with reference to the time of payment, and without regard to the amount thereof; but its negotiable character is destroyed by such a provision if there is an implication that the maker of the note is charged with the payment of the taxes, etc., the amount of which is uncertain, thereby rendering the amount of recovery under the note uncertain: Bright v. Offield, 81 Wash. 442, 143 Pac. 159.

This section, subdivision 2, applies to a note in which the only time of payment is "on or at a fixed period after the

occurrence of a specified event which is certain to happen," and not to a note payable at all events at a time certain, but accelerated in maturity on the happening of a contingency: Bright v. Offield, 81 Wash. 442, 143 Pac. 159.

The negotiability of a promissory note, due on or before four years after date, is not affected by a provision that "if we sell or remove the timber that we have bought on said Johan Joergenson's [payee] homestead claim, before the expiration of said four years, then this note shall be paid at the time of such sale or removal of said timber," since such provision does not change or destroy the maker's absolute liability to pay at the time designated: Joergenson v. Joergenson, 28 Wash. 477, 68 Pac. 913, 92 Am. St. Rep. 888.

§ 3396. Negotiability—Effect of Provisions.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity; or
3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. [L. '99, p. 341, § 5.]

Cited in 62 Wash. 443; 81 Wash. 445—447, 451.

Nature and Form of Instrument—Orders Issued by Municipality: See Remington's Digest, Bills & N., §§ 35—37; Union Sav. Bank etc. Co. v. Gelbach, 8 Wash. 497, 36 Pac. 467, 24 L. R. A. 359; Bardley v. Sternberg, 17 Wash. 243, 49 Pac. 499; Fidelity Trust Co. v. Palmer, 22 Wash. 473, 61 Pac. 158, 79 Am. St. Rep. 953.

§ 35-1. — **Checks:** Peninsula National Bank v. Pederson Construction Co., 91 Wash. 621, 158 Pac. 246.

§ 35-2. — **Bill of Lading and Warehouse Receipts:** First Nat. Bank of Pullman v. Northern Pac. R. R. Co., 28 Wash. 439, 68 Pac. 965; Yarwood v. Happy, 18 Wash. 246, 51 Pac. 461; Roy & Roy v. Northern Pac. R. Co., 42 Wash. 572, 85 Pac. 53, 7 Ann. Cas. 728, 6 L. R. A. (N. S.) 302; Commercial Bank of Port Huron v. Elliott, 92 Wash. 357, 159 Pac. 377.

§ 35-3. — **Instruments Payable from Particular Fund:** Kinkade v. Witherop, 29 Wash. 10, 69 Pac. 399.

§ 35-4. — **Attorney's Fees and Costs:** Second National Bank v. Anglin, 6 Wash. 403, 33 Pac. 1056.

§ 36. **Conditions and Restrictions in Instrument:** Joergenson v. Joergenson, 28 Wash. 477, 68 Pac. 913, 92 Am. St. Rep.

888; Moyses v. Bell, 62 Wash. 534, 114 Pac. 193; First National Bank v. Sullivan, 66 Wash. 375, 119 Pac. 820, Ann. Cas. 1913C, 930; Bright v. Offield, 81 Wash. 442, 143 Pac. 159; Puget Sound State Bank v. Washington Paving Co., 94 Wash. 504, 162 Pac. 870; Moore & Co. v. Burling, 93 Wash. 217, 160 Pac. 420.

§ 37. **Instruments Given as Collateral Security:** Canadian Bank of Commerce v. Sesnon Co., 68 Wash. 434, 123 Pac. 602.

Effect of provision for payment of attorney's fee on negotiability of instrument. 21 Am. Rep. 212; 4 Ann. Cas. 263; Ann. Cas. 1912D, 165; L. R. A. 1916B, 675.

Provision in note for discount if paid within certain time as affecting its negotiability. Ann. Cas. 1918B, 600; 40 L. R. A. (N. S.) 177; L. R. A. 1915E, 564.

Negotiability as affected by provision in relation to interest or discount. 2 A. L. R. 139.

Negotiability of receiver's certificates. Ann. Cas. 1913C, 58.

Warehouse receipts as negotiable. 17 Ann. Cas. 670.

Indorsement to two persons in alternative as affecting negotiability. Ann. Cas. 1915A, 1056; 50 L. R. A. (N. S.) 1097.

§ 3397. Validity and Negotiability—When not Affected.

The validity and negotiable character of an instrument are not affected by the fact that—

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases, the nature of the consideration to be stated in the instrument. [L. '99, p. 341, § 6.]

Pleading Illegality: See Remington's Digest, Bills & N., § 111; Lyts v. Keevey, 5 Wash. 606, 32 Pac. 534; McDaniel v. Preszler, 3 Wash. 636, 29 Pac. 209; Gibson v. Feeney, 66 Wash. 531,

120 Pac. 97; Gwinn v. Ford, 85 Wash. 571, 148 Pac. 891.

Negotiability of note payable in foreign money. 20 L. R. A. 481.

§ 3398. When "Payable on Demand."

An instrument is payable on demand—

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand. [L. '99, p. 342, § 7.]

§ 3399. When "Payable to Order."

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty. [L. '99, p. 342, § 8.]

§ 3400. When "Payable to Bearer."

The instrument is payable to bearer—

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank. [L. '99, p. 342, § 9.]

§ 3401. Intent to Conform to Requirements Sufficient.

The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. [L. '99, p. 342, § 10.]

Cited in 72 Wash. 611.

§ 3402. Date Prima Facie True.

Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement as the case may be. [L. '99, p. 343, § 11.]

Cited in 96 Wash. 77.

In an action upon promissory notes made by a corporation, a prima facie case is established by evidence to the effect that the persons signing as officers were officers of the corporation at the time the notes bear date, that they were authorized to execute notes for the company, and that their signatures were genuine, in view of this section, providing that

the date of a promissory note is deemed prima facie to be the true date of its execution; and it then devolves upon the defendant to establish its defense of forgery in that the note was not executed on its date, by clear, cogent, and convincing evidence: *National City Bank v. Shelton Electric Co.*, 96 Wash. 74, 164 Pac. 933.

§ 3403. Effect of Ante or Post Date.

The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. [L. '99, p. 343, § 12.]

§ 3404. Blank Date—Holder may Fill.

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. [L. '99, p. 343, § 13.]

§ 3405. Defects and Blanks—Holders' Right to Fill.

Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. [L. '99, p. 343, § 14.]

§ 3406. Negotiation Without Delivery or Authority, Invalid.

Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. [L. '99, p. 343, § 15.]

§ 3407. Delivery, What Constitutes.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon,

a valid and intentional delivery by him is presumed until the contrary is proved. [L. '99, p. 344, § 16.]

Cited in 53 Wash. 84; 63 Wash. 77; 85 Wash. 77.

Delivery: See Remington's Digest, Bills & N., §§ 3—5. **Necessity and Sufficiency in General:** Glenn v. Hill, 11 Wash. 541, 40 Pac. 141.

§ 4. — **Conditional Delivery:** Young v. Smith, 14 Wash. 565, 45 Pac. 45.

§ 5. — **Operation and Effect:** Walsh v. Cooper, 10 Wash. 513, 39 Pac. 127.

Under this section, a holder in due course of commercial paper may recover thereon, although the instrument was originally stolen from the maker thereof; this, under the maxim that, where one of two innocent persons must suffer by the wrong of another, he whose act made the loss possible must suffer: Angus v. Downs, 85 Wash. 75, 147 Pac. 630, L. R. A. 1915E, 351.

Presumptions as Execution and Delivery: See Remington's Digest, Bills & N., § 118; Poncin v. Furth, 15 Wash. 201, 46 Pac. 241; Yakima Valley Bank v. McAllister, 37 Wash. 566, 79 Pac. 1119, 107 Am. St. Rep. 823, 1 L. R. A. (N. S.) 1075.

See, also, Foster v. Floyd, 113 Wash. 312, 194 Pac. 407.

Admissibility of Evidence of Execution,

Delivery and Identity of Instruments: See Remington's Digest, Bills & N., § 125; Crane v. Dexter Horton & Co., 5 Wash. 479, 32 Pac. 223; Taylor v. Gale, 14 Wash. 57, 44 Pac. 110.

Evidence is competent to show that the delivery and indorsement of a check to a bank by a depositor, without restriction, is in fact conditional, and for the purpose of collection without passing title, under this section: Morris-Miller Co. v. Van Presentin, 63 Wash. 74, 114 Pac. 912.

Weight and Sufficiency of Evidence—Execution, Delivery and Identity of Instrument: See Remington's Digest, Bills & N., § 135; Bell v. Waudby, 4 Wash. 743, 31 Pac. 18; Crane v. Dexter Horton Co., 5 Wash. 479, 32 Pac. 223; Elwell v. Puget Sound & Chehalis R., 7 Wash. 487, 35 Pac. 376; Warnock v. Itawis, 38 Wash. 144, 80 Pac. 297; Fishburne v. Robinson, 49 Wash. 271, 95 Pac. 80; Handsaker v. Pedersen, 71 Wash. 218, 128 Pac. 230.

See, also, Bank of California v. Starrett, 110 Wash. 231, 188 Pac. 410, 9 A. L. R. 177.

Parol evidence of conditional delivery of bill or note. 3 Ann. Cas. 560; 6 Ann. Cas. 169; 15 Ann. Cas. 669; Ann. Cas. 1917D, 1049; 18 L. R. A. (N. S.) 288; L. R. A. 1917C, 306.

§ 3408. Construction of Ambiguities.

Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply—

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. [L. '99, p. 344, § 17.]

Cited in 78 Wash. 27; 79 Wash. 415; 90 Wash. 696; 110 Wash. 234.

Defendant's signing of a note on the left side of the bottom opposite the maker's signature does not give rise to any presumption that he signed as indorser instead of maker, under this section: *Bank of California v. Starrett*, 110 Wash. 231, 188 Pac. 410, 9 A. L. R. 177.

CONSTRUCTION AND OPERATION: See *Remington's Digest, Bills & N.*, §§ 17, 21—26.

§ 17. What Law Governs: *McCoy v. Ayers*, 2 W. T. 307, 5 Pac. 843; *Adams v. Kelly*, 2 W. T. 263, 5 Pac. 601; *Wolverton v. Exchange Nat. Bank*, 11 Wash. 94, 39 Pac. 247; *Bank v. Doherty*, 42 Wash. 317, 84 Pac. 872, 114 Am. St. Rep. 123, 4 L. R. A. (N. S.) 1191.

§ 21. Interest: *Hazard v. Maxon*, 1 W. T. 584; *Cloud v. Rivord*, 6 Wash. 555, 34 Pac. 136; *Krutz v. Robbins*, 12 Wash. 7, 40 Pac. 415, 50 Am. St. Rep. 871, 28 L. R. A. 676; *Haywood v. Miller*, 14 Wash. 660, 45 Pac. 307; *Cullen v. Whitham*, 33 Wash. 366, 74 Pac. 581; *Equitable Sav. & Loan Assn. v. Bowes*, 70 Wash. 169, 126 Pac. 436.

§ 22. Attorneys' Fees and Costs: *Second Nat. Bank v. Anglin*, 6 Wash. 403, 33 Pac. 1056; *Cloud v. Rivord*, 6 Wash. 555, 34 Pac. 136; *Merrill v. Muzzy*, 11 Wash. 16, 39 Pac. 277; *Exchange Nat. Bank v. Wolverton*, 11 Wash. 108, 39

Pac. 248; *Scholey v. De Mattos*, 18 Wash. 504, 52 Pac. 242; *Scandinavian-American Bank v. Long*, 75 Wash. 270, 134 Pac. 913.

§ 23. Place of Payment: *Bardsley v. Washington Mill Co.*, 54 Wash. 553, 103 Pac. 822, 132 Am. St. Rep. 1133.

§ 24. Time of Maturity: *Heckert v. Hilscher*, 61 Wash. 269, 112 Pac. 365; *Matzger v. Page*, 62 Wash. 170, 113 Pac. 254.

§ 25. Days of Grace: *Joergenson v. Joergenson*, 28 Wash. 477, 68 Pac. 913, 92 Am. St. Rep. 888.

§ 26. Mode and Form of Payment: *Cock v. Blalock*, 1 W. T. 560; *Old Dominion Min. etc. Co. v. Daggett*, 38 Wash. 675, 80 Pac. 839; *Thisler v. Stephenson*, 54 Wash. 605, 103 Pac. 987.

Effect of omission of dollar-mark or other designation indicating money. *Ann. Cas.* 1915C, 335.

Object and effect of marginal figures in bill or note. 1 *Ann. Cas.* 611; 7 *Ann. Cas.* 804; 44 *Am. Rep.* 690.

Substitution of phrase "et al." in place of names in promissory note. 14 *Ann. Cas.* 574.

Fictitious names as affecting validity of bill or note. *Ann. Cas.* 1918A, 669; 39 *L. R. A.* 425.

Written matter as controlling printed in construction of negotiable instruments. *Ann. Cas.* 1913E, 966.

§ 3409. Liability—Signature Necessary—Assumed or Trade Name.

No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed his own name. [L. '99, p. 345, § 18.]

Cited in 96 Wash. 423.

Under this section, the purchaser of mortgaged property who orally assumed and agreed to pay the mortgage debt is not liable to a holder of a note who waives the mortgage and brings an action at law upon the note: *Frazey v. Casey*, 96 Wash. 422, 165 Pac. 104.

This section has no application to oral guaranties made by the payee upon transferring a note for value received, since that is an original and absolute obligation, to which the note is merely incidental and collateral: *Swenson v. Stoltz*, 36 Wash. 318, 78 Pac. 999, 2 *Ann. Cas.* 504.

EXECUTION AND DELIVERY: See

Remington's Digest, Bills & N., §§ 1, 2. **Signature:** *Bell v. Waudby*, 4 Wash. 743, 31 Pac. 18; *Crane v. Dexter Horton & Co.*, 5 Wash. 479, 32 Pac. 223; *Swenson v. Stoltz*, 36 Wash. 318, 78 Pac. 999, 2 *Ann. Cas.* 504; *Yakima Valley Bank v. McAllister*, 37 Wash. 566, 79 Pac. 1119, 107 Am. St. Rep. 823, 1 *L. R. A.* (N. S.) 1075; *Daniel v. Glidden*, 38 Wash. 556, 80 Pac. 811; *Metzger v. Sigall*, 83 Wash. 80, 145 Pac. 72.

See, also, *Bank of California v. Starrett*, 110 Wash. 231, 188 Pac. 410, 9 A. L. R. 177.

§ 2. Ratification of Instrument Defectively Executed: *Bell v. Waudby*, 4 Wash. 743, 31 Pac. 18; *Ash v. Clark*, 32 Wash. 390, 73 Pac. 351.

§ 3410. Signature by Agent.

The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the

authority of the agent may be established as in other cases of agency. [L. '99, p. 345, § 19.]

Cited in 68 Wash. 451.

§ 3411. Liability of Agent.

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. [L. '99, p. 345, § 20.]

Representative or Fiduciary Capacity:
See Remington's Digest, Bills & N., § 19; Elwell v. Puget Sound & C. R. Co., 7 Wash. 487, 35 Pac. 376; Washington Mill Co. v. Sprague Lbr. Co., 19 Wash. 165, 52 Pac. 1067; Daniel v. Glidden, 38 Wash. 556, 80 Pac. 811.

Liability of principal on negotiable paper executed by an agent. 21 L. R. A. (N. S.) 1046.

Admissibility of extrinsic evidence to show whether principal or agent liable on note. 20 L. R. A. 705.

§ 3412. Signature by "Procurator"—Notice.

A signature by "procurator" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. [L. '99, p. 345, § 21.]

§ 3413. Assignment by Corporation or Infant Passes Title.

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. [L. '99, p. 345, § 22.]

§ 3414. Forgery—Effect of.

Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. [L. '99, p. 345, § 23.]

Cited in 106 Wash. 179.

Under this section, payment of notes to a bank holding under an indorsement forged by the holder's agent, discharges the note, where the holder receives the proceeds, although through his agent's dishonesty he applied the same to other accounts; since he lost nothing by the forgery: Bayley v. Hamburg, 106 Wash. 177, 179 Pac. 88.

Estoppel of ostensible maker of

negotiable instrument to set up forgery. 1 Ann. Cas. 81; Ann. Cas. 1912C, 590; 12 L. R. A. 140; 36 L. R. A. 539; 40 L. R. A. (N. S.) 653.

Forgery of part of signatures of makers or sureties as defense against bona fide holder by makers whose signatures were genuine. 13 L. R. A. (N. S.) 426.

Liability of seller of forged negotiable instrument. 50 Am. Dec. 606.

§ 3415. Consideration Presumed.

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature

appears thereon to have become a party thereto for value. [L. '99, p. 346, § 24.]

Cited in 77 Wash. 298; 85 Wash. 185, 465; 87 Wash. 43.

Presumption and Burden of Proof as to Consideration: See Remington's Digest, Bills & N., § 119; Baker-Boyer Nat. Bank v. Hughson, 5 Wash. 100, 31 Pac. 423; McKenzie v. Oregon Imp. Co., 5 Wash. 409, 31 Pac. 748; Scott v. Bourn, 13 Wash. 471, 43 Pac. 372; Nicholson v. Neary, 77 Wash. 294, 137 Pac. 492; State Bank of Clarkston v. Morrison, 85 Wash. 182, 147 Pac. 875.

See, also, Foster v. Floyd, 113 Wash. 312, 194 Pac. 407.

Under this section, a consideration is implied from the indorsement of a promissory note: Ginnett v. Greene, 87 Wash. 40, 151 Pac. 99.

Admissibility of Evidence of Mistake or Fraud: See Remington's Digest, Bills & N., § 127; Crane v. Dexter Horton & Co., 5 Wash. 479, 32 Pac. 223; Dickerson v. Spokane, 35 Wash. 414, 77 Pac. 730; Yakima Valley Bank v. McAllister, 37 Wash. 566, 79 Pac. 1119, 107 Am. St. Rep. 823, 1 L. R. A. (N. S.) 1075; Preas

v. Vollintine, 53 Wash. 137, 101 Pac. 706; Ireland v. Scharpenberg, 54 Wash. 558, 103 Pac. 801.

See, also, Naylor v. Lovell, 109 Wash. 409, 186 Pac. 855.

Sufficiency of Evidence of Mistake or Fraud: See Remington's Digest, Bills & N., §§ 138, 139; Barnes v. Packwood, 10 Wash. 50, 38 Pac. 857; Moore v. Palmer, 14 Wash. 134, 44 Pac. 142; Scandinavian-American Bank v. Johnston, 63 Wash. 187, 115 Pac. 102; Cornwall v. Anderson, 85 Wash. 369, 148 Pac. 1. **Alteration:** Wolferman v. Bell, 6 Wash. 84, 32 Pac. 1017, 36 Am. St. Rep. 126.

See, also, Bona fide purchasers—Notice of mistake—Evidence—Sufficiency: Naylor v. Lovell, 109 Wash. 409, 186 Pac. 855.

— Weight of evidence — Fraud — Duress: Walcott v. Wood, 109 Wash. 617, 187 Pac. 375; Minnick v. Kitt, 111 Wash. 433, 191 Pac. 398.

Cross-notes, bills, or checks as consideration for each other. 7 A. L. R. 1569.

§ 3416. Value, What Constitutes.

Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. [L. '99, p. 346, § 25.]

Cited in 85 Wash. 465.

Enforceability of note given for past services rendered by one member of family to another. Ann. Cas. 1913A, 865.

Transfer of negotiable note as secur-

ity for antecedent debt. 1 Ann. Cas. 275; 21 Ann. Cas. 936.

Enforceability of note given in payment of a worthless pre-existing obligation of another. L. R. A. 1917C, 842.

§ 3417. "Holder for Value," When.

Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. [L. '99, p. 346, § 26.]

Cited in 83 Wash. 83; 85 Wash. 465; 105 Wash. 583.

A bank which received a check for collection on a conditional credit, and honored the depositor's checks exhausting his

balance, including the deposited check, thereby becomes a holder in due course, under this and the next section: Old National Bank of Spokane v. Gibson, 105 Wash. 578, 179 Pac. 117, 6 A. L. R. 247.

§ 3418. Same—Lien.

Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. [L. '99, p. 346, § 27.]

Cited in 85 Wash. 465, 466; 93 Wash. 366; 105 Wash. 583.

Under this section, a bank taking a note as collateral to a loan for eighty

per cent of its face, can recover from the maker, having a good defense as against the payee, only to the extent of the lien with interest at the legal rate,

in the absence of any evidence as to the rate of interest agreed upon: *Citizens' Bank & Trust Co. v. Limpricht*, 93 Wash. 361, 160 Pac. 1046.

§ 3419. Lack of Consideration as a Defense.

Absence of failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. [L. '99, p. 346, § 28.]

See *infra*, § 5853, notes in consideration of gambling contract, void when.

Cited in 53 Wash. 140; 89 Wash. 652; 96 Wash. 78.

VALIDITY: See Remington's Digest, Bills & N., §§ 11—16.

§ 11. **Validity of Assent—In General:** *Huntington v. Lombard*, 22 Wash. 202, 60 Pac. 414.

§ 12. — **Misrepresentation:** *Warnock v. Itawis*, 38 Wash. 144, 80 Pac. 297.

§ 13. — **Fraud:** *Baker-Boyer Nat. Bank v. Hughson*, 5 Wash. 100, 31 Pac. 423; *Du Clos v. Batcheller*, 17 Wash. 389, 49 Pac. 483.

§ 14. — **Duress:** *Delta County Bank v. McGranahan*, 37 Wash. 307, 79 Pac. 796; *Cornwall v. Anderson*, 85 Wash. 369, 148 Pac. 1.

§ 15. — **Undue Influence:** *Budd v. Walla Walla Printing etc. Co.*, 2 W. T. 347, 7 Pac. 896.

§ 16. **Legality of Object or of Consideration:** *Turnbull v. Farnsworth*, 1 W. T. 444; *McDaniel v. Pressler*, 3 Wash. 636, 29 Pac. 209; *Furness v. Stiles*, 18 Wash. 383, 51 Pac. 470; *Ash v. Clark*, 32 Wash. 390, 73 Pac. 351; *Hynes v. Plastico*, 45 Wash. 190, 87 Pac. 1127; *Galena Nat. Bank v. Ripley*, 55 Wash. 615, 104 Pac. 807, 26 L. R. A. (N. S.) 993; *Skagit State Bank v. Moody*, 86 Wash. 286, 150 Pac. 425, L. R. A. 1916A, 1215.

CONSIDERATION: See Remington's Digest, Bills & N., §§ 7—10.

§ 7. **Sufficiency—In General:** *Hardin v. Sweeney*, 14 Wash. 129, 44 Pac. 138; *Pacific Northwest Inv. Soc. v. Cunningham*, 54 Wash. 284, 103 Pac. 9; *Harris v. Johnson*, 75 Wash. 291, 134 Pac. 1048; *McConaughy v. Juvenal*, 73 Wash. 166, 131 Pac. 851; *Lackaff v. Hinz*, 73 Wash. 21, 131 Pac. 207; *Nicholson v. Neary*, 77 Wash. 294, 137 Pac. 492; *Metzger v. Sigall*, 83 Wash. 80, 145 Pac. 72.

See, also, *Owens v. Bausman*, 105 Wash. 412, 177 Pac. 792; *Katz v. Judd*, 108 Wash. 557, 185 Pac. 613; *Moore v. Kildall*, 111 Wash. 504, 191 Pac. 394.

§ 8. — **Pre-existing Indebtedness or Liability:** *Lumberman's Nat. Bank v. Gross*, 37 Wash. 18, 79 Pac. 470; *Pitt v. Little*, 58 Wash. 355, 108 Pac. 941;

Thomas & Co. v. Hillis, 70 Wash. 53, 126 Pac. 62.

§ 10. **Failure of Consideration:** *Kenworthy v. Merritt*, 2 W. T. 155, 7 Pac. 62; *Hanson v. Tompkins*, 2 Wash. 508, 27 Pac. 73; *Baker-Boyer Nat. Bank v. Hughson*, 5 Wash. 100, 31 Pac. 423; *Cloud v. Rivord*, 6 Wash. 555, 34 Pac. 136; *Walsh v. Cooper*, 10 Wash. 513, 39 Pac. 127; *Bay View Brewing Co. v. Techlenberg*, 19 Wash. 469, 53 Pac. 724; *Gross v. Bennington*, 52 Wash. 417, 100 Pac. 846; *Moyses v. Bell*, 62 Wash. 534, 114 Pac. 193; *Hamilton v. Ramage*, 89 Wash. 649, 155 Pac. 151; *Hamilton v. Mihills*, 92 Wash. 675, 159 Pac. 887; *Hornburg v. Larson*, 93 Wash. 74, 160 Pac. 11.

That a promissory note was obtained after maturity without consideration is no defense to an action thereon by the holder, when the note had been transferred before maturity to parties other than plaintiff, who were holders in good faith, and for value, and plaintiffs' title had been acquired through such bona fide holders: *Donnerberg v. Oppenheimer*, 15 Wash. 290, 46 Pac. 254.

The settlement of a pre-existing debt, owing from the maker to the indorsee, is sufficient consideration to uphold the contract of indorsement: *Wilkie v. Chandon*, 1 Wash. 355, 25 Pac. 464.

In an action by the holder of a note against accommodation indorsers thereof, want of consideration between the maker and the indorsers is no defense: *Allen v. Chambers*, 13 Wash. 327, 43 Pac. 57; *Donohoe-Kelly Banking Co. v. Puget Sound Sav. Bank*, 13 Wash. 407, 43 Pac. 359, 942, 52 Am. St. Rep. 57.

ADMISSIBILITY OF EVIDENCE OF CONSIDERATION: See Remington's Digest, Bills & N., § 126; *Bigelow v. Scott*, 2 W. T. 378, 8 Pac. 494; *Pilling v. Morse*, 5 Wash. 797, 32 Pac. 748; *Hornburg v. Larson*, 93 Wash. 74, 160 Pac. 11.

Admissibility of Evidence of Legality of Object and of Consideration: See Remington's Digest, Bills & N., § 128; *Lyts v. Keevey*, 5 Wash. 606, 32 Pac. 534; *Ash v. Clark*, 32 Wash. 390, 73 Pac. 351.

Sufficiency of Evidence of Consideration: See Remington's Digest, Bills & N.,

§ 136; *Baker-Boyer Nat. Bank v. Hughson*, 5 Wash. 100, 31 Pac. 423; *Pilling v. Morse*, 5 Wash. 797, 32 Pac. 748; *Shuey v. Holmes*, 20 Wash. 13, 54 Pac. 540; *State Bank of Clarkston v. Morrison*, 85 Wash. 182, 147 Pac. 875.

See, also, *Flanagan v. American Minerals Producing Co.*, 108 Wash. 569, 185 Pac. 609; *Gwinn v. Heydon*, 112 Wash. 664, 192 Pac. 914.

— **Pleading Want or Failure of Consideration:** See *Remington's Digest, Bills & N.*, § 110; *Griffith v. Wright*, 21 Wash. 494, 58 Pac. 582; *Baker-Boyer Nat. Bank v. Hughson*, 5 Wash. 100, 31 Pac. 423; *Shuey v. Adair*, 18 Wash. 188, 51 Pac. 388, 63 Am. St. Rep. 879, 39 L. R. A. 473; *Lyts v. Keevey*, 5 Wash. 606, 32 Pac. 534.

Defenses—In General: See *Remington's Digest, Bills & N.*, §§ 97, 98; *Warnock v. Itawis*, 38 Wash. 144, 80 Pac. 297; *Dewin v. Crueger*, 7 Wash. 590, 35 Pac. 393; *Horton v. Haley*, 12 Wash. 74, 40

Pac. 624; *Shuey v. Adair*, 18 Wash. 188, 51 Pac. 38, 63 Am. St. Rep. 879, 39 L. R. A. 473; *Kirkland Land & Imp. Co. v. Jones*, 18 Wash. 407, 51 Pac. 1043; *Spencer v. Alki Point Transp. Co.*, 53 Wash. 77, 101 Pac. 509, 132 Am. St. Rep. 1058; *Sanderson v. Stay*, 66 Wash. 350, 119 Pac. 1135; *Gibson v. Feeney*, 60 Wash. 531, 120 Pac. 97; *Aurora Land Co. v. Keewan*, 67 Wash. 305, 121 Pac. 469; *Citizens' National Bank v. Ariss*, 68 Wash. 448, 123 Pac. 593; *Gwinn v. Ford*, 91 Wash. 498, 158 Pac. 536; *Hamilton v. Mihills*, 92 Wash. 675, 159 Pac. 887; *Cowen v. Culp*, 97 Wash. 480, 166 Pac. 789; *Kelley v. Bauzman*, 98 Wash. 686, 168 Pac. 181.

See, also, *Osner & Mehlhorn v. Loewe*, 111 Wash. 550, 191 Pac. 746.

Burden of proof of want of consideration as defense to action on bill or note. 18 *Ann. Cas.* 205.

Sufficiency of general averment of want of consideration. *L. R. A.* 1917F, 581.

§ 3420. Accommodation Party, Who is.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. [L. '99, p. 346, § 29.]

Cited in 71 Wash. 221; 79 Wash. 415; 83 Wash. 83; 86 Wash. 288; 108 Wash. 559; 110 Wash. 236.

Accommodation Paper: See *Remington's Digest, Bills & N.*, § 9; *Weeks v. Bussell*, 8 Wash. 440, 36 Pac. 265; *Bradley Eng. & Mfg. Co. v. Heyburn*, 56 Wash. 628, 106 Pac. 170, 134 Am. St. Rep. 1127; *Hobson v. Marsh*, 69 Wash. 326, 124 Pac. 912; *Northern Bank & Trust Co. v. Graves*, 79 Wash. 411, 140 Pac. 328; *Skagit State Bank v. Moody*, 86 Wash. 286, 150 Pac. 425, L. R. A. 1916A, 1215.

The signing of a note as accommodation party, although without receiving consideration, obligates the party on the note: *Katz v. Judd*, 108 Wash. 557, 185 Pac. 613.

Extension of time granted principal debtor as discharge of accommoda-

tion party under Negotiable Instruments Act. *Ann. Cas.* 1913C, 527; *Ann. Cas.* 1918A, 1103; *Ann. Cas.* 1918E, 806.

Liability of corporation on accommodation paper. *Ann. Cas.* 1913A, 1313; *Ann. Cas.* 1916A, 87; 9 *L. R. A. (N. S.)* 193.

Conflict of laws respecting liability of married woman as accommodation maker or indorser. 20 *Ann. Cas.* 618.

Discharge of accommodation joint maker by extension of time to co-maker. 13 *Ann. Cas.* 999.

Right of transferee of accommodated party after maturity as against accommodation party. 2 *Ann. Cas.* 256.

§ 3421. How Negotiated.

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. [L. '99, p. 347, § 30.]

Cited in 104 Wash. 262.

How Negotiated: See Remington's Digest, Bills & N., §§ 38, 39, 45, 46. **Necessity of Indorsement to Transfer Title:** Stinson v. Sachs, 8 Wash. 391, 36 Pac. 287.

— **Authority to Indorse:** Castor v. Peterson, 2 Wash. 204, 26 Pac. 223, 26 Am. St. Rep. 854.

Assignment: Seattle Nat. Bank v. Emmons, 16 Wash. 585, 48 Pac. 262; Metzger v. Signall, 83 Wash. 80, 145 Pac. 72.

Operation and Effect of Indorsement as to Title—Joint or Several Parties: Barkley v. American Sav. Bank & Trust Co., 61 Wash. 415, 112 Pac. 495.

Admissibility of Evidence of Transfer and Ownership in General: See Remington's Digest, Bills & N., § 129; Citizens' Nat. Bank v. Wintler, 14 Wash. 558, 45 Pac. 38, 53 Am. St. Rep. 890; Brooks v. James, 16 Wash. 335, 47 Pac. 751; Lodge v. Lewis, 32 Wash. 191, 72 Pac. 1009;

Yakima Nat. Bank v. Knipe, 6 Wash. 348, 33 Pac. 834; Waldo v. Milroy, 19 Wash. 156, 52 Pac. 1012; Johnson County Sav. Bank v. Rapp, 47 Wash. 30, 91 Pac. 382; German-American Bank v. Wright, 85 Wash. 460, 148 Pac. 769.

Sufficiency of Evidence of Transfer and Ownership: See Remington's Digest, Bills & N., § 140; Yakima Nat. Bank v. Knipe, 6 Wash. 348, 33 Pac. 834; Lodge v. Lewis, 32 Wash. 191, 72 Pac. 1009; Carr v. Bonthius, 79 Wash. 282, 140 Pac. 339.

See, also, Doonan v. Roszi, 112 Wash. 150, 191 Pac. 865.

Pleading, Transfer and Ownership: See Remington's Digest, Bills & N., § 106; Davis v. Erickson, 3 Wash. 654, 29 Pac. 86; Osborne & Co. v. Stevens, 15 Wash. 478, 46 Pac. 1027.

Admissibility of parol evidence to vary or explain the contract implied from the regular indorsement of a bill or note. 4 A. L. R. 764; 11 A. L. R. 637.

§ 3422. How Indorsed.

The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. [L. '99, p. 347, § 31.]

RIGHTS AND LIABILITIES ON INDORSEMENT: See Remington's Digest, Bills & N., §§ 49—57.

§ 49. **Nature of Liability on Indorsement—As Original Promisor:** Wilkie v. Chandon, 1 Wash. 355, 25 Pac. 464; Donohoe-Kelly Banking Co. v. Puget Sound Savings Bank, 13 Wash. 407, 43 Pac. 359, 942, 52 Am. St. Rep. 57; Ginnett v. Greene, 87 Wash. 40, 151 Pac. 99; Fidelity National Bank of Spokane v. Stanton Co., 93 Wash. 344, 160 Pac. 960.

§ 49-1. — **As Surety:** Seward v. Derrickson, 12 Wash. 225, 40 Pac. 939; Caldwell v. Hurley, 41 Wash. 296, 83 Pac. 318.

§ 49-2. — **Indorsement of Non-negotiable Bills or Notes:** Thomson v. Koch, 62 Wash. 438, 113 Pac. 1110; Bright v. Offield, 81 Wash. 442, 143 Pac. 159; Davis v. Gutheil, 87 Wash. 596, 152 Pac. 14.

§ 50. **Contribution:** Caldwell v. Hurley, 41 Wash. 296, 83 Pac. 318.

§ 53. **Parties to Indorsement:** Blue v. McCabe, 5 Wash. 125, 21 Pac. 431.

§ 54. **Indorsement Procured by Fraud:** Nethercutt v. Hopkins, 38 Wash. 577, 80 Pac. 798.

§ 55. **Mode, Form, or Purpose of Indorsement—Indorsement With Guaranty:** National Bank of Commerce v. Galland, 14 Wash. 502, 45 Pac. 35; Donnerberg v. Oppenheimer, 15 Wash. 290, 46 Pac. 254.

§ 56. **Rights of Indorser—As Against Original Parties:** Austin v. Hamilton, 7 Wash. 382, 34 Pac. 1097; Opie v. Pacific Investment Co., 26 Wash. 505, 67 Pac. 231, 56 L. R. A. 778.

§ 57. — **Amount or Extent of Indemnity:** Austin v. Hamilton, 7 Wash. 382, 34 Pac. 1097; Balkema v. Grolimund, 92 Wash. 326, 159 Pac. 127.

Evidence as to Liability of Indorsers: See Remington's Digest, Bills & N., § 133. Tacoma Mill Co. v. Sherwood, 11 Wash. 492, 39 Pac. 977; Allen v. Chambers, 13 Wash. 327, 43 Pac. 57; Spencer v. Alki Point Transp. Co., 53 Wash. 77, 101 Pac. 509, 132 Am. St. Rep. 1058.

— **Evidence That Maker Signed as Surety:** See Remington's Digest, Bills & N., § 134; Harmon v. Hale, 1 W. T. 422; Warburton v. Ralph, 9 Wash. 537, 38 Pac. 140; Culbertson v. Wilcox, 11 Wash. 522, 39 Pac. 954; Bank of B. C. v. Jeffs, 15 Wash. 230, 46 Pac. 247; Baldwin v. Daly, 41 Wash. 416, 83 Pac. 724; Bradley Eng. & Mfg. Co. v. Heyburn, 56 Wash. 628, 106 Pac. 170, 134 Am. St. Rep. 1127.

Sufficiency of indorsement on face of negotiable instrument. 19 Ann. Cas. 570; L. R. A. 1918D, 966.

Sufficiency of indorsing a bill or note by printing or stamping. 7 A. L. R. 672.

§ 3423. Indorsement must be Entire.

The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsee severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. [L. '99, p. 347, § 32.]

§ 3424. Same—May be Special, etc.

An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. [L. '99, p. 347, § 33.]

Cited in 83 Wash. 83.

§ 3425. Special and Blank Indorsements, What are.

A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. [L. '99, p. 347, § 34.]

Indorsement of negotiable paper in blank by other than the payee or holder.
3 Am. Dec. 571; 29 Am. St. Rep. 297.

§ 3426. Blank Indorsement may be Changed to Special.

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [L. '99, p. 347, § 35.]

§ 3427. Restrictive Indorsements.

An indorsement is restrictive, which either—

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. [L. '99, p. 347, § 36.]

Indorsement "To the order of any bank or banker" as a restrictive indorsement.
10 A. L. R. 709.

§ 3428. Rights of Restrictive Indorsee.

A restrictive indorsement confers upon the indorsee the right—

1. To receive payment of the instrument;
2. To bring any action thereon that the indorser could bring;
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsee acquire only the title of the first indorsee under the restrictive indorsement. [L. '99, p. 348, § 37.]

Cited in 83 Wash. 83.

§ 3429. Qualified Indorsement.

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. [L. '99, p. 348, § 38.]

Indorsement without recourse. 87
Am. Dec. 389; 134 Am. St. Rep.
993.

Undertaking of one who indorses a
note without recourse. 2 A. L. B.
216.

Indorsement without recourse as a
circumstance sufficient to put pur-
chaser of negotiable paper on in-
quiry. L. R. A. 1918F, 1152.

§ 3430. Conditional Indorsement, Effect of.

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. [L. '99, p. 348, § 39.]

Indorsement on Condition: See Remington's Digest, Bills & N., §§ 51, 52; Merrill v. Muzzy, 11 Wash. 16, 39 Pac. 277.

Without Recourse: American Sav. Bank & Trust Co. v. Helgesen, 64 Wash. 54, 116 Pac. 837, Ann. Cas. 1913A, 390.

§ 3431. Special Indorsement, Payable to Bearer, Effect of.

Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. [L. '99, p. 348, § 40.]

§ 3432. Payable to Two or More—Indorsement.

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. [L. '99, p. 348, § 41.]

§ 3433. Indorsement to "Cashier," Effect of.

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. [L. '99, p. 348, § 42.]

§ 3434. Misspelled Name, How Indorsed.

Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature. [L. '99, p. 349, § 43.]

Variance between name of payee of negotiable instrument and his indorsement thereof. Ann. Cas. 1914D, 979.

§ 3435. Indorsement in Representative Capacity.

Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. [L. '99, p. 349, § 44.]

§ 3436. Presumption of Negotiation Before Indorsement.

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue. [L. '99, p. 349, § 45.]

§ 3437. Indorsement Presumed Made When Dated.

Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated. [L. '99, p. 349, § 46.]

§ 3438. Negotiability Continues.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. [L. '99, p. 349, § 47.]

§ 3439. Striking Indorsement.

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument. [L. '99, p. 349, § 48.]

§ 3440. Transfer Without Indorsement.

Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. [L. '99, p. 349, § 49.]

Cited in 94 Wash. 516; 104 Wash. 262.

Transfer by Delivery: See Remington's Digest, Bills & N., §§ 43, 44; Swenson v. Stoltz, 36 Wash. 318, 78 Pac. 999, 2 Ann. Cas. 504; Gottstein v. Harrington, 25

Wash. 508, 65 Pac. 758; Puget Sound State Bank v. Washington Paving Co., 94 Wash. 504, 162 Pac. 870.

Necessity of Delivery: Lodge v. Lewis, 32 Wash. 191, 72 Pac. 1009.

§ 3441. Transfer Back to Prior Party.

Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. [L. '99, p. 349, § 50.]

Liability of one indorsing for special purpose, who, after reindorsement to him, reissues same to third per-

son without erasing special indorsement. 12 Ann. Cas. 271.

§ 3442. Holder may Sue in Own Name.

The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument. [L. '99, p. 350, § 51.]

§ 3443. "Holder in Due Course," When.

A holder in due course is a holder who has taken the instrument under the following conditions:—

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
3. That he took it in good faith and for value;
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. [L. '99, p. 350, § 52.]

Cited in 55 Wash. 579, 580; 57 Wash. 597; 61 Wash. 463; 62 Wash. 539; 63 Wash. 192, 195; 64 Wash. 61, 277; 79 Wash. 116; 100 Wash. 223; 104 Wash. 262.

Rights of Assignee or Purchaser: See Remington's Digest, Bills & N., §§ 60—62; Munson v. Exchange Nat. Bank, 19 Wash. 125, 52 Pac. 1011; Huntington v. Lombard, 22 Wash. 202, 60 Pac. 414; Miller v. Washington Savings Bank, 5 Wash. 200, 31 Pac. 712; First Nat. Bank v. Andrews, 7 Wash. 261, 34 Pac. 913, 38 Am. St. Rep. 885.

§ 61. Equities and Defenses Against Assignee—In General: Ash v. Clark, 32 Wash. 390, 73 Pac. 351; Gross v. Bennington, 52 Wash. 417, 100 Pac. 846.

§ 62. Transfer After Maturity: Gordon v. Decker, 19 Wash. 188, 52 Pac. 856; Huntington v. Lombard, 22 Wash. 202, 60 Pac. 414.

BONA FIDE PURCHASERS: See Remington's Digest, Bills & N., §§ 64—70.

Actual Notice—In General: Washington Nat. Bank v. Pierce, 6 Wash. 491, 33 Pac. 972, 36 Am. St. Rep. 174; Gross v. Bennington, 52 Wash. 417, 100 Pac. 846; Spencer v. Alki Point Transp. Co., 53 Wash. 77, 101 Pac. 509, 132 Am. St. Rep. 1058; Gray v. Boyle, 55 Wash. 578, 104 Pac. 828, 133 Am. St. Rep. 1042; Hughes & Co. v. Flint, 61 Wash. 460, 112 Pac. 633; Barker v. Sartori, 66 Wash. 260, 119 Pac. 611; Washington Trust Co. v. Keyes, 79 Wash. 61, 139 Pac. 638, Ann. Cas. 1916A, 279; Barker v. Pfund, 80 Wash. 143, 141 Pac. 327; Hamilton v. Mihills, 92 Wash. 675, 159 Pac. 887.

See, also, Naylor v. Lovell, 109 Wash. 409, 186 Pac. 855.

§ 64-1. — Good Faith in General: Washington Nat. Bank v. Pierce, 6 Wash. 491, 33 Pac. 972, 36 Am. St. Rep. 174; Keene v. Behan, 40 Wash. 505, 82 Pac. 884; German-American Bank v. Wright, 85 Wash. 460, 148 Pac. 769.

§ 64-2. — Knowledge of Default as to Interest or Accompanying Instruments: Ireland v. Scharpenberg, 54 Wash. 558, 103 Pac. 801; National City Bank v. Shelton Electric Co., 96 Wash. 74, 164 Pac. 933.

§ 64-3. — Duty to Make Inquiry in General: Castor v. Peterson, 2 Wash. 204,

26 Pac. 223, 26 Am. St. Rep. 854; Hansen v. Hoffman, 5 Wash. 792, 32 Pac. 747; Jamieson & McFarland v. Heim, 43 Wash. 153, 86 Pac. 165; Gray v. Boyle, 55 Wash. 578, 104 Pac. 828, 133 Am. St. Rep. 1042; Citizens' Bank & Trust Co. v. Limpricht, 93 Wash. 361, 160 Pac. 1046.

§ 65. Taking After Maturity—Defenses as Against Purchasers After Maturity: Murray v. Reed, 17 Wash. 1, 48 Pac. 343; Kirkland Land & Imp. Co. v. Jones, 18 Wash. 407, 51 Pac. 1043.

Where a note is not indorsed by the payee until it is overdue, the holder is not a holder in due course and the note is subject to offsets against the payee, under section 3440, and this section: Hansen v. Roesch, 104 Wash. 257, 176 Pac. 349.

§ 66. Consideration in General: Baker-Boyer Nat. Bank v. Hughson, 5 Wash. 100, 31 Pac. 423; Barker v. Sartori, 66 Wash. 260, 119 Pac. 611; McGowan Co. v. Carlson, 79 Wash. 92, 139 Pac. 869.

See, also, Old National Bank v. Gibson, 105 Wash. 578, 179 Pac. 117, 6 A. L. R. 247.

The subsequent failure of consideration for notes given for the purchase price of land when not a defense to the notes in the hands of a holder in due course: Fisk Rubber Co. v. Pinkey, 100 Wash. 220, 170 Pac. 581.

§ 68. Taking as Collateral Security in General: Peters v. Gay, 9 Wash. 383, 37 Pac. 325; Moyes v. Bell, 62 Wash. 534, 114 Pac. 193; American Sav. Bank & Trust Co. v. Helgesen, 64 Wash. 54, 116 Pac. 837, Ann. Cas. 1913A, 390.

See, also, Old National Bank v. Gibson, 105 Wash. 578, 179 Pac. 117, 6 A. L. R. 247.

§ 69. Taking in Payment of Pre-existing Debt: Spencer v. Alki Point Transp. Co., 53 Wash. 77, 101 Pac. 509, 132 Am. St. Rep. 1058; McLaughlin v. Dopps, 84 Wash. 442, 147 Pac. 6; German-American Bank v. Wright, 85 Wash. 460, 148 Pac. 769.

§ 70. Purchasers from Bona Fide Holders: Donnerberg v. Oppenheimer, 15 Wash. 290, 46 Pac. 254; Reardan v. Cockrell, 54 Wash. 400, 103 Pac. 457, 50 L. R. A. (N. S.) 87.

Sufficiency of Evidence of Good Faith and Payment of Value: See Reming-

ton's Digest, Bills & N., § 141; Culbertson v. Wilcox, 11 Wash. 522, 39 Pac. 954; McNamara v. Jose, 28 Wash. 461, 68 Pac. 903; Keene v. Behan, 40 Wash. 505, 82 Pac. 884; Jamieson & McFarland v. Heim, 43 Wash. 153, 86 Pac. 165; Gosline v. Dryfoos, 45 Wash. 396, 88 Pac. 634; Johnson County Sav. Bank v. Rapp, 47 Wash. 30, 91 Pac. 382; Barry v. Danielson, 78 Wash. 453, 129 Pac. 223; Union Inv. Co. v. Rosenzweig, 79 Wash. 112, 139 Pac. 874; Wells v. Duffy, 69 Wash. 310, 124 Pac. 907; Davis v. Hibbs, 73 Wash. 315, 131 Pac. 1135; Scandinavian-American Bank v. Appleton, 63 Wash. 203, 115 Pac. 109; Gibbens v.

Nipp, 80 Wash. 332, 141 Pac. 689; Park v. Newell, 87 Wash. 431, 151 Pac. 783.

Payee as a holder in due course within uniform negotiable instruments law. 13 L. R. A. (N. S.) 490; L. R. A. 1915B, 144.

Crediting the proceeds of negotiable paper to holder's deposit account as constituting bank a holder in due course. 6 A. L. R. 252.

Effect on bona fides of purchase of promissory note of fact that there is interest due and unpaid upon it. 11 A. L. R. 1277.

§ 3444. Same, When not.

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. [L. '99, p. 350, § 53.]

Cited in 85 Wash. 467; 94 Wash. 516.

§ 3445. Notice of Defect Before Full Payment.

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. [L. '99, p. 350, § 54.]

§ 3446. Title Defective, When.

The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. [L. '99, p. 350, § 55.]

Cited in 57 Wash. 634; 62 Wash. 540; 63 Wash. 192, 195; 64 Wash. 277, 280; 69 Wash. 312; 85 Wash. 469; 93 Wash. 365.

Usurious Consideration: See Remington's Digest, Bills & N., § 67-2; Keene v. Behan, 40 Wash. 505, 82 Pac. 884; American Sav. Bank & Trust Co. v. Helgesen, 64 Wash. 54, 116 Pac. 837, Ann. Cas. 1913A, 390.

Defective Title: See Remington's Digest, Bills & N., § 67-3; Citizens' Bank & Trust Co. v. Limpricht, 93 Wash. 361, 160 Pac. 1046; Fisk Rubber Co. v. Pinkey, 100 Wash. 220, 170 Pac. 581.

Title and Rights Acquired by Bona Fide Purchasers: See Remington's Digest,

Bills & N., §§ 71, 72; Merrill v. Muzzy, 11 Wash. 16, 39 Pac. 277; Moyses v. Bell, 62 Wash. 534, 114 Pac. 193; Metzger v. Sigall, 83 Wash. 80, 145 Pac. 72; Spencer v. Alki Point Transp. Co., 53 Wash. 77, 101 Pac. 509, 132 Am. St. Rep. 1058.

Right of Action—Title to Sustain Action: See Remington's Digest, Bills & N., § 91; McDaniel v. Pressler, 3 Wash. 636, 29 Pac. 209; Riddell v. Prichard, 12 Wash. 601, 41 Pac. 905; Davis v. Erickson, 3 Wash. 654, 29 Pac. 86; Stinson v. Sachs, 8 Wash. 391, 36 Pac. 287; Glenn v. Hill, 11 Wash. 541, 40 Pac. 141; Lodge v. Lewis, 32 Wash. 191, 72 Pac. 1009; Jackson v. Mercantile Mut. Fire Ins. Co., 45 Wash. 244, 88 Pac. 127.

§ 3447. Notice of Defect, What is.

To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is

negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. [L. '99, p. 350, § 56.]

Cited in 53 Wash. 86; 55 Wash. 579, 580; 63 Wash. 192, 195, 196, 199; 69 Wash. 312, 313; 96 Wash. 79; 109 Wash. 413.

In an assignee's action on a mortgage note and to reform and foreclose the mortgage, findings that by mistake the mortgage fixed the due date one year in advance of the maturity of the note, and that plaintiff had notice of the mistake when he purchased at a large discount,

are sustained where the discrepancy appeared on the face of the papers, and he was told of the two dates, and he admitted having had some intimation of it; the presumption of good faith attaching by virtue of this section, being in such case overcome by clear and satisfactory evidence: *Naylor v. Lovell*, 109 Wash. 409, 186 Pac. 855.

§ 3448. "Holder in Due Course"—Right to Full Payment.

A holder in due course holds the instrument free from any defects of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. [L. '99, p. 350, § 57.]

Cited in 63 Wash. 196; 93 Wash. 220.

Payment of Less Than Face Value: See Remington's Digest, Bills & N., § 67-1; *McNamara v. Jose*, 28 Wash. 461, 68 Pac. 903; *Moore & Co. v. Burling*, 93 Wash. 217, 160 Pac. 420.

Under this section, a bona fide purchaser at a large discount may recover from the maker the full face of mortgage notes: *Moore & Co. v. Burling*, 93 Wash. 217, 160 Pac. 420.

§ 3449. Defenses Against One not a Holder in Due Course.

In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. [L. '99, p. 351, § 58.]

Cited in 56 Wash. 630, 631, 632; 62 Wash. 538, 543; 69 Wash. 312; 83 Wash. 83.

Under this section, a bona fide holder in due course can pass a good title after maturity, although there has since been a failure of consideration as between the original parties, to the knowledge of the last assignee: *Moyses v. Bell*, 62 Wash. 534, 114 Pac. 193.

Defenses as Against Bona Fide Purchasers: See Remington's Digest, Bills & N., §§ 73—73-6. **Want of Authority in General:** *Gund v. Parke*, 15 Wash. 393, 46 Pac. 408; *Bradley Eng. & Mfg. Co. v. Heyburn*, 56 Wash. 628, 106 Pac. 170, 134 Am. St. Rep. 1127.

§ 73-1. — **Conditions or Collateral Agreements:** *Bradley Eng. & Mfg. Co. v. Heyburn*, 56 Wash. 628, 106 Pac. 170, 134 Am. St. Rep. 1127; *German-American Bank v. Wright*, 85 Wash. 460, 148 Pac. 769.

§ 73-2. — **Want or Failure of Consideration in General:** *Moyses v. Bell*, 62 Wash. 534, 114 Pac. 193; *National City Bank v. Shelton Electric Co.*, 96 Wash. 74, 164 Pac. 933.

§ 73-3. — **Fraudulent Diversion and Forged or Fraudulent Indorsement:** *Peters v. Gay*, 9 Wash. 383, 37 Pac. 325; *Commercial Bank v. Toklas*, 21 Wash. 36, 56 Pac. 927; *Fidelity Trust Co. v. Palmer*, 22 Wash. 473, 61 Pac. 158, 79 Am. St. Rep. 953; *Yakima Valley Bank v. McAllister*, 37 Wash. 566, 79 Pac. 1119, 107 Am. St. Rep. 823, 1 L. R. A. (N. S.) 1075; *Jamieson & McFarland v. Heim*, 43 Wash. 153, 86 Pac. 165.

§ 73-5. — **Payment or Discharge:** *Commercial Bank v. Toklas*, 21 Wash. 36, 56 Pac. 927.

§ 73-6. — **Setoff or Counterclaim:** *Gordon v. Decker*, 19 Wash. 188, 52 Pac. 856.

See, also, *Hanson v. Roesch*, 104 Wash. 257, 176 Pac. 349.

§ 3450. "Due Course" Presumed—Burden of Proof.

[Every] holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. [L. '99, p. 351, § 59.]

Cited in 54 Wash. 565; 56 Wash. 630, 631, 632; 57 Wash. 597; 62 Wash. 539; 63 Wash. 192, 195; 64 Wash. 277, 280; 69 Wash. 312; 79 Wash. 115; 84 Wash. 447; 96 Wash. 78; 100 Wash. 224, 226.

Presumption and Burden of Proof as to Good Faith and Payment of Value: See Remington's Digest, Bills & N., § 122; Keene v. Behan, 40 Wash. 505, 82 Pac. 884; Ireland v. Scharpenberg, 54 Wash. 558, 103 Pac. 801; Cedar Rapids Nat. Bank v. Myhre Bros., 57 Wash. 596,

107 Pac. 518; City Nat. Bank v. Mason, 58 Wash. 492, 108 Pac. 1071; Gottstein v. Simmons, 59 Wash. 178, 109 Pac. 596; Moyses v. Bell, 62 Wash. 534, 114 Pac. 193; Citizens' Savings Bank v. Houtchens, 64 Wash. 275, 116 Pac. 866; Scandinavian-American Bank v. Johnston, 63 Wash. 187, 115 Pac. 102; Wells v. Duffy, 69 Wash. 310, 124 Pac. 907; German American Bank v. Wright, 85 Wash. 460, 148 Pac. 769.

§ 3451. Maker's Undertaking—Estoppel.

The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. [L. '99, p. 351, § 60.]

Cited in 56 Wash. 630, 631, 632; 79 Wash. 190.

§ 3452. Drawer's Undertaking—Estoppel.

The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. [L. '99, p. 351, § 61.]

Cited in 56 Wash. 630, 631, 632.

§ 3453. Acceptor's Undertaking—Estoppel.

The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits—

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse. [L. '99, p. 351, § 62.]

Cited in 56 Wash. 630, 631, 632; 109 Wash. 315, 322.

Where checks to fictitious payees with forged indorsements passed through the clearing house and were paid by the drawee bank, the payment admits the ex-

istence of the payees and their capacity to indorse, under this section; since payment includes acceptance: National Bank of Commerce of Seattle v. Seattle National Bank, 109 Wash. 312, 187 Pac. 342.

§ 3454. Signer, an Indorser, Unless Intention Clearly Indicated.

A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. [L. '99, p. 352, § 63.]

Admissibility of Parol Evidence to Show Relations of Parties: See Remington's Digest, Bills & N., § 132; Gurney v. Morrison, 12 Wash. 456, 41 Pac. 192; Bryan v. Duff, 12 Wash. 233, 40 Pac. 936, 50 Am. St. Rep. 889; Keeler v. Commercial Printing Co., 16 Wash. 526, 48 Pac. 239; Taylor v. Parish, 86 Wash. 141, 149 Pac. 635.

See, also, Admissibility of parol evidence to show that maker signed as surety: Bank of California v. Starrett, 110 Wash. 231, 188 Pac. 410, 9 A. L. R. 177.

— Parol evidence to vary writing—Collateral agreement limiting liability on note: Moore v. Kildall, 111 Wash. 504, 191 Pac. 394.

§ 3455. Blank Signature by One not a Party—Liability.

Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. [L. '99, p. 352, § 64.]

§ 3456. Warranties by Negotiator.

Every person negotiating an instrument by delivery or by a qualified indorsement, warrants—

1. That the instrument is genuine and in all respects what it purports to be;

2. That he has a good title to it;

3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision 3 of this section do not apply to persons negotiating public or corporate securities, other than bills and notes. [L. '99, p. 352, § 65.]

See, also, § 3460, *infra*.

§ 3457. Warranties by Indorser.

Every indorser who indorses without qualification, warrants to all subsequent holders in due course—

1. The matters and things mentioned in subdivisions 1, 2 and 3 of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and

that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. [L. '99, p. 352, § 66.]

Cited in 62 Wash. 658; 90 Wash. 405; 100 Wash. 379; 109 Wash. 321.

Under this section, an indorsement in blank implies a promise to pay the note according to its purport, but only upon demand and notice: *Bardshar v. Chaffee*, 90 Wash. 404, 156 Pac. 388.

This section was not intended to define any obligation or liability to the drawee,

who by acceptance, under the terms of Id., § 3453, admits the existence of the payee and his capacity to indorse; since the drawee paying a check is not a "holder" and acceptance and payment strips the instrument of all negotiability: *National Bank of Commerce of Seattle v. Seattle National Bank*, 109 Wash. 312, 187 Pac. 342.

§ 3458. Liability of Indorser—When Negotiable by Delivery.

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. [L. '99, p. 353, § 67.]

Cited in 62 Wash. 658.

§ 3459. Order of Liability—Agreements Admissible—Joint Payees, etc.

As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. [L. '99, p. 353, § 68.]

§ 3460. Liability of Broker Negotiating Without Indorsement.

Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 3456 of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent. [L. '99, p. 353, § 69.]

Cited in 57 Wash. 597; 85 Wash. 470.

§ 3461. Presentment—When Necessary.

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. [L. '99, p. 353, § 70.]

See *infra*, § 3471, when not necessary.

Cited in 54 Wash. 557.

Necessity of Demand for Payment and Notice of Nonpayment: See *Remington's Digest*, Bills & N., §§ 76, 77; *Agee v. Smith*, 7 Wash. 471, 35 Pac. 370; *Galbraith v. Shepard*, 43 Wash. 698, 86 Pac. 1113; *Bardsley v. Washington Mill Co.*, 54 Wash. 553, 103 Pac. 822, 132 Am. St. Rep. 1133; *Gleeson v. Lichty*, 62 Wash. 656, 114 Pac. 518; *Bardshar v. Chaffee*, 90

Wash. 404, 156 Pac. 388. **Condition Precedent to Liability of Indorser:** *Bay View Brewing Co. v. Grubb*, 24 Wash. 163, 63 Pac. 1091; *Codd v. Von Der Ahe*, 92 Wash. 529, 159 Pac. 686.

Sufficiency of Presentment: See *Remington's Digest*, Bills & N., §§ 78, 78-3. **Persons on Whom to be Made:** *Barlow v. Coggan*, 1 W. T. 257; *Benedict v. Schmieg*, 13 Wash. 476, 43 Pac. 374, 52 Am. St.

Rep. 61, 36 L. R. A. 703; *Furth v. Baxter*, 24 Wash. 608, 64 Pac. 798; *Galbraith v. Shepard*, 43 Wash. 698, 86 Pac. 1113.

§ 78-3. — **Notice of Dishonor:** *Shultz v. Crewdson*, 95 Wash. 266, 163 Pac. 734.

Pleading, Presentment, Demand, Protest and Notice: See *Remington's Digest, Bills & N.*, § 108; *Hardin v. Sweeney*, 14 Wash. 129, 44 Pac. 138;

Loveday v. Anderson, 18 Wash. 322, 51 Pac. 463; *Bay View Brewing Co. v. Grubb*, 24 Wash. 163, 63 Pac. 1091; *Galbraith v. Shepard*, 43 Wash. 698, 86 Pac. 1113.

Failure to present bill or note for payment and give notice of dishonor as excused by acceptance of worthless check in payment. *Ann. Cas.* 1915B, 155.

§ 3462. Time of Presentment.

Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. [L. '99, p. 353, § 71.]

§ 3463. Presentment, Sufficiency of.

Presentment for payment, to be sufficient, must be made—

1. By the holder, or by some person authorized to receive payment on his behalf.

2. At a reasonable hour on a business day;

3. At a proper place as herein defined;

4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made. [L. '99, p. 354, § 72.]

See *infra*, § 3536.

Sufficiency of telephone presentment and demand of payment of negotiable instrument. *Ann. Cas.* 1912A,

862; 11 A. L. R. 979; 34 L. R. A. (N. S.) 417.

§ 3464. Same, Place of.

Presentment for payment is made at the proper place—

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. [L. '99, p. 354, § 73.]

Demand is not necessary before suit on a negotiable note payable on demand at a particular place, the bringing of suit being a sufficient demand of pay-

ment: *Hardin v. Sweeney*, 14 Wash. 129, 44 Pac. 138; *Northwestern Nat. Bank v. Pearson*, 102 Wash. 570, 173 Pac. 730.

§ 3465. Exhibition of Instrument Necessary.

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. [L. '99, p. 354, § 74.]

Necessity of possession and exhibition of paper at time of demand in order to make a valid presentment. 11 A. L. R. 969.

§ 3466. Presentment at Bank, Time of.

Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. [L. '99, p. 354, § 75.]

See, also, *infra*, § 3477.

§ 3467. Same—To Personal Representative.

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found. [L. '99, p. 354, § 76.]

§ 3468. Same—To One of Partners.

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. [L. '99, p. 354, § 77.]

See *infra*, § 3489, notice to one, notice to all.

See *infra*, § 3518, bill addressed to two or more.

§ 3469. Presentment to All Parties, When Necessary.

Where there are several persons not partners, primarily liable on the instrument and no place of payment is specified, presentment must be made to them all. [L. '99, p. 355, § 78.]

§ 3470. Presentment Unnecessary to Charge Drawer, When.

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. [L. '99, p. 355, § 79.]

§ 3471. Presentment Unnecessary to Charge Indorser, When.

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented. [L. '99, p. 355, § 80.]

See *supra*, § 3461, when necessary.

§ 3472. Excusable Delay.

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. [L. '99, p. 355, § 81.]

See *infra*, § 3559.

Excuses for Delay: See Remington's Digest, Bills & N., § 78-2; Guarantee

Loan & T. Co. v. Galliher, 12 Wash. 507, 41 Pac. 887; Hunt v. Panhandle Lumber Co., 66 Wash. 645, 120 Pac. 538.

§ 3473. Presentment Unnecessary.

Presentment for payment is dispensed with—

1. Where after the exercise of reasonable diligence presentment as required by this act cannot be made;
2. Where the drawee is a fictitious person;
3. By waiver of presentment, express or implied. [L. '99, p. 355, § 82.]

§ 3474. When Dishonored.

The instrument is dishonored by non-payment when—

1. It is duly presented for payment and payment is refused or cannot be obtained; or
2. Presentment is excused and the instrument is overdue and unpaid. [L. '99, p. 355, § 83.]

§ 3475. Dishonor Attaches Liability to Secondary Parties.

Subject to the provisions of this act, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. [L. '99, p. 355, § 84.]

§ 3475½. No Grace—Sundays and Holidays.

Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. [L. '15, p. 547, § 1. Cf. L. '99, p. 355, § 85.]

See *infra*, § 3536, application of this section.

See *infra*, § 3584, Sundays and holidays.

§ 3476. Computation of Time.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. [L. '99, p. 356, § 86.]

See *infra*, § 3533, fixed by presentment.

§ 3477. "Payable at Bank," an Order on Bank.

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. [L. '99, p. 356, § 87.]

See, also, *supra*, § 3466.

Cited in 91 Wash. 624.

§ 3478. Payment in Due Course.

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. [L. '99, p. 356, § 88.]

§ 3479. Notice of Dishonor Necessary to Charge.

Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or in-

dorser to whom such notice is not given is discharged. [L. '99, p. 356, § 89.]

See *infra*, § 3504, not required when.

Necessity of notice of dishonor to fix liability of surety on commercial paper. 6 Ann. Cas. 281.

Effect where part only of joint indorsers notified of dishonor of bill or note. Ann. Cas. 1912D, 353.

§ 3480. Who may Give Notice.

The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. [L. '99, p. 356, § 90.]

§ 3481. Notice by Agent.

Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. [L. '99, p. 356, § 91.]

§ 3482. Notice by Holder, Who Benefits by.

Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. [L. '99, p. 356, § 92.]

§ 3483. Notice by Party Entitled, Who Benefits.

Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given. [L. '99, p. 357, § 93.]

§ 3484. Agent may Notify Parties or Principal.

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder. [L. '99, p. 357, § 94.]

§ 3485. Sufficiency of Notice.

A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. [L. '99, p. 357, § 95.]

§ 3486. Notice may be Written or Oral.

The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. [L. '99, p. 357, § 96.]

Cited in 62 Wash. 660.

Where an indorser of a note had its custody for collection as agent for the owner it was his duty to present it for payment, and knowing that the maker

was in the hands of a receiver and that presentment would be an idle ceremony he was not entitled to further notice as an indorser, under this section: *Gleeson v. Lichty*, 62 Wash. 656, 114 Pac. 518.

§ 3487. Notice, to Whom Given.

Notice of dishonor may be given either to the party himself or to his agent in that behalf. [L. '99, p. 357, § 97.]

§ 3488. Notice, When Party Deceased.

When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. [L. '99, p. 357, § 98.]

§ 3489. Notice to One of Partners.

Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution. [L. '99, p. 357, § 99.]

See *supra*, § 3468, presentment to one partner.

§ 3490. Joint Parties, Notice to Each.

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others. [L. '99, p. 357, § 100.]

§ 3491. Insolvency—Notice to Whom.

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. [L. '99, p. 358 § 101.]

§ 3492. Notice Immediately upon Dishonor.

Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act. [L. '99, p. 358, § 102.]

§ 3493. Parties Living in Same Place, Notice When.

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times—

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following. [L. '99, p. 358, § 103.]

§ 3494. Living in Different Places, Notice When.

Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times—

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision. [L. '99, p. 358, § 104.]

§ 3495. Notice by Mail.

Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. [L. '99, p. 358, § 105.]

Protest and Certificate Thereof—Notice by Mail: See Remington's Digest, Bills & N., § 79; Benedict v. Schmeig, 13 Wash. 476, 43 Pac. 374, 52 Am. St. Rep. 61, 36 L. R. A. 703.

§ 3496. Deposited in Postoffice, When.

Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter-box under the control of the postoffice department. [L. '99, p. 358, § 106.]

§ 3497. Notice to Antecedent Parties.

Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. [L. '99, p. 359, § 107.]

§ 3498. Notice, Where Addressed.

Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows—

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section. [L. '99, p. 359, § 108.]

§ 3499. Waiver of Notice.

Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied. [L. '99, p. 359, § 109.]

Waiver of Presentment, Protest or Notice: See Remington's Digest, Bills & N., § 80; Wilkie v. Chandon, 1 Wash. 355, 25 Pac. 464; Loveday v. Anderson, 18 Wash. 322, 51 Pac. 463; Bay View Brewing Co. v. Grubb, 31 Wash. 34, 71 Pac. 553.

§ 3500. What Parties Bound by Waiver of Notice.

Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. [L. '99, p. 359, § 110.]

§ 3501. Waiver of Protest Waives Notice of Presentment and Dishonor.

A waiver of protest, whether in case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. [L. '99, p. 359, § 111.]

§ 3502. Notice of Dishonor Dispensed With, When.

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. [L. '99, p. 359, § 112.]

§ 3503. Excusable Delay.

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. [L. '99, p. 359, § 113.]

§ 3504. When Drawer not Entitled to Notice of Dishonor.

Notice of dishonor is not required to be given to the drawer in either of the following cases—

1. When the drawer and drawee are the same person;
2. Where the drawee is a fictitious person or a person not having capacity to contract;
3. When the drawer is the person to whom the instrument is presented for payment;
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
5. Where the drawer has countermanded payment. [L. '99, p. 360, § 114.]

§ 3505. When Indorser not Entitled to Notice.

Notice of dishonor is not required to be given to an indorser in either of the following cases—

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
2. Where the indorser is the person to whom the instrument is presented for payment;
3. Where the instrument was made or accepted for his accommodation. [L. '99, p. 360, § 115.]

See *supra*, § 3479, notice when necessary.

§ 3506. Notice of Nonacceptance, Effect of.

Where due notice of dishonor by nonacceptance has been given notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted. [L. '99, p. 360, § 116.]

§ 3507. Omission of Notice.

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. [L. 99, p. 360, § 117.]

§ 3508. Protest Required Only on Foreign Bills.

Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange. [L. '99, p. 360, § 118.]

See *infra*, § 9902, notaries may.

See, also, *infra*, § 3542.

§ 3509. Discharge of Instrument, How Effected.

A negotiable instrument is discharged—

1. By payment in due course by or on behalf of the principal debtor;
2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
3. By the intentional cancellation thereof by the holder;
4. By any other act which will discharge a simple contract for the payment of money;
5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. [L. '99, p. 360, § 119.]

Cited in 75 Wash. 516; 78 Wash. 31; 103 Wash. 301.

PAYMENT AND DISCHARGE: See Remington's Digest, Bills & N., §§ 82—89; **Persons to Whom Payment may be Made:** Dewing v. Crueger, 7 Wash. 590, 35 Pac. 393.

See, also, Bayley v. Hamburg, 106 Wash. 177, 179 Pac. 88.

§ 83. Mode and Sufficiency of Payment: Capital Nat. Bank v. Robinson, 41 Wash. 454, 83 Pac. 1021; Barron v. Robinson, 67 Wash. 656, 122 Pac. 343.

Upon the continuing guaranty of an existing loan and of renewals thereof, and not merely of the instrument evidencing it, this section has no application; hence the cancellation of a renewal note does not discharge the guarantor: Exchange National Bank of Spokane v. Hunt, 75 Wash. 513, 135 Pac. 224.

§ 84. — New Bills or Notes: Boston National Bank v. Jose, 10 Wash. 185, 38 Pac. 1026; Richards v. Jefferson, 20 Wash. 166, 54 Pac. 1123; Commercial Bank v. Toklas, 21 Wash. 36, 56 Pac. 927.

§ 85. — Property or Services: Cock v. Blalock, 1 W. T. 560; First Nat. Bank of Idaho Springs v. Beamer, 4 Wash. 489, 30 Pac. 640; Frye v. Meyer, 22 Wash. 277, 60 Pac. 655.

§ 86. — Acceptance of Collateral Security: Gilliam v. Davis, 7 Wash. 332, 35 Pac. 69.

See, also, Foster v. Floyd, 113 Wash. 312, 194 Pac. 407.

§ 87. Indorsement of Payments: Rear-dan v. Cockrell, 54 Wash. 400, 103 Pac. 457, 50 L. R. A. (N. S.) 87.

§ 88. Discharge—In General: State Finance Co. v. Moore, 103 Wash. 298, 174 Pac. 22.

§ 89. — Payment or Satisfaction by Other Parties: Gilliam v. Davis, 7 Wash. 332, 35 Pac. 69; Washington Loan & Trust Co. v. Ritz, 37 Wash. 642, 80 Pac. 174; Washington Seminary v. Hunt, 45 Wash. 571, 88 Pac. 1034.

Pleading, Payment and Discharge: See Remington's Digest, Bills & N., § 115; Richards v. Jefferson, 20 Wash. 166, 54 Pac. 1123; Poncin v. Furth, 15 Wash. 201, 46 Pac. 241; Gilliam v. Davis, 7 Wash. 332, 35 Pac. 69; Frye v. Meyer, 22 Wash. 277, 60 Pac. 655.

Presumption as to Payment: See Remington's Digest, Bills & N., § 123; First National Bank of Seattle v. Harris, 7 Wash. 139, 34 Pac. 466; Boston Nat. Bank of Seattle v. Jose, 10 Wash. 185, 38 Pac. 1026.

Admissibility of Evidence of Payment and Discharge: See Remington's Digest, Bills & N., § 130; Richards v. Jefferson, 20 Wash. 166, 54 Pac. 1122; Washington Trust Co. v. Keyes, 79 Wash. 61, 139 Pac. 638, Ann. Cas. 1916A, 279; Bingham v. Domer, 94 Wash. 253, 162 Pac. 355.

Sufficiency of Evidence of Payment and Discharge: See Remington's Digest, Bills & N., § 142; First Nat. Bank etc. v. Beamer, 4 Wash. 489, 30 Pac. 640; Gurney v. Morrison, 12 Wash. 456, 41 Pac. 192; Sutherland v. Pallister, 50 Wash. 552, 97 Pac. 745; Canadian Bank of Commerce v. Sesnon Co., 68 Wash. 434, 123 Pac. 602; Bingham v. Domer, 94 Wash. 253, 162 Pac. 355; Evenson v. Baum, 99 Wash. 345, 169 Pac. 819; Han-

son v. Moses Inv. Co., 103 Wash. 218, 174 Pac. 25.

See, also, Tomanovich v. Casey, 106 Wash. 642, 180 Pac. 919; Burnham v. Rowley, 111 Wash. 656, 191 Pac. 811.

Acceptance of renewal note made or indorsed by personal representative, of obligor in original paper as payment of that paper. 12 **A. L. B.** 1546.

§ 3510. Discharge of Parties Secondarily Liable.

A person secondarily liable on the instrument is discharged—

1. By any act which discharges the instrument;
2. By the intentional cancellation of his signature by the holder;
3. By the discharge of a prior party;
4. By a valid tender of payment made by a prior party;
5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. [L. '99, p. 361, § 120.]

Cited in 66 Wash. 661; 75 Wash. 517; 87 Wash. 598, 600, 601, 602.

MODIFICATION, RENEWAL AND RESCISSION: See Remington's Digest, Bills & N., §§ 27—33. **Modification by Parties in General:** Wolferman v. Bell, 6 Wash. 84, 32 Pac. 1017, 36 Am. St. Rep. 126.

§ 28. **Extension and Agreements to Extend:** Merchants' Bank of Port Townsend v. Bussell, 16 Wash. 546, 48 Pac. 242; Bank of British Columbia v. Jeffs, 18 Wash. 135, 51 Pac. 348, 63 Am. St. Rep. 875; Boyd v. Cochrane, 18 Wash. 281, 51 Pac. 383.

§ 29. **Renewal, and Agreements to Renew:** Boston Nat. Bank v. Jose, 10 Wash. 185, 38 Pac. 1026; Commercial Bank v. Hart, 10 Wash. 303, 38 Pac. 1114.

Upon the guaranty of an existing loan, and not merely of the instrument evidencing it, sections 3510, 3582, relating to the discharge of and defining secondary liability upon negotiable instruments, have no application: Exchange National Bank of Spokane v. Hunt, 75 Wash. 513, 135 Pac. 224.

§ 30. **Consideration for Extension or Renewal:** Staver & Walker v. Missimer, 6 Wash. 173, 32 Pac. 995, 36 Am. St. Rep. 142; Commercial Bank v. Hart, 10 Wash. 303, 38 Pac. 1114; Merchants' Bank v.

Bussell, 16 Wash. 546, 48 Pac. 242; Price v. Mitchell, 23 Wash. 742, 63 Pac. 514; Lipsett v. Dettering, 94 Wash. 629, 162 Pac. 1007.

§ 31. **Operation and Effect of Extension or Renewal:** Staver & Walker v. Missimer, 6 Wash. 173, 32 Pac. 995, 36 Am. St. Rep. 142; Commercial Bank v. Hart, 10 Wash. 303, 38 Pac. 1114.

§ 32. **Renewal Notes:** First Nat. Bank v. Harris, 7 Wash. 139, 34 Pac. 466; McKee v. Whitworth, 15 Wash. 536, 46 Pac. 1045; Murray v. Reed, 17 Wash. 1, 48 Pac. 343; Commercial Bank v. Toklas, 21 Wash. 36, 56 Pac. 927; Bank of Montreal v. Buchanan, 32 Wash. 480, 73 Pac. 482.

§ 33. **Actions for Cancellation:** Carr v. Jones, 29 Wash. 78, 69 Pac. 646; Ritterhoff v. Puget Sound Nat. Bank, 37 Wash. 76, 79 Pac. 601, 107 Am. St. Rep. 791.

Rights of Parties on Payment or Discharge: See Remington's Digest, Bills & N., § 90; First Nat. Bank of Seattle v. Harris, 7 Wash. 139, 34 Pac. 466; Kirkland Land & Imp. Co. v. Jones, 18 Wash. 407, 51 Pac. 1043; Bowles Co. v. Clark, 50 Wash. 336, 109 Pac. 812, 31 L. R. A. (N. S.) 613; Davis v. Gutheil, 87 Wash. 596, 152 Pac. 14.

See, also, National Bank of Commerce v. Seattle National Bank, 109 Wash. 312, 187 Pac. 342.

§ 3511. Renegotiation by Secondary Party.

Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except—

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated. [L. '99, p. 361, § 121.]

Cited in 78 Wash. 31.

§ 3512. Holder's Renunciation of Rights.

The holder may expressly renounce his rights against any party to the instrument, before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. [L. '99, p. 361, § 122.]

Cited in 58 Wash. 359; 87 Wash. 42, 598, 599; 93 Wash. 77.

Discharge by Renunciation: See Remington's Digest, Bills & N., § 88; Davis v. Gutheil, 87 Wash. 596, 152 Pac. 14; Hornburg v. Larson, 93 Wash. 74, 160 Pac. 11.

Under this section, a surety is not entitled to show that he had been released

by parol: Baldwin v. Daly, 41 Wash. 416, 83 Pac. 724.

The maker cannot show an oral agreement to release him from liability when the note was not surrendered, as "renunciation" is used in the statute in the sense of "release": Pitt v. Little, 58 Wash. 355, 108 Pac. 941.

§ 3513. Unintentional Cancellation—Burden of Proof.

A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority. [L. '99, p. 362, § 123.]

Cited in 113 Wash. 316.

§ 3514. Material Alterations, Effect of.

Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. [L. '99, p. 362, § 124.]

Cited in 57 Wash. 353; 58 Wash. 359; 74 Wash. 655, 662; 87 Wash. 598.

A bank to whom a note was offered for discount is not a holder in due course without notice of a material alteration, within this section, where it was a party to and participated in the alteration by insisting upon the indorsement of a

fictitious payment reducing the principal sum as a condition to acceptance and discount: Washington Finance Corporation v. Glass, 74 Wash. 653, 134 Pac. 480, 46 L. R. A. (N. S.) 1043.

The release from liability of one of the solvent makers of a mortgage note, and part of the security, is not "material

alteration" of the note within this section: *Davis v. Gutheil*, 87 Wash. 596, 152 Pac. 14.

Effect of detaching contract or memorandum attached to bill or note on rights of subsequent bona fide pur-

chaser. *Ann. Cas.* 1917E, 603; 22 *L. R. A. (N. S.)* 263.

Effect of alteration of promissory note on bona fides. 35 *L. R. A.* 464.

§ 3515. Material Alterations, Defined.

Any alteration which changes—

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;
5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. [L. '99, p. 362, § 125.]

Cited in 57 Wash. 353; 58 Wash. 359; 71 Wash. 222; 74 Wash. 655.

Under this section, the addition of new signatures to procure their discount is a material alteration, which discharges an accommodation indorser who had no notice of the alteration: *Handsaker v. Pedersen*, 71 Wash. 218, 128 Pac. 230.

The indorsement upon the back of a note, offered for discount to a bank, of a fictitious payment, reducing the amount of the principal sum, as a condition precedent to discount or delivery to the original payee, without the knowledge of an accommodation maker, is a material alteration, within this section; and it is

immaterial that the change was to the advantage of the maker: *Washington Finance Corporation v. Glass*, 74 Wash. 653, 134 Pac. 480, 46 *L. R. A. (N. S.)* 1043.

Alteration of date of negotiable instrument as material alteration. *Ann. Cas.* 1913D, 725.

Addition of words "or bearer," "or order," or substitution of one expression for other as material alteration of negotiable instrument. *Ann. Cas.* 1917C, 1177.

Change in name of payee of negotiable instrument as material alteration. *Ann. Cas.* 1913C, 183.

§ 3516. Bill of Exchange, Defined.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. [L. '99, p. 362, § 126.]

Cited in 65 Wash. 672; 74 Wash. 329; 78 Wash. 125; 100 Wash. 379; 110 Wash. 442; 113 Wash. 456.

Under this section, an order requesting that sums due or to become due to the drawer from the drawee, be paid to a third person, does not amount to an equitable assignment of the funds or render the drawees liable thereon, until the order is accepted by them in writing: *Frederick & Nelson v. Spokane Grain Co.*, 47 Wash. 85, 91 Pac. 570.

In an action by plaintiffs upon an unaccepted order for the payment of money, which, under this section, would not bind the drawee unless accepted in writing, it was error to refuse a directed verdict in defendant's favor, where the allegations of the complaint as to an agreement obviating the necessity for a written acceptance was wholly unsupported by evidence: *Nelson v. Nelson Bennett Co.*, 31 Wash. 116, 71 Pac. 749.

§ 3517. Bill not an Assignment—Drawee Liable on Acceptance.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. [L. '99, p. 363, § 127.]

Cited in 74 Wash. 329; 78 Wash. 125; 110 Wash. 442; 113 Wash. 456.

The acceptance by a drawee of an order or bill of exchange must be in writing, under this section: *Wadhams v. Portland etc. R. Co.*, 37 Wash. 86, 79 Pac. 597.

An order for the payment of money due on the sale of logs does not amount to an assignment of or pass title to the fund unless it is accepted in writing, as required by sections 3517 and 3522: *Bleitz v. Bryant Lumber Co.*, 110 Wash. 437, 188 Pac. 509.

§ 3518. Joint Drawees.

A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. [L. '99, p. 363, § 128.]

§ 3519. Inland and Foreign Bills Defined.

An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. [L. '99, p. 363, § 129.]

§ 3520. Bill may be Promissory Note.

Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. [L. '99, p. 363, § 130.]

Cited in 61 Wash. 421.

Where a sight draft is drawn by an agent upon his principal in payment of logs purchased for the drawee, the effect is that of a bill drawn upon the drawer

himself, which the holder may treat as a promissory note, under this section: *Clemens v. Stanton Co.*, 61 Wash. 419, 112 Pac. 494.

§ 3521. Referee in Case of Need.

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. [L. '99, p. 363, § 131.]

§ 3522. Acceptance Defined.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. [L. '99, p. 363, § 132.]

Cited in 74 Wash. 329; 78 Wash. 126; 110 Wash. 442; 113 Wash. 456.

Written Acceptance: See *Remington's Digest, Bills & N.*, § 6; *Wadhams v. Portland etc. R. Co.*, 37 Wash. 86, 79 Pac. 597; *Seattle Shoe Co. v. Packard*, 43 Wash. 527, 86 Pac. 845, 117 Am. St. Rep. 1064; *Sheets v. Coast Coal Co.*, 74 Wash. 327, 133 Pac. 433; *Plaza Farmers' Union*

Warehouse & Elevator Co. v. Ryan, 78 Wash. 124, 138 Pac. 651; *Schwabacher Hardware Co. v. Miller Sawmill Co.*, 90 Wash. 193, 155 Pac. 767, Ann. Cas. 1918A, 940.

See, also, *Citizens' Bank v. Willing*, 109 Wash. 464, 186 Pac. 1072.

Acceptance of bill by parol. 44 Am. Dec. 253.

§ 3523. Holder may Require Acceptance in Writing.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored. [L. '99, p. 363, § 133.]

§ 3524. Acceptance on Separate Paper.

Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. [L. '99, p. 364, § 134.]

Cited in 109 Wash. 467.

Under this section, a draft accompanying a bill of lading for a carload of shooks was not conditionally accepted or binding on the drawee, where the bank consigning the car received the draft several days prior to presentation and on presentation the drawee refused to ac-

cept it but requested that the bill of lading and shipment be forwarded to the purchaser for inspection until which no payment would be made; since the bank did not receive the draft for value on the faith of the acceptance, although it may have relied thereon in forwarding the bill: *Citizens' Bank v. Willing*, 109 Wash. 464, 186 Pac. 1072.

§ 3525. Promise to Accept, Effect of.

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. [L. '99, p. 364, § 135.]

§ 3526. Grace.

The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation. [L. '99, p. 364, § 136.]

§ 3527. When Acceptance Presumed.

Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same. [L. '99, p. 364, § 137.]

Retention of, or refusal to return, bill of exchange as acceptance thereof. 8 Ann. Cas. 612; 17 L. R. A. (N. S.) 1266.

§ 3528. Time of Acceptance.

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. [L. '99, p. 364, § 138.]

§ 3529. Acceptance Either General or Qualified.

An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. [L. '99, p. 364, § 139.]

Cited in 78 Wash. 126.

§ 3530. General Acceptance Defined.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. [L. '99, p. 364, § 140.]

§ 3531. Qualified Acceptance Defined.

An acceptance is qualified, which is—

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
 2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
 3. Local, that is to say, an acceptance to pay only at a particular place;
 4. Qualified as to time;
 5. The acceptance of some one or more of the drawees, but not of all.
- [L. '99, p. 364, § 141.]

Cited in 78 Wash. 126, 127.

Construction of acceptance of bill of exchange conditional on possession or availability of funds. *Ann. Cas.* 1918A, 941.

§ 3532. Qualified Acceptance, Rights of Parties Under.

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. [L. '99, p. 365, § 142.]

§ 3533. Presentment for Acceptance, When Necessary.

Presentment for acceptance must be made—

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
2. Where the bill expressly stipulates that it shall be presented for acceptance; or
3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. [L. '99, p. 365, § 143.]

§ 3534. Discharge of Drawer by Failure to Present.

Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged. [L. '99, p. 365, § 144.]

§ 3535. Presentment to Whom and When.

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawer or some person authorized to accept or refuse acceptance on his behalf; and—

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. [L. '99, p. 365, § 145.]

Presentment for Acceptance: See Remington's Digest, Bills & N., § 75; Bartholomew v. First National Bank, 18 Wash. 683, 52 Pac. 239.

§ 3536. Presentment on What Days.

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 3463 and 3475½. [L. '15, p. 547, § 2. Cf. L. '99, p. 366, § 146.]

§ 3537. Failure to Present Excusable, When.

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. [L. '99, p. 366, § 147.]

§ 3538. Presentment Excused, When.

Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases—

1. Where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill;

2. Where, after the exercise of reasonable diligence, presentment cannot be made;

3. Where, although presentment has been irregular, acceptance has been refused on some other ground. [L. '99, p. 366, § 148.]

§ 3539. Dishonor by Nonacceptance.

A bill is dishonored by nonacceptance,—

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted. [L. '99, p. 366, § 149.]

§ 3540. Dishonored When not Promptly Accepted.

Where a bill is duly presented for acceptance, and is not accepted within the prescribed time, the person presenting it must treat the bill as

dishonored by nonacceptance or he loses the right of recourse against the drawer and indorser. [L. '99, p. 367, § 150.]

§ 3541. Effect of Dishonor by Nonacceptance.

When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. [L. '99, p. 367, § 151.]

§ 3542. Protest Necessary on Foreign Bills.

Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. [L. '99, p. 367, § 152.]

See § 3508, *supra*.

§ 3543. What Protest must Specify.

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. [L. '99, p. 367, § 153.]

See *infra*, § 9905, record of protests.

§ 3544. Who may Make Protest.

Protest may be made by,—

1. A notary public; or
2. By any respectable [responsible] resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. [L. '99, p. 367, § 154.]

See *infra*, § 9902, notaries may.

§ 3545. When Protest must be Made.

When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. [L. '99, p. 367, § 155.]

§ 3546. Place of Protest.

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence, of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. [L. '99, p. 368, § 156.]

§ 3547. Protest for Both Nonacceptance and Nonpayment.

A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. [L. '99, p. 368, § 157.]

§ 3548. Insolvency, Effect of.

Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. [L. '99, p. 368, § 158.]

§ 3549. Protest Excused, When.

Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. [L. '99, p. 368, § 159.]

§ 3550. Lost Bill.

Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. [L. '99, p. 368, § 160.]

§ 3551. Acceptance for Honor.

Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. [L. '99, p. 368, § 161.]

Cited in 110 Wash. 236.

§ 3552. How Made.

An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. [L. '99, p. 369, § 162.]

§ 3553. Presumed for Honor of Drawer.

Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. [L. '99, p. 369, § 163.]

§ 3554. Liability of Acceptor for Honor.

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. [L. '99, p. 369, § 164.]

§ 3555. Acceptor for Honor's Undertaking.

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance: Provided, it shall not have been paid by the drawee: And provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. [L. '99, p. 369, § 165.]

§ 3556. Maturity of Bill Accepted for Honor.

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor. [L. '99, p. 369, § 166.]

§ 3557. When Protest Necessary.

Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. [L. '99, p. 369, § 167.]

§ 3558. Presentment for Payment to Acceptor for Honor.

Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

2. If it is to [be] presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 3494. [L. '99, p. 369, § 168.]

§ 3559. Delay in Presentment Excused.

The provisions of section 3472 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. [L. '99, p. 370, § 169.]

§ 3560. Protest Necessary.

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him. [L. '99, p. 370, § 170.]

§ 3561. Payment for Honor.

Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. [L. '99, p. 370, § 171.]

§ 3562. Attestation by Notary.

The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it. [L. '99, p. 370, § 172.]

§ 3563. Declaration Necessary.

The notarial act of honor must be founded on a declaration made by the payer for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays. [L. '99, p. 370, § 173.]

§ 3564. Preference Between Two Offering Payment.

Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference. [L. '99, p. 370, § 174.]

§ 3565. Payer for Honor Subrogated.

Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. [L. '99, p. 370, § 175.]

§ 3566. Refusal to Receive Payment Supra Protest.

Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. [L. '99, p. 370, § 176.]

§ 3567. Payer for Honor Entitled to Bill and Protest.

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. [L. '99, p. 370, § 177.]

§ 3568. When Set Constitutes One Bill.

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. [L. '99, p. 370, § 178.]

§ 3569. Negotiation of Parts to Different Holders.

Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. [L. '99, p. 371, § 179.]

§ 3570. Indorsement to Different Parties—Liability.

Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. [L. '99, p. 371, § 180.]

§ 3571. Acceptance of Different Parts.

The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such

accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. [L. '99, p. 371, § 181.]

§ 3572. Payment, When a Part not Delivered.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. [L. '99, p. 371, § 182.]

§ 3573. Discharge of Part Discharges Whole.

Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. [L. '99, p. 371, § 183.]

§ 3574. Promissory Note Defined.

A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him. [L. '99, p. 371, § 184.]

§ 3575. Check Defined.

A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check. [L. '99, p. 371, § 185.]

Cited in 65 Wash. 672; 85 Wash. 467; 109 Wash. 315.

A prosecution for larceny of a check is supported by proof of the larceny of an instrument which in its original form was a certificate of deposit, stated on its face as not subject to check, but providing

that the money was payable on the order of the depositor, where it was indorsed by him to the defendant, since it thereby became in legal effect a check, under this section, and section 3516: *State v. Garland*, 65 Wash. 666, 118 Pac. 907.

§ 3576. Presentment of Check.

A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. [L. '99, p. 372, § 186.]

Cited in 85 Wash. 467, 471; 91 Wash. 624.

Under this section, a delay of one week in presenting a check capable of presentment in two days was so unreasonable as to relieve the drawer from liability for its nonpayment by reason of the suspension of the bank: *Peninsula National Bank v. Pederson Construction Co.*, 91 Wash. 621, 158 Pac. 246.

Under this section, the taker of a stale

check, although not an unqualified holder in due course, would be such holder, except in so far as the drawer of the check could show that he had been injured by the delay: *German-American Bank of Seattle v. Wright*, 85 Wash. 460, 148 Pac. 769.

Reasonable time for presentment of check for payment when drawn on bank in same place as residence of payee. 10 *Ann. Cas.* 1121.

§ 3577. Certification an Acceptance.

Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. [L. '99, p. 372, § 187.]

§ 3578. Certification Discharges Drawer.

Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon. [L. '99, p. 372, § 188.]

Effect of certification of check on liability of drawer or indorser. 11 *Ann. Cas.* 245.

§ 3579. Check, not an Assignment.

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check. [L. '99, p. 372, § 189.]

Cited in 100 Wash. 380.

Ordinary bank check as assignment

of funds of drawer. 5 *Ann. Cas.* 189, 939; *Ann. Cas.* 1913D, 418.

§ 3580. Style of Act.

This act shall be known as the Negotiable Instruments Act. [L. '99, p. 372, § 190.]

§ 3581. Definition of Terms.

In this act unless the context otherwise requires,—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and setoff.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print. [L. '99, p. 372, § 191.]

§ 3582. Who Primarily and Who Secondarily Liable.

The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay same. All other parties are “secondarily” liable. [L. '99, p. 373, § 192.]

Cited in 75 Wash. 517; 79 Wash. 190;
87 Wash. 598; 110 Wash. 236.

Parties: See Remington's Digest, Bills
& N., § 18; Harmon v. Hale, 1 W. T. 422;

Culbertson v. Wilcox, 11 Wash. 522, 39 Pac. 954; Bank of British Columbia v. Jeffs, 15 Wash. 230, 46 Pac. 247; Tacoma Mill Co. v. Sherwood, 11 Wash. 492, 39 Pac. 977.

See, also, Bank of California v. Starrett, 110 Wash. 231, 188 Pac. 410, 9 A. L. R. 177.

Persons as to or Against Whom Defenses are Available: See Remington's Digest, Bills & N., § 99; Kenworthy v. Merritt, 2 W. T. 155, 7 Pac. 62; Allen v. Olympia Light & P. Co., 13 Wash. 307, 43 Pac. 55; Seattle Nat. Bank v. Emmons, 16 Wash. 585, 44 Pac. 262; Lodge v. Lewis, 32 Wash. 191, 72 Pac. 1009; Shuey

v. Holmes, 20 Wash. 13, 54 Pac. 540; Walsh v. Cooper, 10 Wash. 513, 39 Pac. 127; Huntington v. Lombard, 22 Wash. 202, 60 Pac. 414; Hamilton v. Ramage, 39 Wash. 649, 155 Pac. 151; Nebraska Inv. Co. v. Corlett, 102 Wash. 151, 172 Pac. 851.

Actions and Defenses Involving Maker and Indorser: See Remington's Digest, Bills & N., § 103; Main v. Johnson, 7 Wash. 321, 35 Pac. 67; Allen v. Chambers, 13 Wash. 327, 43 Pac. 57; Shuey v. Adair, 18 Wash. 188, 51 Pac. 388, 63 Am. St. Rep. 879, 39 L. R. A. 473; Shultz v. Crewdson, 95 Wash. 266, 163 Pac. 734.

§ 3583. Reasonable Time, How Determined.

In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case. [L. '99, p. 373, § 193.]

§ 3584. Sundays and Holidays.

Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. [L. '99, p. 373, § 194.]

See, also, § 3475½, supra.

§ 3585. Act not Retroactive.

The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage thereof. [L. '99, p. 373, § 195.]

§ 3586. Law-merchant.

In any case not provided for in this act the rules of the law-merchant shall govern. [L. '99, p. 373, § 196.]

Cited in 81 Wash. 448.

CHAPTER II.

BILLS OF LADING AND RECEIPTS BY WAREHOUSEMEN.

Public terminal warehouses and receipts by: See infra, § 11549.

§ 3587. [3369-1.] Persons Who may Issue Receipts.

Warehouse receipts may be issued by any warehouseman, and must be issued in manner and form as provided by this act. [L. '13, p. 279, § 1.]

"This act," refers to this chapter.

See infra, § 11554, duty to deliver receipts.

Cited in 90 Wash. 68; 109 Wash. 469.

§ 3588. [3369-2.] Form of Receipts—Essential Terms.

Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

- (a) The location of the warehouse where the goods are stored.
- (b) The date of issue of the receipt.
- (c) The consecutive number of the receipt.
- (d) A statement whether the goods received will be delivered to the bearer, to a specified person or to a specified person or his order.
- (e) The rate of storage charges.
- (f) A description of the goods or of the packages containing them. If the same be issued for wheat it shall specifically state the variety of wheat by name.
- (g) The signature of the warehouseman, which may be made by his authorized agent.
- (h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
- (i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made, or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required. [L. '13, p. 279, § 2.]

See *infra*, § 11554, form of class A warehouse receipts.

Contracts for Storage in General: See Remington's Digest, Wareh., § 1; Windell v. Readman Warehouse Co., 30 Wash. 469, 71 Pac. 56; Patterson v. Wenatchee Canning Co., 53 Wash. 155, 101 Pac. 721; Bollen v. Northern Grain & Warehouse Co., 85 Wash. 86, 147 Pac. 636.

The fact that a receipt given by a mill owner is signed by the manager of his mill as "warehouseman," does not make it a warehouseman's receipt: Steaubli v. Blaine Nat. Bank, 11 Wash. 426, 39 Pac. 814.

Warehouse Receipts: See Remington's Digest, Wareh., § 2-1. **Construction and Operation:** Nowell v. Seattle Transfer Co., 63 Wash. 685, 116 Pac. 287; Windell v. Readman Warehouse Co., 30 Wash. 469, 71 Pac. 56.

Receipts of warehousemen and their transfer and negotiation. 84 Am. Dec. 752; 17 Ann. Cas. 670.

Construction of uniform Warehouse Receipts Act. Ann. Cas. 1917E, 29.

§ 3589. [3369-3.] Form of Receipt—What Terms may be Inserted.

A warehouseman may insert in a receipt, issued by him, any other terms and conditions: Provided, that such terms, and conditions shall not:

- (a) Be contrary to the provisions of this act.
- (b) In any wise impair his obligation to exercise that degree of care in the safekeeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own; and any provisions so inserted contrary to the provisions of this act, shall, so far as they conflict with the provisions thereof be void. [L. '13, p. 280, § 3.]

§ 3590. [3369-4.] Definition of a Non-negotiable Receipt.

A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt. [L. '13, p. 280, § 4.]

§ 3591. [3369-5.] Definition of a Negotiable Receipt.

A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void. [L. '13, p. 280, § 5.]

§ 3592. [3369-6.] Duplicate Receipts must be so Marked.

When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. [L. '13, p. 281, § 6.]

§ 3593. [3369-7.] Failure to Mark "Not Negotiable."

A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable" or "not negotiable." In case of the warehouseman's failure to do so, a holder of the receipt who purchased it for value, supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgment of an informal character. [L. '13, p. 281, § 7.]

Negotiability and Transfer: *Yarwood v. Happy*, 18 Wash. 246, 51 Pac. 461; *Klock Produce Co. v. Diamond Ice & Storage Co.*, 90 Wash. 67, 155 Pac. 414. See, also, *Citizens' Bank v. Willing*, 109 Wash. 464, 186 Pac. 1072.

§ 3594. [3369-8.] Obligation of Warehouseman to Deliver.

A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

- (a) An offer to satisfy the warehouseman's lien.
- (b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to

establish the existence of a lawful excuse for such refusal. [L. '13, p. 281, § 8.]

See *infra*, § 11556, unlawful to deliver, except upon return of receipt.

Delivery by Warehouseman: See Remington's Digest, Wareh., § 5; *Drasdo v. Beck*, 37 Wash. 363, 79 Pac. 948; *Union Elevator & Warehouse Co. v. Farmers' Warehouse Co.*, 69 Wash. 664, 125 Pac. 960; *Northwestern Grain Co. v. Kerr-*

Gifford Warehouse Co., 76 Wash. 689, 136 Pac. 1154.

Liability of warehouseman without notice of transfer of warehouse receipt for delivery of goods to original bailor. *Ann. Cas.* 1914D, 1305.

§ 3595. [3369-9.] Justification of Warehouseman in Delivering.

A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is,

(a) The person lawfully entitled to the possession of the goods, or his agent.

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. [L. '13, p. 282, § 9.]

§ 3596. [3369-10.] Warehouseman's Liability for Misdelivery.

Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than is authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either,

(a) Been requested, by or on behalf of the person lawfully entitled to right of property or possession in the goods, not to make such delivery; or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. [L. '13, p. 282, § 10.]

§ 3597. [3369-11.] Negotiable Receipts must be Canceled When Goods Delivered.

Except as provided in section 3622, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. [L. '13, p. 283, § 11.]

See *infra*, § 11556, duty to cancel.

§ 3598. [3369-12.] Negotiable Receipts must be Canceled or Marked When Part of Goods Delivered.

Except as provided in section 3622, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to anyone who purchases for value in good faith such receipt, for failure, to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. [L. '13, p. 283, § 12.]

Cited in 90 Wash. 70.

On the partial withdrawal of goods from a warehouse, held on a negotiable receipt, the warehouseman cannot, against the consent of the holder, after the old receipt by indorsing thereon a claim of lien for storage of other goods not originally enumerated; and this section does not authorize the warehouse to force an

exchange of receipts against the consent of the holder or surcharge a negotiable receipt with other liens: *Klock Produce Co. v. Diamond Ice & Storage Co.*, 90 Wash. 67, 155 Pac. 414.

Carrier, when justified in delivering the goods to the consignee under this section: *Citizens' Bank v. Willing*, 109 Wash. 464, 186 Pac. 1072.

§ 3599. [3369-13.] Altered Receipts.

The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was:

- (a) Immaterial
- (b) Authorized, or
- (c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. [L. '13, p. 283, § 13.]

§ 3600. [3369-14.] Lost or Destroyed Receipts.

Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [L. '13, p. 284, § 14.]

See *infra*, § 11561, duplicates in case of loss.

§ 3601. [3369-15.] Effect of Duplicate Receipts.

A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such a receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of issue of the duplicate, but shall impose upon him no other liability. [L. '13, p. 284, § 15.]

§ 3602. [3369-16.] Warehouseman cannot Set up Title in Himself.

No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. [L. '13, p. 284, § 16.]

§ 3603. [3369-17.] Interpleader of Adverse Claimants.

If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. [L. '13, p. 285, § 17.]

§ 3604. [3369-18.] Warehouseman has Reasonable Time to Determine Validity of Claims.

If someone other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him, or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [L. '13, p. 285, § 18.]

§ 3605. [3369-19.] Adverse Title No Defense.

Except as provided in the two preceding sections and in sections 3595 and 3622, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. [L. '13, p. 285, § 19.]

§ 3606. [3369-20.] Liability for Nonexistence or Misdescription of Goods.

A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by failure of the goods to

correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor. [L. '13, p. 285, § 20.]

§ 3607. [3369-21.] Liability for Care of Goods.

A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. [L. '13, p. 286, § 21.]

Loss of or Injury to Goods: See Remington's Digest, Wareh., § 4; Oregon Imp. Co. v. Seattle Gas Light Co., 4 Wash. 634, 30 Pac. 672; Gannon v. Seehorn, 44 Wash. 87, 86 Pac. 1116; Patterson v. Wenatchee Canning Co., 53 Wash. 155, 101 Pac. 721; Washington Shoe Manufacturing Co. v. Dodwell Dock & Warehouse Co., 95 Wash. 621, 164 Pac. 252.

An action for the conversion of wheat held in warehouse must fail where plaintiff had sold all his receipts, representing all his wheat, although, due to a commingling of other wheat, a portion of it remained in the warehouse after full delivery to the purchaser; since plaintiff had no title: Hancock v. Pacific Coast Elevator Co., 105 Wash. 149, 177 Pac. 639.

Where a storage company makes good the losses sustained through breach of its contract by improper storage, the effect is the same as a proper delivery, entitling the company to recover the storage charges: Diamond Ice & Storage Co. v. Klock Produce Co., 110 Wash. 689, 189 Pac. 257.

Actions by or Against Warehousemen—Pleadings: See Remington's Digest, Wareh., §§ 6, 7; First Nat. Bank of Pullman v. Young, 20 Wash. 337, 55 Pac. 215; Patterson v. Wenatchee Canning Co., 59 Wash. 556, 110 Pac. 379; Perry Brothers v. Diamond Ice & Storage Co.,

92 Wash. 105, 158 Pac. 1008, Ann. Cas. 1918C, 291.

§ 7. — **Evidence:** Bergman v. Shoudy, 9 Wash. 33, 37 Pac. 453; Foster v. Pacific Clipper Line, 30 Wash. 515, 71 Pac. 48; Young v. Seattle Transfer Co., 33 Wash. 225, 74 Pac. 375, 99 Am. St. Rep. 942, 63 L. R. A. 988; Smith v. Diamond Ice & Storage Co., 65 Wash. 576, 118 Pac. 636, 38 L. R. A. (N. S.) 994; Perry Brothers v. Diamond Ice & Storage Co., 92 Wash. 105, 158 Pac. 1008, Ann. Cas. 1918C, 291; Klock Produce Co. v. Diamond Ice & Storage Co., 98 Wash. 676, 168 Pac. 476.

Duty of warehousemen in the care of property. 136 Am. St. Rep. 212.

Presumption and burden of proof as to care or negligence in respect to subject of bailment. 43 L. R. A. (N. S.) 1176.

Liability of warehouseman for loss of goods by fire. 19 Ann. Cas. 243; Ann. Cas. 1914A, 1123.

Liability for goods damaged or destroyed while stored in building other than that called for by contract. 24 L. R. A. (N. S.) 1117.

Liability of warehouseman for injury to agricultural products by weevil. 26 L. R. A. (N. S.) 1114.

Duty of warehouseman to protect goods against high water. L. R. A. 1915D, 726.

§ 3608. [3369-22.] Goods must be Kept Separate.

Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. [L. '13, p. 286, § 22.]

§ 3609. [3369-23.] Fungible Goods Commingled, if Authorized.

If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. [L. '13, p. 286, § 23.]

§ 3610. [3369-24.] Liability of Warehouseman to Depositors of Commingled Goods.

The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. [L. '13, p. 286, § 24.]

§ 3611. [3369-25.] Attachment or Levy upon Goods for Which a Negotiable Receipt has Been Issued.

If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the courts. [L. '13, p. 287, § 25.]

§ 3612. [3369-26.] Creditors' Remedies to Reach Negotiable Receipts.

A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipts or in satisfying the claim by means thereof, as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. [L. '13, p. 287, § 26.]

§ 3613. [3369-27.] Claims Included in Warehouseman's Lien.

Subject to the provisions of section 3616, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooping and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods, where default has been made in satisfying the warehouseman's lien. [L. '13, p. 287, § 27.]

Cited in 90 Wash. 69.

Lien of warehousemen. 42 Am. Dec. 257; Ann. Cas. 1913D, 1300.

§ 3614. [3369-28.] Against What Property the Lien may be Enforced.

Subject to the provisions of section 3616, a warehouseman's lien may be enforced:

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. [L. '13, p. 287, § 28.]

Cited in 90 Wash. 69.

Bekins Moving & Storage Co., 53 Wash. 430, 102 Pac. 23.

Charges and Expenses: See Remington's Digest, Wareh., § 5-1; George v.

§ 3615. [3369-29.] How the Lien may be Lost.

A warehouseman loses his lien upon goods,

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act. [L. '13, p. 288, § 29.]

§ 3616. [3369-30.] Negotiable Receipt must State Charges for Which Lien is Claimed.

If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 3613, although the amount of the charges so enumerated is not stated in the receipt. [L. '13, p. 288, § 30.]

Cited in 90 Wash. 69, 73.

This section was not intended simply for the protection of transferees and third parties, but forbids belated surcharging of a negotiable receipt as between the original parties to the receipt: Klock Produce Co. v. Diamond Ice & Storage Co., 90 Wash. 67, 155 Pac. 414.

subsequently be surcharged with liens for other goods not mentioned, upon making a partial withdrawal, by virtue of section 3614, providing for such a lien for charges on other goods belonging to the same depositor "wherever deposited," since the later section is expressly made "subject to the provisions of section 3616": Klock Produce Co. v. Diamond Ice & Storage Co., 90 Wash. 67, 155 Pac. 414.

Under this section, a receipt cannot

§ 3617. [3369-31.] Warehouseman Need not Deliver Until Lien is Satisfied.

A warehouseman having a lien valid against the person demanding the goods, may refuse to deliver the goods to him until the lien is satisfied. [L. '13, p. 228, § 31.]

§ 3618. [3369-32.] Warehouseman's Lien Does not Preclude Other Remedies.

Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. [L. '13, p. 288, § 32.]

§ 3619. [3369-33.] Satisfaction of Lien by Sale.

A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice, if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of

the goods according to the terms of the original contract of deposit. [L. '13, p. 289, § 33.]

§ 3620. [3369–34.] Perishable and Hazardous Goods.

If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort, is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section. [L. '13, p. 290, § 34.]

§ 3621. [3369–35.] Other Methods of Enforcing Liens.

The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. [L. '13, p. 291, § 35.]

§ 3622. [3369–36.] Effect of Sale.

After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. [L. '13, p. 291, § 36.]

§ 3623. [3369–37.] Negotiation of Negotiable Receipts by Delivery.

A negotiable receipt may be negotiated by delivery,

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank to the bearer.

(c) Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. [L. '13, p. 291, § 37.]

§ 3624. [3369–38.] Negotiation of Negotiable Receipts by Indorsement.

A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliver-

able. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. [L. '13, p. 292, § 38.]

§ 3625. [3369-39.] Transfer of Receipts.

A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right. [L. '13, p. 292, § 39.]

§ 3626. [3369-40.] Who may Negotiate a Receipt.

A negotiable receipt may be negotiated,

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery. [L. '13, p. 292, § 40.]

§ 3627. [3369-41.] Rights of Person to Whom a Receipt has Been Negotiated.

A person to whom a negotiable receipt has been duly negotiated acquires thereby,

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. [L. '13, p. 292, § 41.]

Transfer of warehouse receipt as divesting vendor's lien. *Ann. Cas.* 1917D, 112.

§ 3628. [3369-42.] Rights of Persons to Whom a Receipt has Been Transferred.

A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods, for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the

goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. [L. '13, p. 293, § 42.]

§ 3629. [3369-43.] Transfer of Negotiable Receipt Without Indorsement.

Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [L. '13, p. 293, § 43.]

§ 3630. [3369-44.] Warranties on Sale of Receipt.

A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants,

- (a) That the receipt be genuine.
- (b) That he has a legal right to negotiate or transfer it.
- (c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and,
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. [L. '13, p. 293, § 44.]

§ 3631. [3369-45.] Indorser not a Guarantor.

The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. [L. '13, p. 294, § 45.]

§ 3632. [3369-46.] No Warranty Implied from Accepting Payment of a Debt.

A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. [L. '13, p. 294, § 46.]

§ 3633. [3369-47.] When Negotiation not Impaired by Fraud, Mistake or Duress.

The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid

value therefor, without notice of the breach of duty, or fraud, mistake or duress. [L. '13, p. 294, § 47.]

§ 3634. [3369-48.] Subsequent Negotiation.

Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. [L. '13, p. 294, § 48.]

§ 3635. [3369-49.] Negotiation Defeats Vendor's Lien.

Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiations be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. [L. '13, p. 295, § 49.]

§ 3636. [3369-50.] Issue of Receipt for Goods not Received.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a gross misdemeanor. [L. '13, p. 295, § 50.]

§ 3637. [3369-51.] Issue of Receipt Containing False Statement.

A warehouseman or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a gross misdemeanor. [L. '13, p. 295, § 51.]

§ 3638. [3369-52.] Issue of Duplicate Receipts not so Marked.

A warehouseman or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate" except in the case of lost or destroyed receipt after proceedings as provided for in section 3600, shall be guilty of a gross misdemeanor. [L. '13, p. 295, § 52.]

§ 3639. [3369-53.] Issue for Warehouseman's Goods of Receipts Which Do not State That Fact.

Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly, or in common with others,

such warehouseman or any of his officers, agents, or servants who, knowing this ownership issues or aids in issuing a negotiable receipt for such goods, which does not state such ownership, shall be guilty of a gross misdemeanor. [L. '13, p. 296, § 53.]

§ 3640. [3369-54.] Delivery of Goods Without Obtaining Negotiable Receipt.

A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 3600 and 3622, be found guilty of a gross misdemeanor. [L. '13, p. 296, § 54.]

§ 3641. [3369-55.] Negotiation of Receipt for Mortgaged Goods.

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a gross misdemeanor. [L. '13, p. 296, § 55.]

§ 3642. [3369-56.] When Rules of Common Law Still Applicable.

In any case not provided for in this act, the rules of law and equity, including the law-merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause shall govern. [L. '13, p. 296, § 56.]

§ 3643. [3369-57.] Interpretation shall Give Effect to Purpose of Uniformity.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [L. '13, p. 297, § 57.]

§ 3644. [3369-58.] Definitions.

(1) In this act, unless the context or subject matter otherwise requires, "Action" includes counterclaim, setoff, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

“Warehouseman” means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done “in good faith” within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. [L. '13, p. 297, § 58.]

Cited in 109 Wash. 469.

A company having no warehouse of its own and doing no business for the public, organized as a device by which a bank could furnish negotiable warehouse receipts as collateral security for loans to a manufacturing company, is not a “warehouseman” authorized to issue negotiable warehouse receipts, within this section;

hence the bank did not acquire title by virtue of its warehouse receipt denominated on its face as negotiable; since the carrier was justified, under section 3658, *infra*, in delivering the goods to the consignee named in a non-negotiable bill of lading: *Citizens Bank v. Willing*, 109 Wash. 464, 186 Pac. 1072.

§ 3645. [3369–59.] Prior Receipts.

The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act. [L. '13, p. 298, § 59.]

§ 3646. [3369–61.] Name of Act.

This act may be cited as the “Uniform Warehouse Receipts Act.” [L. '13, p. 298, § 61.]

CHAPTER III.

BILLS OF LADING BY CARRIERS.

PART I.

THE ISSUE OF BILLS OF LADING.

§ 3647. [3385–1.] Bills Governed by This Act.

Bills of lading issued by any common carrier shall be governed by this act. [L. '15, p. 462, § 1.]

“This act” refers to this chapter.

§ 3648. [3385–2.] Form of Bills—Essential Terms.

Every bill must embody within its written or printed terms:

- (a) The date of its issue,
- (b) The name of the person from whom the goods have been received,
- (c) The place where the goods have been received,
- (d) The place to which the goods are to be transported,

(e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,

(f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in section 3669, and

(g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section. [L. '15, p. 462, § 2.]

§ 3649. [3385-3.] Form of Bills—Terms Inserted.

A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to law or public policy, or

(b) In anywise impair his obligation to exercise at least that degree of care in the transportation and safekeeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. [L. '15, p. 463, § 3.]

Nature and Construction of Bill of Lading: See Remington's Digest, Carr., §§ 9—13. **In General:** Bleecker v. Satsop R. Co., 3 Wash. 77, 27 Pac. 1073; First Nat. Bank of Pullman v. Northern Pac. R. Co., 28 Wash. 439, 68 Pac. 965.

§ 11. **Validity of Bill of Lading:** Roy & Roy v. Northern Pac. R. Co., 42 Wash. 572, 85 Pac. 53, 7 Ann. Cas. 728, 6 L. R. A. (N. S.) 302.

§ 12. **Construction and Operation of Bill of Lading—In General:** Williams v. Steamship Columbia, 1 W. T. 95; Allen etc. Co. v. Canadian Pac. R. Co., 42

Wash. 64, 84 Pac. 620, 7 Ann. Cas. 468; Vittucci Co. v. Canadian Pac. R. Co., 102 Wash. 686, 174 Pac. 981.

§ 13. — **As a Contract:** Allen etc. Co. v. Canadian Pac. R. Co., 42 Wash. 64, 84 Pac. 620, 7 Ann. Cas. 468; Revilla Fish Products Co. v. American-Hawaiian Steamship Co., 77 Wash. 49, 137 Pac. 337.

Definition and effect of bill of lading. 38 **Am. Dec.** 407.

Conclusiveness of bill of lading. 30 **Am. St. Rep.** 634; 21 **Ann. Cas.** 225; 6 **L. R. A. (N. S.)** 302; 34 **L. R. A. (N. S.)** 1177.

§ 3650. [3385-4.] Non-negotiable or Straight Bill.

A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill. [L. '15, p. 463, § 4.]

§ 3651. [3385-5.] Negotiable or Order Bill.

A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that it is non-negotiable shall not affect its negotiability within the meaning of this act. [L. '15, p. 463, § 5.]

Negotiability and Transfer of Bill of Lading: See Remington's Digest, Carr., §§ 14, 14-1; First Nat. Bank of Pullman v. Northern Pac. R. Co., 28 Wash. 439, 68 Pac. 965; Roy & Roy v. Northern Pac. R. Co., 42 Wash. 572, 85 Pac. 53, 7 Ann.

Cas. 728, 6 L. R. A. (N. S.) 302; Bonds-Foster Lumber Co. v. Northern Pac. R. Co., 53 Wash. 302, 101 Pac. 877.

See, also, Johnson Lbr. Co. v. Great Northern R. Co., 104 Wash. 354, 176 Pac.

343; Quality Shingle Co. v. Old Oregon Pac. 705; Getchell v. Northern Pac. R. Lbr. & Shingle Co., 110 Wash. 60, 187 Co., 110 Wash. 66, 187 Pac. 707.

§ 3652. [3385-6.] Negotiable Bills not Issued in Sets.

Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets.

If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts. [L. '15, p. 463, § 6.]

§ 3653. [3385-7.] Duplicate Negotiable Bills Marked.

When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. [L. '15, p. 464, § 7.]

See supra, § 2646, duplicates when misdemeanor.

§ 3654. [3385-8.] Non-negotiable Bills Marked.

A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character. [L. '15, p. 464, § 8.]

Rights of assignee of bill of lading of import: State Bank of Buckley v. lumber, where the bills of lading were Nebraska Bridge Supply & Lumber Co., not stamped upon their face "not negoti- 87 Wash. 142, 151 Pac. 253. able," and contained no words of similar

§ 3655. [3385-9.] Insertion of Name of Person to be Notified.

The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. [L. '15, p. 464, § 9.]

§ 3656. [3385-10.] Acceptance of Bill Indicates Assent to Its Terms.

Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy. [L. '15, p. 464, § 10.]

PART II.

OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING.

§ 3657. [3385-11.] **Obligation of Carrier to Deliver.**

A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods,

(b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. [L. '15 p. 465, § 11.]

§ 3658. [3385-12.] **Justification of Carrier in Delivering.**

A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a non-negotiable bill of the goods, or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee. [L. '15, p. 465, § 12.]

Cited in 109 Wash. 468.

Delivery by Carrier: See Remington's Digest, Carr., §§ 19—22-1. **To Whom Delivery may be Made—Custom:** Williams v. The Steamship Columbia, 1 W. T. 95.

§ 21. **Presentation of Bill of Lading:** First National Bank of Pullman v. North-

ern Pac. R. Co., 28 Wash. 439, 68 Pac. 965.

§ 22. **Place of Delivery:** Sweeney v. Waterhouse & Co., 39 Wash. 507, 81 Pac. 1005.

§ 22-1. **Notice to Consignee:** Rosenbaum v. Northern Pac. R. Co., 101 Wash. 225, 172 Pac. 238.

§ 3659. [3385-13.] **Carrier's Liability for Misdelivery.**

Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or

apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. [L. '15, p. 466, § 13.]

Duties of Carrier and Consignee as to Delivery: See Remington's Digest, Carr., §§ 23—26; Normile v. Northern Pac. R. Co., 36 Wash. 21, 77 Pac. 1087; 67 L. R. A. 271.

§ 24. **Failure or Refusal of Consignee to Receive Goods:** Beedy v. Pacey, 22 Wash. 94, 60 Pac. 56; Normile v. Northern Pac. R. Co., 36 Wash. 21, 77 Pac. 1087, 67 L. R. A. 271.

§ 25. **Liability for Failure or Refusal to Deliver:** Lee v. Fidelity Storage & Transfer Co., 51 Wash. 208, 98 Pac. 658; Garberson v. Trans-Continental Freight Co., 51 Wash. 213, 98 Pac. 612.

§ 26. **Actions for Failure to Deliver or Misdelivery:** Swcney v. Waterhouse & Co., 29 Wash. 507, 81 Pac. 1005; Gates v. Bekins, 44 Wash. 422, 87 Pac. 505; Lee v. Fidelity Storage & Transfer Co., 51 Wash. 208, 98 Pac. 658; Coovert v. Spokane, Portland & S. R. Co., 89 Wash. 87, 141 Pac. 324.

DELAY, LOSS OR INJURY IN TRANSPORTATION OR DELIVERY: See Remington's Digest, Carr., §§ 27—35. **Commencement of Liability:** Roy v. Griffin, 26 Wash. 106, 66 Pac. 120.

§ 28. **Condition of Goods:** Rothchild Brothers v. Northern Pac. R. Co., 68 Wash. 527, 123 Pac. 1011, 40 L. R. A. (N. S.) 773.

§ 29. **Claims for Damages:** Williams v. The Steamship Columbia, 1 W. T. 95.

§ 30. **Actions for Delay or Loss:** Moran Bros. Co. v. Northern Pac. R. Co., 19 Wash. 266, 53 Pac. 49, 1101; Beedy v. Pacey, 22 Wash. 94, 60 Pac. 56.

§ 30-1. — **Defenses:** Revilla Fish Products Co. v. American-Hawaiian Steamship Co., 77 Wash. 49, 137 Pac. 337; Bridgeport Milling Co. v. Columbia & Okanogan Steamboat Co., 85 Wash. 336, 148 Pac. 6; Vittucci Co. v. Canadian Pac. R. Co., 102 Wash. 686, 174 Pac. 981.

§ 31. — **Pleading and Findings:** Carstens v. Alaska Steamship Co., 39 Wash. 229, 81 Pac. 691; Vittucci Co. v. Canadian Pac. R. Co., 102 Wash. 686, 174 Pac. 981.

§ 32. — **Evidence:** Garberson v. Trans-Continental Freight Co., 51 Wash. 213, 98 Pac. 612; Auditorium Theatre Co. v. Oregon-Washington R. & Nav. Co., 77 Wash. 277, 137 Pac. 489.

§ 33. — **Damages:** Waldron v. Canadian Pac. R. Co., 22 Wash. 253, 60 Pac. 653; Kettenhofen v. Globe Transfer & Storage Co., 70 Wash. 645, 127 Pac. 295, Ann. Cas. 1914B, 776, 42 L. R. A. (N. S.) 902; Lagomarsino v. Pacific Alaska Nav. Co., 100 Wash. 105, 170 Pac. 368.

§ 34. **Goods Awaiting Delivery:** Fisher v. Northern Pac. R. Co., 49 Wash. 258, 94 Pac. 1073, 126 Am. St. Rep. 867; Kettenhofen v. Globe Transfer & Storage Co., 70 Wash. 645, 127 Pac. 295, Ann. Cas. 1914B, 776, 42 L. R. A. (N. S.) 902; Lagomarsino v. Pacific Alaska Nav. Co., 100 Wash. 105, 170 Pac. 368.

§ 35. **Duties of Carrier as Warehouseman:** North Yakima Brewing & Malting Co. v. Northern Pac. R. Co., 49 Wash. 375, 95 Pac. 486, 16 L. R. A. (N. S.) 935; Rosenbaum v. Northern Pac. R. Co., 101 Wash. 225, 172 Pac. 238.

§ 3660. [3385-14.] Negotiable Bills Canceled When Goods Delivered.

Except as provided in section 3673, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. [L. '15, p. 466, § 14.]

See supra, § 2647, penalty, failure to cancel, when.

§ 3661. [3385-15.] Negotiable Bills When Canceled or Marked.

Except as provided in section 3673, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. [L. '15, p. 466, § 15.]

See note to last section.

§ 3662. [3385-16.] Altered Bills.

Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. [L. '15, p. 467, § 16.]

§ 3663. [3385-17.] Lost or Destroyed Bills.

Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [L. '15, p. 467, § 17.]

§ 3664. [3385-18.] Effect of Duplicate Bills.

A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. [L. '15, p. 467, § 18.]

§ 3665. [3385-19.] Carrier cannot Set Up Title in Himself.

No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. [L. '15, p. 468, § 19.]

§ 3666. [3385-20.] Interpleader of Adverse Claimants.

If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate. [L. '15, p. 468, § 20.]

§ 3667. [3385-21.] Time to Determine Validity of Claims.

If someone other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [L. '15, p. 468, § 21.]

§ 3668. [3385-22.] Adverse Title When No Defense.

Except as provided in the two preceding sections and in section 3658, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand. [L. '15, p. 468, § 22.]

§ 3669. [3385-23.] Liability for Nonreceipt or Misdescription.

If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to

- (a) The consignee named in a non-negotiable bill, or
- (b) The holder of a negotiable bill,

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill. [L. '15, p. 469, § 23.]

Cited in 104 Wash. 355.

A railroad company, whose general agent, having power to receive shipments, issued an exchange bill of lading for a forged bill under a mistake of fact, without ascertaining, as he might, whether

the goods had been received, is liable to an innocent purchaser for value of the exchange bill, under this section: *Johnson Lumber Co. v. Great Northern R. Co.*, 104 Wash. 354, 176 Pac. 343.

§ 3670. [3385-24.] Attachment or Levy upon Goods.

If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. [L. '15, p. 469, § 24.]

§ 3671. [3385-25.] Creditor's Remedies to Reach Negotiable Bills.

A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. [L. '15, p. 470, § 25.]

§ 3672. [3385-26.] Statement of Charges for Which Lien is Claimed.

If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. [L. '15, p. 470, § 26.]

§ 3673. [3385-27.] Effect of Sale.

After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. [L. '15, p. 470, § 27.]

PART III.

NEGOTIATION AND TRANSFER OF BILLS.

§ 3674. [3385-28.] Negotiation of Negotiable Bills by Delivery.

A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. [L. '15, p. 471, § 28.]

Negotiability and Transfer: See Remington's Digest, Carr., §§ 14—14-2. **In General:** First Nat. Bank of Pullman v. Northern Pac. R. Co., 28 Wash. 439, 68 Pac. 965; Roy & Roy v. Northern Pac. R. Co., 42 Wash. 572, 85 Pac. 53, 7 Ann. Cas. 728, 6 L. R. A. (N. S.) 302.

§ 14-1. — **Negotiability and Assignability:** Bonds-Foster Lumber Co. v. Northern Pac. R. Co., 53 Wash. 302, 101 Pac. 877.

§ 14-2. — **Indorsement or Other Transfer:** Bonds-Foster Lumber Co. v. Northern Pac. R. Co., 53 Wash. 302, 101 Pac. 877.

§ 3675. [3385-29.] Negotiation of Negotiable Bills by Indorsement.

A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. [L. '15, p. 471, § 29.]

§ 3676. [3385-30.] Transfer of Bills.

A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A non-negotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right. [L. '15, p. 471, § 30.]

§ 3677. [3385-31.] Who may Negotiate a Bill.

A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. [L. '15, p. 471, § 31.]

§ 3678. [3385-32.] Rights of Person to Whom a Bill has Been Negotiated.

A person to whom a negotiable bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully if the carrier had contracted directly with him. [L. '15, p. 471, § 32.]

§ 3679. [3385-33.] Rights of Person to Whom a Bill has Been Transferred.

A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods. [L. '15, p. 472, § 33.]

Rights and liabilities of assignees of bills of lading. 105 Am. St. Rep. 332.

§ 3680. [3385-34.] Transfer of Negotiable Bill Without Indorsement.

Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. [L. '15, p. 472, § 34.]

§ 3681. [3385-35.] Warranties on Sale of Bill.

A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless, a contrary intention appears, warrants—

- (a) That the bill is genuine,
- (b) That he has a legal right to transfer it,
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill, and
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim. [L. '15, p. 473, § 35.]

§ 3682. [3385-36.] Indorser not a Guarantor.

The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. [L. '15, p. 473, § 36.]

§ 3683. [3385-37.] No Warranty Implied from Accepting Payment of a Debt.

A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt

or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described. [L. '15, p. 473, § 37.]

§ 3684. [3385–38.] When Negotiation not Impaired by Fraud, etc.

The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion. [L. '15, p. 473, § 38.]

§ 3685. [3385–39.] Subsequent Negotiation.

Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. [L. '15, p. 474, § 39.]

§ 3686. [3385–40.] Form of the Bill as Indicating Rights of Buyer and Seller.

Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is indorsed

in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. [L. '15, p. 474, § 40.]

§ 3687. [3385-41.] Demand or Sight Draft to be Paid When — Acceptance of Time Draft.

Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order. [L. '15, p. 475, § 41.]

§ 3688. [3385-42.] Negotiation Defeats Vendor's Lien.

Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. [L. '15, p. 476, § 42.]

§ 3689. [3385-43.] Rights and Remedies Under Mortgages and Liens.

Except as provided in section 3688, nothing in this act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. [L. '15, p. 476, § 43.]

PART IV.

CRIMINAL OFFENSES.

§ 3690. [3385-44.] Issue of Bill for Goods not Received.

Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 476, § 44.]

Bills of lading for goods not delivered for shipment. 53 Am. Rep. 453.

§ 3691. [3385-45.] Issue of Bill Containing False Statement.

Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [L. '15, p. 477, § 45.]

Validity of agreement of railroad company to issue false bills of lading. 12 L. E. A. (N. S.) 610.

§ 3692. [3385-46.] Issue of Duplicate Bills not so Marked.

Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 3653, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 477, § 46.]

§ 3693. [3385-47.] Negotiation of Bill for Mortgaged Goods.

Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterward negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [L. '15, p. 477, § 47.]

§ 3694. [3385-48.] Negotiation of Bill — Goods not in Carrier's Possession.

Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such

carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 477, § 48.]

§ 3695. [3385-49.] Inducing Carrier to Issue Bill When Goods have not Been Received.

Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier, or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 478, § 49.]

§ 3696. [3385-50.] Issue of Non-negotiable Bill not so Marked.

Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 478, § 50.]

PART V.

INTERPRETATION.

§ 3697. [3385-51.] Rule for Cases not Provided for in This Act.

In any case not provided for in this act, the rules of law and equity including the law-merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern. [L. '15, p. 478, § 51.]

§ 3698. [3385-52.] Interpretation—Effect.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [L. '15, p. 479, § 52.]

§ 3699. [3385-53.] Definitions.

(1) In this act, unless the context or subject matter otherwise requires—

"Action" includes counterclaim, setoff, and suit in equity.

"Bill" means bill of lading.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership of two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. [L. '15, p. 479, § 53.]

§ 3700. [3385-54.] Act Does not Apply to Existing Bills.

The provisions of this act do not apply to bills made and delivered prior to the taking effect thereof. [L. '15, p. 479, § 54.]

§ 3701. [3385-56.] Name of Act.

This act may be cited as the Uniform Bills of Lading Act. [L. '15, p. 480, § 56.]

Blind, The. See "Education," § 4644.

Board. Of arbitration, see "Labor Law," § 7667.

Of equalization, see "Taxation," § 11219.

Boards. See "State and State Boards."

Bonding and Indemnity Companies. See "Insurance," § 7128.

Bonds. Actions on official bonds, see § 958.

By school districts, see "Education," § 4941.

By surety companies, see "Insurance," § 7246.

For county purposes, see "Finance," § 5575.

For local improvements, see "Municipal Corporations," § 9515.

For indebtedness and funding, see "Municipal Corporations," § 9532; "Finance," § 5599.

Of officials. See "Officers," § 9930.

Of river improvement districts, see "Navigation," § 9641.

Boom Companies. See "Logs," § 8399.

Boulevards. See "Highways," § 6647.

Boundaries. See "Counties," §§ 3924-3964; "Municipal Corporations," § 8892; "Education," § 4721.

Establishment of, see §§ 947-949.

TITLE XX.

BOUNTIES.

3702. County commissioners may offer bounties for killing wild animals.
 3703. Limit of amount of such bounties.
 3704. Commissioners to fix rate of bounty offered.
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 3706. Payment of bounties—Records of.
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 3712. Bounty on seals and sea-lions.
 3713. Proof of killing—Affidavit.
 3714. Delivery of scalps—Certificate—Destruction of scalps.
 3715. Scalp, of what to consist.

§ 3702. [3587.] County Commissioners may Offer Bounties for Killing Wild Animals.

The county commissioners of the several counties of this state are hereby authorized to offer and pay out of the county funds of the county treasury a bounty for the scalps of cougars, or panthers, or mountain lions, black or cinnamon bears, wildcats, black and gray wolves, muskrats, squirrels, lynx, and coyotes. [Cf. L. '77, p. 324, § 1; L. '79, p. 141, § 2; Cd. '81, § 2557; L. '86, p. 112, § 1; 1 H. C., § 2418.]

For former laws on this subject see L. '54, pp. 407, 408; L. '63, pp. 494, 495; L. '71, p. 62; repealed by L. '73, p. 483.

§ 3703. [3588.] Limit of Amount of Such Bounties.

The bounty provided for in this act, shall not exceed, for each scalp, as follows: For each mountain lion, cougar, or panther, not more than five dollars; for each black or cinnamon bear, not more than four dollars; for each black or gray wolf, not more than five dollars; for each wildcat, not more than two dollars; for each coyote, not more than one dollar; for each lynx, not more than two dollars; for each muskrat caught within fifty yards of any dike or dam, not less than ten or more than twenty cents; and for each squirrel, not more than five cents: Provided, that in the county of Clarke, the board of commissioners may offer and pay double the amount specified as a bounty for killing the animals named. [Cf. L. '77, p. 324, § 2; L. '79, p. 141, § 3; Cd. '81, § 2558; L. '86, p. 112, § 2; 1 H. C., § 2419.]

"Act" in this section refers to §§ 3702—3707.

§ 3704. [3589.] Commissioners to Fix Rate of Bounty Offered.

Whenever, in the opinion of the board of county commissioners, it shall be necessary to offer a bounty as provided in this act, they shall so order in open court, and cause the order to be spread upon the minutes of the session. Said order shall fix the rate to be offered by the county for scalps, and may contain anything else necessary for carrying out and not inconsistent with the provisions of this act. [Cf. L. '77, p. 324, § 3; L. '79, p. 142, § 4; Cd. '81, § 2559; 1 H. C., § 2420.]

"Act" in this section refers to §§ 3702—3707.

§ 3705. [3590.] Notice of Offering Bounty.

It shall be the duty of the county auditor, whenever the county commissioners shall order that a bounty shall be paid, as provided in the preceding section, to give notice of the order of the board by posting, or causing to be posted, one notice in each precinct in the county; said notice shall state the amounts fixed by the board per scalp for each animal. [Cf. L. '77, p. 324, § 4; L. '79, p. 142, § 5; Cd. '81, § 2560; 1 H. C., § 2421.]

§ 3706. [3591.] Payment of Bounties—Records of.

Whenever any persons shall have any scalp of any animal named in this act upon which they wish to obtain bounty, they shall present the same to the county auditor, whose duty it shall be to examine the same, and ascertain if they have both ears upon them, and such person shall also present to the auditor a bill certified by affidavit that the animal or animals were killed within the county, and that it is just and correct; said bill shall be audited by the county auditor, and presented to the board of county commissioners at their next regular meeting, whose duty it shall be to order the same paid out of the treasury in like moneys [manner] as other claims against the county. It shall also be the duty of the auditor to keep a book provided for the purpose, in which he shall enter the names of all persons presenting scalps, the number and kind presented, and, after allowance by the board, the amount allowed to each person, which book shall be presented at each regular session for their examination and approval. The said auditor shall destroy said scalps, and return the proceedings to each regular session of the board of county commissioners. [Cf. L. '77, p. 324, §§ 5, 6; L. '79, p. 142, §§ 6, 7; Cd. '81, § 2561; 1 H. C., § 2422.]

"Act" in this section refers to §§ 3702—3707.

See *infra*, § 3709, identification to secure state bounty.

§ 3707. [3592.] Revocation of Offer.

The county commissioners may, at any regular term of the court, revoke their orders offering bounty for scalps. [Cf. L. '77, p. 325, § 7; L. '79, p. 142, § 8; Cd. '81, § 2562; 1 H. C., § 2423.]

§ 3708. [3593.] State Bounties on Cougar, Lynx, Wildcat, Coyote and Wolf.

Any person who shall kill any cougar, lynx, wildcat, coyote or timber wolf in the state of Washington shall be entitled to a bounty therefor as follows: For each cougar, twenty dollars (\$20); for each lynx or wildcat, five dollars (\$5); for each coyote, one dollar (\$1); and for each timber wolf, fifteen dollars (\$15). [L. '09, p. 689, § 1.]

Wolves other than "timber" wolves. See § 3702, *supra*.

§ 3709. [3594.] Proof of Killing—Burning Identification.

Upon the production to the county auditor of any county of the entire hide or pelt and right fore leg to the knee joint intact of any cougar, lynx, wildcat, coyote or timber wolf, killed in such county, each of which hides or pelts shall show two ears, eye holes, skin to tip of

nose, and right fore leg to the knee joint intact, the county auditor shall require satisfactory proof that such animal was killed in such county. When the county auditor is satisfied that such animal was killed in his county, he shall cut from such hide or pelt the bone of the right fore leg to the knee as aforesaid which shall be burned in the presence of such auditor and one other county official, who shall certify to the date and place of such burning. [L. '09, p. 689, § 2. Cf. L. '05, p. 122, § 2.]

See *supra*, § 3706, identification to secure county bounties.

§ 3710. [3595.] Penalty for Fraud.

Any person or persons obtaining or attempting to obtain said bounty on the hide or pelts of any cougar, wildcat, lynx, coyote, or timber wolf, killed more than thirty days prior to the date of obtaining or attempting to obtain said bounty or that was killed outside of the boundaries of the county in which the same was offered, or make any other false or fraudulent representation for the purpose of obtaining such bounty, shall be guilty of a felony and upon conviction thereof shall be imprisoned in the state penitentiary for a period of time not to exceed five years, or shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment at the discretion of the court. [L. '09, p. 689, § 3. Cf. L. '05, p. 24, § 6; L. '05, p. 122, § 4.]

§ 3711. [3596.] County Credit for Bounties Paid.

The amount paid by any county for scalps under this act shall be credited to it by the state auditor upon receipt by the state auditor of a sworn statement from the county auditor as to the amount of warrants issued under the provisions of this act in said county, which statement shall be rendered to the state auditor by each county quarterly, and the state auditor shall make a charge against the general fund of the state for any such credits: Provided, that the credits herein provided for shall not exceed twenty-five thousand dollars (\$25,000) for each biennial period. [L. '05, p. 24, § 4; L. '09, p. 690, § 4.]

"Act" refers to §§ 3708—3711.

§ 3712. [3597.] Bounty on Seals and Sea-lions.

There shall be paid a bounty in the sum of one dollar for the killing of each common seal (*phoca vitulina*) and the sum of two dollars and fifty cents for the killing of each sea-lion, when killed within the waters of the state of Washington, or within the waters of the Pacific Ocean within one marine league of the Washington shore: Provided, however, that no more than twenty-five hundred dollars shall be paid in any year as a bounty under the provisions of this act. [L. '03, p. 344, § 1.]

"Act" refers to the following sections of this Title.

§ 3713. [3598.] Proof of Killing Affidavit.

Any person killing or causing to be killed within the waters of the state of Washington, or within the Pacific Ocean within one marine

league of the Washington shore, any common seal (*phoca vitulina*), or any sea-lion, shall scalp or cause to be scalped said seal or sea-lion and shall take the scalp to the fish commissioner of the state of Washington, or any deputy, and shall make an affidavit that the animal from which the scalp was taken, was killed within the state of Washington, or in the Pacific Ocean within one marine league of the Washington shore, together with date of killing, which said affidavit shall be in the following form:

State of Washington, } ss.
County of —, }

I, (A. B.), being first duly sworn, on oath depose and say, that I killed (in case the party making the affidavit did not kill, then he must include herein that he saw killed, and here insert the kind killed and the place and the time when killed), said animals within the state of Washington, or (if in the waters of the Pacific Ocean), within one marine league of the Washington shore, and that the scalp or scalps, which are here presented, are the identical scalps taken from said animals and which animals were killed within the year 190—.

Signed, —.

Subscribed and sworn to before me this — day of —, 190—.

— —,
Fish commissioner of the state of Washington.

That thereupon said fish commissioner, or his deputy shall immediately investigate the truth of said affidavit and all allegations therein, and shall be authorized to demand additional evidence, and the fish commissioner and any deputy appointed by him, is hereby authorized to administer oaths and take the affidavit hereinbefore provided. [L. '03, p. 345, § 2.]

§ 3714. [3599.] Delivery of Scalps—Certificate—Destruction of Scalps.

The party killing said animals and presenting said affidavit mentioned in the preceding section shall be required to deliver all scalps to the fish commissioner, or the deputy taking the affidavit. Thereupon the fish commissioner, upon being satisfied the party making the affidavit actually killed or caused to be killed the number of animals named in his affidavit, and the scalps presented are in number identical with the number and kind stated in the affidavit, and all delivered to the fish commissioner, shall issue a certificate in duplicate which shall be in the following form:

State of Washington, } ss.
County of —, }

No. —.

This is to certify, that — has satisfactorily proved to me that he killed — within the waters of the state of Washington, and is entitled to receive from the state treasurer the sum of — therefor.

— —,
Fish commissioner of the state of Washington.

Provided, that in case the affidavit and scalps herein provided are presented to a deputy fish commissioner, the deputy shall investigate the statements contained in said affidavit, and he shall forward the said affidavit, together with his report in writing thereon, to the fish commissioner, and the fish commissioner, shall thereupon investigate the same and if satisfied of the truth of said affidavit, shall issue the certificate hereinbefore mentioned, but the deputy fish commissioner shall not destroy the scalps delivered to him until the fish commissioner issues the certificate. No deputy shall be permitted to issue any certificate hereunder. Each certificate and duplicate shall be correctly and consecutively numbered, the original shall be delivered to the party making the affidavit, and the duplicate shall be numbered the same as the original and shall be immediately forwarded to the state auditor to be filed in his office. The party receiving such (such) certificate, or his assigns or order, upon presentation of such certificate to the state auditor shall be entitled to be paid the amount thereof and the state auditor upon said certificate being presented to him shall compare the same with the duplicate thereof and if found in all respects correct shall issue a warrant for the amount thereof. The fish commissioner shall immediately after issuing the certificate hereinbefore mentioned, destroy all scalps presented, but shall preserve and keep of record all affidavits and shall keep correct record of the number and amount of each certificate issued, in a book provided for that purpose, and when the total amount of certificates issued shall equal twenty-five hundred dollars (\$2,500) in any one year, no more certificates shall be issued for that year, and no further bounty paid for that year. [L. '03, p. 345, § 3.]

§ 3715. [3600.] Scalp, of What to Consist.

A scalp, referred to in this act, shall consist of both ears, of the seal or sea-lion, connected by a strip of skin that grew between them, at least two inches wide, intact. [L. '03, p. 347, § 4.]

Bowling. See "Licenses," § 8289.

Brands. See "Animals," § 3051; "Inspection," § 6975; "Logs," § 8381.

Bridges. See "Highways," § 6511; "Municipal Corporations," § 9323; "Railroads," § 10468.

TITLE XXI. BUILDING AND LOAN ASSOCIATIONS.

CHAPTER I.—INCORPORATION AND POWERS.

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CHAPTER II.—CONVERSION OF BUILDING, LOAN AND SAVINGS ASSOCIATIONS INTO MUTUAL SAVINGS BANKS.

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CHAPTER I. INCORPORATION AND POWERS.

§ 3716. [3601-1.] Creation of Building and Loan Associations, etc.

Ten or more persons, citizens of the state of Washington, may form a savings and loan association or savings and loan society for the purpose of accumulating the savings and funds of its members and lending its shareholders or others the funds so accumulated by the making and acknowledging in quadruplicate and by filing as hereinafter required articles or incorporation specifying:

(a) The name of the proposed association, which shall terminate with the words "Savings and Loan Association," or "Savings and Loan Society."

(b) The city, town or village and the county wherein the principal place of business of the association is to be located and which must be within the state of Washington.

(c) The number of its directors, which shall not be less than seven nor more than fifteen. The first board of directors shall hold office for a term to be specified in said articles of not less than two, and not more than six months from the time said association is authorized to do business.

(d) The names, occupation and postoffice addresses of its first directors.

(e) The names, occupation and postoffice addresses of the subscribers to the articles of incorporation, and a statement of the number of shares which each has agreed to take. The matured value of the total number of shares so subscribed shall be at least twenty-five thousand dollars.

(f) The limit of capital to be accumulated.

(g) The time of duration of said association, which shall not exceed fifty years.

Said articles shall be filed in the first instance in the office of the state auditor pending his approval thereof and of the by-laws of said association as hereinafter provided for.

The articles of incorporation may be amended by a vote of at least two-thirds in number of the shareholders voting at any general meeting, or by a special meeting called for that purpose, and a copy of the resolution making said amendment shall be certified in quadruplicate by the president and secretary under the seal of said corporation, and when so certified shall be so filed and kept the same as in the case of original articles, and from the time of said filing, said amendment shall have the same effect as if embraced in the original articles of incorporation: Provided, however, that no increase in the authorized capital shall be made unless three-fourths of the capital previously authorized has actually been issued. [L. '13, p. 326, § 1.]

Cited in 99 Wash. 594, 595.

Powers, Rights and Liabilities of Associations in General: See Remington's Digest, B. & L. Assoc., § 5; Trowbridge v. Hamilton, 18 Wash. 686, 52 Pac. 328; Hale v. Stenger, 22 Wash. 516, 61 Pac. 156; Horrell v. California etc. Homebuilders' Assn., 40 Wash. 531, 82 Pac. 889.

Actions by and Against Associations: See Remington's Digest, B. & L. Assoc., § 9; Brown v. Union Savings & Loan Association, 28 Wash. 657, 69 Pac. 383; Conaway v. Co-operative Homebuilders, 65 Wash. 39, 117 Pac. 716; State ex rel. Tanner v. National Mercantile Co., 87 Wash. 108, 151 Pac. 244.

What is building and loan association. *Ann. Cas.* 1914A, 697.

§ 3717. [3601-2.*] By-laws—Approval by State Auditor.

Each association shall adopt by-laws for its government and therein describe the manner in which its business shall be transacted, which by-laws shall be in conformity with the provisions of this act, and the laws of this state, and at all times be open to the inspection of the state auditor and the members of the association at its home office. All by-laws shall be subject to the approval of the state auditor before going into effect, and in case any provision in such by-laws shall be contrary to the provisions of this act, or to the laws of this state, or be detrimental to the interests of the members of such organization, or

against public policy, he shall require the same to be stricken out. [L. '19, p. 494, § 1. Cf. L. '13, p. 326, § 2.]

§ 3718. [3601-3.*] Responsibility of Incorporators—Certification by Auditor.

Whenever said articles of incorporation are in due form and regularly executed and the by-laws have been duly approved as above required, and it shall be made to appear to the satisfaction of the state auditor that at least \$1500 have been actually paid in in cash upon the subscriptions for shares, the state auditor thereupon shall ascertain from the best source of information at his command the responsibility, character and general fitness of the incorporators. If he shall be satisfied concerning the several matters, specified above, he shall within a reasonable time, issue under his hand and official seal a certificate reciting in substance the filing in his office of the articles of incorporation and by-laws; that said articles and by-laws conform to all the requirements of law; that he has approved the same, and that he verily believes the incorporators are fit and proper to conduct the business of a savings and loan association as defined in this act and said by-laws. Said certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the state auditor and the other three shall be returned to the incorporators who shall forthwith file one copy thereof in the office of the secretary of state, one in the office of the auditor of the county in which the chief place of business of said association is located, and the other shall be retained by the association, whereupon the incorporation of said association shall be deemed complete. [L. '19, p. 494, § 2. Cf. L. '13, p. 328, § 3.]

§ 3719. [3601-4.*] Directors—Removal—Court Review—Oaths—Bond.

No person shall be a director of an association unless he shall have subscribed and paid in in cash at least \$200 on his stock subscription, and such subscription shall not be reduced below the sum of \$200, either by withdrawal or by pledge for a loan with the association, or in any other manner, so long as he remains a director of the association. Any officer or director may be removed by the state auditor for cause. Any officer or director so removed by the state auditor and feeling himself aggrieved by such removal shall have a right of appeal from the order of removal to the superior court of Thurston County by filing a written notice of appeal with the state auditor, who shall, upon the filing of such notice, certify to the court the causes upon which the order of removal was based, and all records and files in his office pertaining to the matter of the removal. The court shall hear the matter de novo and enter an order affirming or canceling the order of removal. Each officer and director, when appointed or elected, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such association, and will not knowingly violate the by-laws or any of the provisions of law applicable to such association.

Each officer or agent having the custody of money or securities of an association shall be required to give bond to such association in an

amount to be determined by the board of directors of such association commensurate with his liability, and said bonds shall be deposited with the state auditor. [L. '19, p. 495, § 3. Cf. L. '13, p. 328, § 4.]

§ 3720. [3601-5.*] Fees and Fines.

The membership of the association shall consist of those persons holding shares therein.

A membership fee of not over \$2 per share may be charged: Provided, however, that on all applications written in the state of Washington for more than fifteen shares, such fee shall be collected in one payment in cash, which shall accompany the application and shall in no case be more than one-half of such payment. No other fees, fines, penalties or forfeitures shall be charged against the shares of any association, except that serial associations declaring dividends to all stock and maturing same at one time may charge a fine which shall not exceed the earnings on the delinquent installments. [L. '19, p. 496, § 4. Cf. L. '13, p. 329, § 5.]

Fines by building and loan association. 35 L. B. A. 215.

§ 3721. [3601-6.*] Capital and Shares—Permanent and Serial Associations—Preferred Stock—Reserve Fund—Classified Shares.

The capital of every such association shall consist of the accumulated payments made by its members and dividends credited thereon, and shall be represented by shares. Every share issued shall have a matured value of one hundred dollars. Every such association shall be either permanent or serial in character as provided by the terms of its by-laws. A permanent association may issue shares at any time and credit its dividends upon the pass books of its members. A serial association may issue shares in series and credit its dividends equally upon each share issued in such series. No shares of a prior series shall be issued after the issuing of shares in a later series, when issued upon the serial plan, except at the book value at the last distribution of profits plus the dues and accumulated earnings thereon since such distribution. Shares which have not been transferred to the association as security for the repayment of a loan shall be called free shares. Shares that have been so transferred shall be called pledged shares.

No preferred stock shall be issued, i. e., stock upon which a different or stipulated rate of dividends shall be guaranteed or paid before or regardless of the amount of dividends distributed to other classes of shares, neither shall any shares be issued which shall be exempt from bearing their pro rata portion of loss: Provided, however, that nothing herein contained shall be held to prohibit any association already having reserve stock outstanding from continuing to have an equal amount of such stock outstanding, and from issuing, if necessary, additional reserve fund stock so as to equal five per cent of the capital as defined in this section; and when so provided in its by-laws, such reserve fund stock may participate in all earnings equitably with the general stock and be chargeable with all real estate taken under foreclosure or otherwise in the adjustment of delinquent loans together with all direct losses of whatever nature sustained by the association in the general course

of business and in consideration of such guaranty against loss, and when provided in the by-laws such stock may receive additional dividends, and such stock shall not be subject to withdrawal until all other classes of stock and all other liabilities of the association shall first have been liquidated, and any such association may agree to mature its other classes of stock at a fixed time, provided any deficiency arising therefrom shall be chargeable only to such reserve fund stock.

Any association may issue the shares classified below when so provided by its by-laws:

(a) Installment shares upon which a regular stipulated payment of dues shall be made at stated periods expressed in the by-laws.

(b) Savings shares, upon which payments shall be made in such sums and at such times as the holder thereof may elect until the shares reach their matured value or are withdrawn.

(c) Fully paid shares, upon which a single payment amounting to one hundred dollars per share shall be paid at the time of subscription.

Any association may issue shares to, or in the name of, any minor which shall be held for the exclusive right and benefit of such minor and free from the control or lien of all other persons; and the accumulated savings on these shares together with the dividends credited thereon shall be paid to the persons in whose name the shares have been issued and the receipt or acquittance of such minor shall be valid and sufficient discharge and release to the association for such accumulated savings, together with the dividends credited thereon or any part thereof.

Any association may issue shares to or in the name of two or more persons, whether husband or wife or otherwise, withdrawable by any one of such persons, and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder. [L. '19, p. 497, § 5. Cf. L. '13, p. 329, § 6.]

§ 3722. [3601-7.*] Dividends—Undivided Earnings.

Profits and losses shall be ascertained and distributed semi-annually. Dividends shall be taken from the net earnings of the association and, subject to the provisions of section 3721 relating to reserve fund stock, shall be distributed ratably to all classes of shares and to each share in proportion to the accumulation made thereon. No dividends shall be credited or paid except by a vote of the board of directors duly entered upon the minutes, whereupon shall be recorded the vote by ayes and nays. It shall be lawful for the association, in addition to the contingent fund required by section thirteen of this act, to hold in its fund of undivided earnings such sum as the board of directors may from time to time deem necessary or wise: Provided, however, that when the undivided earnings, including the contingent fund, exceed fifteen per cent of the dues and dividends credited to members, the board of directors shall declare such extra dividend in excess of the dividend regularly apportioned, as may be necessary to distribute among the shareholders

the accumulation in excess of such authorized surplus. [L. '19, p. 499, § 6. Cf. L. '13, p. 331, § 7.]

Cited in 107 Wash. 438.

§ 3723. [3601-8.] Loans, How Made—Investments.

For every loan made, except a loan from one association to another, a note or bond secured by first mortgage on improved real estate shall be taken, which security shall be conservatively worth at least twice the value of the loan. No mortgage loan shall be made except upon the report in writing of an appraiser or a committee of appraisers appointed by the board of directors, which report shall state the conservative value of the mortgage security. The directors in their discretion may also loan upon the security of the shares in the association to the amount of ninety per cent of their withdrawal value, and may loan upon or invest in bonds of the United States and of the state of Washington, and in such classes of bonds and warrants of the counties, school districts and other municipalities, as well as local improvement districts, in this state, as the state auditor may from time to time approve. Any association having a surplus for which there is no demand for loaning purposes or for the payment of withdrawals or matured shares, may loan the same to another domestic association, and such association may borrow from other associations or otherwise for loaning purposes or for the payment of withdrawals or matured shares: Provided, that no association shall borrow any amount or amounts which in the aggregate shall exceed twenty-five per cent of the actual value of mortgages on deposit with the state auditor, as shown by the last preceding semi-annual statement of the borrowing associations, as provided in section 3724.

In borrowing said amount or amounts for the purposes specified, any such association may, at its election, borrow the same or any part thereof upon its debenture bonds, maturing on or before five years after date and bearing interest not exceeding six per cent per annum, interest payable semi-annually. In no case shall such bonds be issued when there are sufficient funds on hand or receivable in time to meet approved applications for loans or for the payment of maturing stock or withdrawals of stock. Such debenture bonds may be retired by action of the board of directors at any time after one year from date of issue, by the secretary of the association giving notice in writing sixty days or more prior to the next interest date to the recorded holders thereof, and on return of said retired bonds, together with the coupons attached, said holders shall receive their par value. At the expiration of said interest period, the bonds so called shall cease to draw interest. Whenever the state auditor shall deem any indebtedness incurred under the provisions of this section to be detrimental to the interests of the shareholders of any such association, he shall notify such association to reduce its indebtedness to such amount as he shall consider reasonable, giving such association such reasonable time as may be necessary to effect such reduction of indebtedness. [L. '13, p. 332, § 8.]

Loans: See Remington's Digest, B. & L. Assoc., §§ 6, 7; **In General:** Hale v. Stenger, 22 Wash. 516, 61 Pac. 156; Hale v. Stenger, 22 Wash. 699, 63 Pac. 554; United States Sav. & L. Co. v. Owens, 23 Wash. 790, 63 Pac. 1134; Hopkins v. Hale, 23 Wash. 790, 63 Pac. 1134; Interstate Sav. & L. Assn. v. Cairns, 16 Wash.

215, 47 Pac. 509; United States Savings & Loan Association v. Parr, 26 Wash. 115, 66 Pac. 109. **Interest:** United States Sav. & Loan Co. v. Cade, 15 Wash. 38, 45 Pac. 656; Interstate Sav. & L. Assn. v. Knapp, 20 Wash. 225, 55 Pac. 48, 931.

Whether and when contracts of building and loan associations are usurious. 83 Am. Dec. 612.

To whom loans may be made by building and loan association. **Ann. Cas.** 1917B, 590.

Duty of director to disclose existence of lien or claim against property on which association lends money. 3 A. L. R. 1058.

§ 3724. [3601-9.] Securities Deposited With State.

Every savings and loan association heretofore or hereafter incorporated under the laws of this state, and governed by this act, shall deposit and keep with the state auditor, or with a duly chartered trust company of this state, approved by the state auditor, in trust for all its members and creditors, all mortgages and notes secured thereby, received by it in the usual course of business. When deposited with a trust company such company shall certify to the state auditor the possession of such securities, and the same shall not be surrendered without the authority or sanction of the state auditor. All associations except such as confine their business operations wholly to the county in which such associations are incorporated and adjoining counties, not having or owning mortgages to the amount of twenty-five thousand dollars, shall deposit with the state auditor additional securities to make with the securities so owned and deposited a total value of not less than twenty-five thousand dollars. Such additional securities shall consist of bonds of the United States and of the state of Washington, and such classes of bonds and warrants of the counties, school districts and other municipalities, as well as local improvement districts, in said state, as the state auditor may from time to time approve, and such additional securities may be withdrawn from time to time when mortgage securities of corresponding value shall be deposited, as provided in this act, or when other securities of like character are substituted therefor, and it shall be the duty of the state auditor, from time to time, to examine said associations to ascertain whether all of its securities are deposited, as required by this act: Provided, that all securities heretofore taken in any other state, territory or nation, by any association organized under the laws of this state, and subject to the provisions of this act, and there deposited under the laws of such state, territory or nation, with some officer, authorized to receive the same, shall not be deposited with the auditor of the state of Washington. But in every such case a certificate of such deposit shall be filed with the auditor of this state, and renewed annually, together with a statement verified by the affidavit of some officer of such association, who has knowledge of the facts, showing all of the securities taken by such association, in such other state, territory or nation, at the time of the filing of such certificate; and in case any securities taken in any such state, territory or nation are not deposited there, then the same shall be deposited here, as required by this act.

Every foreign association doing business in this state and governed by this act shall deposit and keep with the auditor of this state, or with a duly chartered trust company of this state, approved by the state auditor, in trust for all its members and creditors in this state, all mort-

gages heretofore received by it in this state and now in effect, and all mortgages hereafter received by it in the usual course of its business in this state. Such securities shall be kept and dealt with by the state auditor or by such trust company in like manner as the securities deposited by savings and loan associations organized under the laws of this state. Every association governed by this act shall on or before the first day of February and on or before the first day of August in each year, file with the state auditor a verified statement of the total amount due to the association from the borrowers, upon the mortgage loans on deposit with the state auditor upon respectively the thirty-first day of December and the thirtieth day of June last preceding. Payments upon stock pledged to the association for a loan, which payments are accumulated for the purpose of meeting the loan at or prior to its maturity, shall be considered as payments upon such loan within the intent of this section. [L. '13, p. 333, § 9.]

Validity and effect of statute requiring deposit of securities by building and loan association as

prerequisite to right to transact business. 9 L. B. A. (N. S.) 461.

§ 3725. [3601-10.*] Right to Earnings of Securities Deposited — Surrender of Mortgages.

All interest and dividends which may accrue on securities held by the state auditor or such trust company as provided for herein and all dues, or monthly payments, which may become payable on stock pledged as security for loans, the notes and mortgages for which are deposited in accordance with the provisions of this act, may be collected and retained by the association depositing such securities or mortgages, so long as such association remains solvent and faithfully performs all contracts with its members and when any mortgage shall have been fully paid to said association the same shall be surrendered by said state auditor, or upon his order, upon filing with him a certificate of the auditor of the county where the real estate is situated, to the effect that the satisfaction of said mortgage has been filed for record. Any mortgage may be surrendered to the association upon filing with the state auditor an affidavit sworn to by the president and secretary of the association owning the same, showing to the satisfaction of the state auditor that it would be to the advantage of the association to assign the said mortgage without recourse, or that such mortgage is in default and that it is withdrawn for the purpose of foreclosure. [L. '19, p. 500, § 7. Cf. L. '13, p. 335, § 10.]

§ 3726. [3601-11.] May Hold Real Estate—Limitation.

Any savings and loan association may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment, lien, or other encumbrance or in which it may have any interest, and may sell, convey, lease or mortgage the same at pleasure to any person or persons, but shall not otherwise acquire or deal in real estate: Provided, that any such association may acquire such real estate or a leasehold interest therein as may be necessary or convenient for a location for the transaction of its business: Provided further, that no such association shall use more than ten per cent of its assets at any time

in acquiring real estate for its business location: Provided further, that all real estate except that used for its business location shall be sold by said association within five years from and after the time that title thereto is acquired. [L. '13, p. 335, § 11.]

§ 3727. [3601-12.] Checking Accounts Prohibited.

No savings and loan association shall carry any demand, commercial or checking account and no such association shall receive any savings account or any sum of money on deposit without issuing shares of stock for the same. [L. '13, p. 336, § 12.]

§ 3728. [3601-13.] Contingent Fund.

At each periodical distribution of profits, unless such association already has issued paid-up reserve fund stock equal to five per cent of the amount credited to members to which losses may be chargeable as provided in section 3721, the board of directors shall reserve and carry to a contingent fund, a sum equal to at least five per cent of the net earnings during the period since the last previous dividend was declared, until such contingent fund shall be equal to at least five per cent of the amount credited to members. The directors may at any time carry to such contingent fund any further portion of the undivided earnings that in their discretion may seem wise, except as herein provided. Losses of the association may be paid therefrom, and whenever the contingent fund is reduced below five per cent the board of directors shall at each periodical distribution of profits carry to such contingent fund at least five per cent of the net earnings during the period since the last dividend was declared until such contingent fund shall again be equal to at least five per cent of the amount credited to members. [L. '13, p. 336, § 13.]

§ 3729. [3601-14.*] Charging Losses.

Whenever the losses of an association exceed the contingent fund, or the reserve fund, if reserve fund stock has been issued as provided in section 3721, they may be charged against the undivided earnings, if any, and in the event that they also exceed such undivided earnings, the state auditor may proceed to wind up the affairs of such association as hereinafter provided. [L. '19, p. 500, § 8. Cf. L. '13, p. 336, § 14.]

§ 3730. [3601-15.*] Expenses — Limit — Operating Expenses — Foreign Companies.

The expenses of such association shall be paid from its earnings, and no deduction from dues shall be made either directly or indirectly for that purpose. No such association shall pay or be or become liable to pay either directly or indirectly in the course of any calendar year as salaries, commissions, fees, or other compensation to its officers, directors, auditor, attorneys, agents, clerks and all other employees and for rent, advertising, and all other operating expenses, sums of money the aggregate of which shall exceed two and one-half per cent of the average amount of assets of such association during such year. The term "operating expenses" as used in this connection shall not be construed to include membership fees, taxes, assessments, repairs or insurance on real

estate or commissions on the sale of real estate, or on the placing of loans, or any interest which the association may have paid or become liable to pay, proper legal charges for searching titles or the preparation of legal papers, expenses of foreclosure suits or other bona fide litigation, nor charges for state license. The provisions of this section, in so far as they limit the expenditure for expenses, shall not apply to any association whose accumulated capital is less than forty thousand dollars: Provided, however, that the annual expenses of every such latter association shall not exceed a total of one thousand dollars. The provisions of this section shall apply as well to foreign as to domestic corporations doing business under the permission and certificate of the state auditor and said auditor shall not renew such permission or issue such certificate to any corporation that shall have violated the provisions of this section. [L. '19, p. 501, § 9. Cf. L. '13, p. 337, § 15.]

§ 3731. [3601-16.*] Withdrawal of Shares—Payment.

Shares shall not be withdrawn until after a lapse of three months from the time of issuance of such shares and not then except at the option of the association; but shares may be withdrawn at any time after one year from the time of issuance. The withdrawing shareholder shall be paid the amount of the withdrawal value of the shares, as shown by the last prior distribution of profits together with all the dues paid thereon since such distribution: Provided, that upon withdrawal of shares pledged to the association for a stock loan, or stock loans, the association shall first deduct therefrom the indebtedness due the association. Withdrawals shall be paid in the order of their filing, except as hereinafter provided, and it shall be the duty of the secretary or other officer discharging such duties to enter upon each notice the order and date of such filing. Except as hereinafter provided, not more than two-thirds of the receipts of the association in any month shall be applied to the payment of withdrawals and matured shares without the consent of the board of directors. Whenever an application for withdrawal shall have been on file or the payment of matured shares demanded and either shall have remained unpaid for a period of six months, all the receipts of the association in any month from dues, loans repaid, and the proceeds of all other investments, shall, after the payment of expenses and general indebtedness, be applied toward the payment of withdrawals and matured stock; and the board of directors, or the state auditor, in his discretion, may direct that withdrawals be paid upon a ratable and proportionate basis. After filing the notice of withdrawal provided herein, the withdrawing member shall be entitled to the dividends credited to the same class of shares, until the final payment of his shares is made; and membership in the association shall remain unimpaired so long as any accumulation remains to his credit. No officer, director, attorney, clerk or agent of such association, and no person in any way interested or concerned in the management of its affairs shall discount or directly or indirectly purchase a share of any such association, whether filed for withdrawal or not, except by payment therefor of the withdrawal value of such share as determined herein. The board of directors of any association may retire all classes of free shares by enforcing withdrawals of

the same: Provided, that the by-laws shall clearly state the manner in which such withdrawals may be enforced: And provided also, that the holders thereof shall be paid the full value of the shares, including, in such case, their proportion of the contingent fund. [L. '19, p. 502, § 10. Cf. L. '13, p. 337, § 16.]

See *infra*, § 10812, duties of state auditor devolve upon director of taxation and examination.

Stock—Maturity and Withdrawal of Shares: See Remington's Digest, B. & L. Assoc., §§ 4, 4-1; Conaway v. Co-operative Homebuilders, 65 Wash. 39, 117 Pac. 716; Huber v. Home Savings & Loan Assn., 99 Wash. 593, 169 Pac. 979. Withdrawals from building and loan association. 8 Ann. Cas. 835; 35 L. R. A. 289.

§ 3732. [3601-17.] Exemption from Taxation.

Shares held by members shall be exempt from taxation and the association itself shall not be taxable, except that its tangible personal and real property shall be taxed as other tangible personal and real property is taxed. [L. '13, p. 339, § 17.]

§ 3733. [3601-18.*] Annual Reports—License Fees.

On or before the first day of September in each year every savings and loan association doing business in this state shall deposit with the state auditor a report of its affairs and operations for the year ending on the thirtieth day of June immediately preceding. Such report shall be verified under oath by the president and secretary or by three directors of the association, and shall contain such information as the state auditor from time to time requests. Upon filing such report, there shall be paid to the state auditor for the state general fund, in lieu of all other corporation fees or licenses, a fee determined as follows: If the assets of the association as shown by said report amount to one hundred thousand dollars or less a fee of twenty dollars; if more than one hundred thousand dollars and less than two hundred fifty thousand dollars, a fee of thirty dollars; if more than two hundred fifty thousand dollars and less than five hundred thousand dollars, a fee of forty dollars; if more than five hundred thousand dollars and less than one million dollars, a fee of sixty dollars; and if more than one million dollars, a fee of one hundred dollars; and in addition to the fees above specified there shall be further paid to the state auditor for the state general fund, a fee of twenty-five cents for each one thousand dollars of assets of the association up to three million dollars of assets, and ten cents for each one thousand dollars of assets above three million dollars of assets: Provided, however, that foreign associations doing business as a savings and loan association within the state of Washington shall pay a fee of three hundred dollars per annum and no more: Provided further, that foreign associations, doing a loan business only, in the state of Washington, shall pay a fee of \$100 per annum and no more. If such association shall fail to furnish to the auditor of the state any report required by this act, at the time so required, it shall forfeit the sum of twenty-five dollars per day for every day such report shall be delayed or withheld; and an action shall be started in the name of the state to recover such penalty and the same shall be paid into the treasury of the state. After receiving such report, the auditor, if satisfied that such association has complied with

all the provisions of this act and is entitled to do business in this state, shall issue a certificate stating the compliance with such provisions, and that such association is entitled to do business in this state, which certificate shall be in force for the period of one year unless sooner revoked. [L. '19, p. 503, § 11. Cf. L. '13, p. 339, § 18.]

See *infra*, § 10812, duties of state auditor devolve upon director of taxation and examination.

§ 3734. [3601-19.*] Examinations—Salary of Inspectors—Foreign Associations.

The state auditor shall have supervision of all such associations doing business in this state, and shall be charged with the execution of the laws of this state relating thereto. At least annually he shall make or cause to be made an examination into the affairs of all such associations doing business in this state. Such examinations shall be made by an inspector of savings and loan associations to be appointed by the state auditor, and who shall hold office during his pleasure. Such inspector shall be paid a salary of two hundred fifty dollars per month and actual traveling expenses from the state general fund. All examinations made by such inspector shall be full and complete, and in making the same he shall have full access to, and may compel the production of all books, papers, moneys, and records of the association under examination, and may administer oaths to and examine the officers of such association or any person connected therewith as to its business and affairs, and any willful false swearing shall be deemed perjury and be punishable as such: Provided, whenever by the laws of the state under which any foreign association is organized, annual examinations of such association are required and are made pursuant thereto, then such foreign association shall not be examined hereunder: Provided, such foreign association shall furnish to the auditor of this state annually a certificate of the proper officer of such other state that he has made an examination pursuant to the laws of such other state, and that the affairs of such association are in accord with the laws of such other state: And provided further, that the auditor of this state may, whenever he deems it advisable, cause examination of such foreign association to be made as is required in the case of associations organized under the laws of this state. [L. '19, p. 504, § 12. Cf. L. '13, p. 340, § 19.]

See *infra*, § 10812, duties of state auditor devolve upon director of taxation and examination.

§ 3735. [3601-20.*] Insolvency—Possession Taken by Inspector—Restoration of Sound Condition—Receiverships.

Whenever it shall appear to the state auditor that the affairs of any savings and loan association are in an unsound condition or that it is conducting its business in an unsafe or unlawful manner, the state auditor may direct the inspector of savings and loan associations to take possession of all books, records and assets of every description of such association and hold and retain the possession of same pending the further proceedings herein specified. Should the board of directors, secretary or person in charge of such association refuse to permit the said inspector

to take possession as aforesaid, the state auditor shall communicate such fact to the attorney general, whereupon it shall become the duty of the attorney general at once to institute such proceedings as may be necessary to place such inspector in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid said inspector shall prepare a full and true statement of the affairs and condition of such association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of his trust. Such inspector shall be required to execute to the state auditor a good and sufficient bond in a sum required by the state auditor conditioned upon the faithful discharge of his duties as custodian of such association, which said bond shall be approved by the state auditor, and the expenses of which shall be borne by the association under examination.

When the condition of such association has been fully ascertained, and it shall appear that the affairs of said association are in fact in an unsound condition, the state auditor shall at once notify in writing the board of directors of such association of his decision, giving them twenty days in which to restore the affairs of such association to a sound condition. Meanwhile, the auditor shall remain in charge of the books, records and assets of every description of such association, attend or be represented at all directors' and stockholders' meetings held, suggest such steps as he may deem necessary to restore such association to a sound condition; and if same is not done within the twenty days allowed by the statute he shall report the facts to the attorney general and it shall thereupon become the duty of the attorney general to institute proceedings in the superior court of the proper county for the appointment of the state auditor as receiver and for the dissolution of such association, or such other proceedings as the occasion may require. [L. '19, p. 505, § 13. Cf. L. '13, p. 41, § 20.]

See *infra*, § 10812, duties of state auditor devolve upon director of taxation and examination through division of banking.

Cited in 87 Wash. 109, 110.

Jurisdiction of an action to enjoin a foreign building and loan association from doing business in this state in violation of the laws of the state cannot rest upon compliance with this section, since the board of directors in a foreign jurisdiction could not be made amenable to the demand of such notice: *State ex rel. Tanner v. National Mercantile Co.*, 87 Wash. 108, 151 Pac. 244.

Dissolution: See *Remington's Digest*, B. & L. Assoc., § 10; *State ex rel. Tanner v. Northwestern Investment Co.*, 70 Wash. 381, 126 Pac. 895.

Effect of insolvency upon the rights and liabilities of members of building and loan association. 61 *Am. St. Rep.* 24.

When receiver may be appointed for building and loan association. 72 *Am. St. Rep.* 47; 20 *L. R. A.* 214.

§ 3735½. Division of Banking Assumes Powers and Duties.

That from and after the first day of April, 1921, the director of taxation and examination shall have the power, and it shall be his duty, through and by means of the division of banking, to exercise all the powers and perform all the duties in relation to the organization, inspection, supervision and dissolution of savings and loan associations, now vested in and required to be performed by the state auditor. [L. '21, p. 226, § 1.]

§ 3736. [3601-21.] Foreign Associations — Disbarred from State — Re-entry.

Any savings and loan association organized under the laws of any other state or territory that shall remove any action that shall be commenced against it in a court of this state to a United States court, or that shall fail to pay any judgment rendered against it upon a suit in any court in this state within sixty days after the rendition of final judgment in such case, or that shall fail to make reports to the state auditor as provided in this act, or to do any other act to be done or performed as required by law, and after the continued failure to do such act for twenty days after notice in writing from the state auditor of such failure, shall have no right or authority to do or transact any further business within the limits of this state, and the state auditor shall thereupon cause notice of the termination of such authority to do business to be mailed to such association, and to be published in some newspaper of general circulation at the capital of the state, and shall communicate the facts to the attorney general of this state; who shall institute such proceedings in the matter as the case may require: Provided, any such corporation may be again authorized to commence business upon such terms as the state auditor may deem just and proper, and upon full compliance with the provisions of this act. [L. '13, p. 342, § 21.]

See note, § 3734, *supra*.

§ 3737. [3601-22.] Penalties.

Any officer, director or agent of any savings and loan association or any other person who shall sell or issue or knowingly cause to be sold or issued to any resident of this state, any stock of said association while said association does not have on deposit with the state auditor as required by this act, securities of the value and at the time herein prescribed, or while such association shall not have the certificate of the state auditor authorizing it to do business as herein prescribed shall be guilty of a gross misdemeanor. [L. '13, p. 343, § 22.]

See *infra*, § 3743, falsification of records.

See *infra*, § 3744, suppression of evidence.

Cited in 83 Wash. 12.

Officers and Agents, Who are: See Remington's Digest, B. & L. Assoc., § 3; Blair v. Metropolitan Savings Bank, 27 Wash. 192, 67 Pac. 609; State v. Merrill, 83 Wash. 8, 144 Pac. 925.

An information charging the defendant, as an agent and employee, with conducting a savings and loan business in this state when the company he represented was not authorized to do business in this state, by then and there selling and knowingly causing to be sold and issued to one L. one certain contract and share of his said company, then and there being a foreign building and loan association not theretofore or then lawfully engaged in said business in

this state, does not state an offense under this section, since the sale of "capital stock" was not charged, but only the sale of a contract certificate share, and the doing of business in this state without authority: State v. Merrill, 83 Wash. 8, 144 Pac. 925.

Under Rem. Code, § 3601-27, which made it a misdemeanor for any officer or agent of a savings and loan association to "willfully" violate or fail to comply with the provisions of the act, an information was insufficient to sustain a conviction unless it charged that the act complained of was "willfully" done; since the elements of scienter and bad purpose was involved and constituted the gravamen of the offense: State v. Shuey, 107 Wash. 437, 181 Pac. 890.

§ 3738. [3601-23.*] Act Exclusive as to New Organizations—Foreign Companies.

After the passage and approval of this act, it shall be unlawful for any person, association or persons or domestic associations not already organized and doing business under sections 3601 to 3638, both inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, to conduct a business in the form or of a character similar to that authorized by this act without first incorporating under this act. After the passage and approval of this act no foreign association not already lawfully engaged in the state of Washington in the business of a savings and loan association shall be permitted to conduct such a business in this state. [L. '19, p. 507, § 14. Cf. L. '13, p. 343, § 23.]

The sections referred to are repealed.

Cited in 83 Wash. 12, 13; 87 Wash. 109.

Foreign Associations: See Remington's Digest, B. & L. Assoc., § 11; State ex rel. Atkinson v. Co-operative Home-builders, 47 Wash. 235, 91 Pac. 953.

Where a foreign corporation is clearly a savings and loan association and has

all the features of what is commonly known as a building and loan association, and its contracts are of the character of a savings and loan association, it is amenable to this act: State v. Merrill, 83 Wash. 8, 144 Pac. 925.

§ 3739. [3601-24.*] Deceptive Advertising.

It shall be unlawful for any savings and loan association to make, publish, or circulate any advertisement, sign, circular or statement intended or calculated to misrepresent in any way any of the powers or liabilities of such association, and any person who violates any provision of this section shall be guilty of a misdemeanor. [L. '19, p. 507, § 15. Cf. L. '13, p. 343, § 24.]

Cited in 83 Wash. 12, 13.

§ 3740. [3601-25.] Names Prohibited.

After the passage and approval of this act, no person, association of persons, or corporation conducting a business not in the form and of a character similar to that authorized by this act shall have or continue to use for a part of its title or corporate name any combination of two or more of the following words, to wit: "building," "savings," "loan," "home," "association" or "society." [L. '13, p. 344, § 25.]

§ 3741. [3601-26.] Act Exclusive—Existing Contracts not Impaired.

The powers, rights, duties, privileges and obligations of every association heretofore or hereafter organized and doing business in the form or of a character similar to that authorized by this act, shall be governed, controlled, construed, extended, limited and determined by the provisions of this act, to the same extent and effect as if said association had been organized and incorporated under or pursuant to the provisions of this act, and the articles of incorporation, by-laws, and rules of every such association heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where such articles of incorporation, by-laws or rules are inconsistent with the provisions of this act; except that the obligations of any existing association, whether between such association and its

shareholders or any one of them or any other person or persons or any valid contract between the shareholders of such association existing at the time this act takes effect shall not be in any way impaired by the provisions of this act; and with such exceptions every savings and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this act, notwithstanding anything to the contrary in its articles of incorporation, by-laws or rules. All obligations to any such association heretofore contracted shall be enforceable by it and in its name, and demands, claims and rights of action against any such association may be enforced against it as fully and completely as they might have been enforced before. [L. '13, p. 344, § 26.]

Cited in 99 Wash. 595.

The saving clause of this section has reference only to existing obligations of

any association: *Huber v. Home Savings & Loan Assn.*, 99 Wash. 593, 169 Pac. 979.

§ 3742. Dissolution of Associations.

Any savings and loan association incorporated under the laws of the State of Washington may dissolve itself voluntarily in the following manner:

A majority of the board of directors shall publish a notice in some newspaper of general circulation in the county wherein is the principal place of business of the association once each week for eight consecutive weeks calling a meeting of the shareholders to determine whether said savings and loan association shall voluntarily dissolve. If at such meeting two-thirds of the shareholders then present and voting shall vote to dissolve, and the state auditor shall approve of such dissolution, the officers of the association, under the direction of the directors of the association, shall thereupon proceed to liquidate the affairs of the association and reduce the assets thereof to cash, and, after paying all indebtedness and expenses, distribute the same among the shareholders in proportion to the withdrawal value of the holdings of each shareholder at the time of the passage of the resolution to dissolve. [L. '19, p. 508, § 17.]

Mode of settlement with borrowing members on premature dissolution.
4 Ann. Cas. 1980; 7 Ann. Cas. 318;

10 Ann. Cas. 391; Ann. Cas. 1914B, 1269.

§ 3743. Falsification of Records—Penalty.

Every person who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any savings and loan association or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any savings and loan association or shall make, state or publish any false statement of the amount of the assets or liabilities of any savings and loan association shall be guilty of a felony. [L. '19, p. 508, § 18.]

§ 3744. Suppression of Evidence—Penalty.

Every officer, director or employee or agent of any savings and loan association who, for the purpose of concealing any fact or suppressing any evidence against himself, or against any other person, abstracts, re-

moves, mutilates, destroys or secretes any paper, book or record of any savings and loan association, or of the state auditor, shall be guilty of a felony. [L. '19, p. 509, § 19.]

§ 3745. Special Meetings of Shareholders.

The directors of the association shall call a special meeting of its shareholders at the office of the association at any time when requested so to do by one-fourth of the qualified shareholders. The request for a meeting shall be duly signed by at least one-fourth of its qualified shareholders and filed with the secretary of the association and it shall thereupon become the duty of the directors to call a meeting of the shareholders within twenty days thereafter. [L. '19, p. 509, § 20.]

§ 3746. Stock Agents to be Licensed.

It shall be unlawful for any savings and loan association doing business within the state of Washington to employ any agent for the purpose of soliciting the sale of stock in said company unless he shall first be licensed by the state auditor, and no agent representing any savings and loan association doing business within the state of Washington shall solicit the sale of stock in such company unless he shall first be licensed by the state auditor. [L. '19, p. 509, § 21.]

§ 3747. Application for Agent's License.

No license shall be issued to any applicant for an agent's license until such applicant shall have first made and filed in the office of the state auditor an application therefor upon a form to be prescribed and furnished by the auditor, which must show the applicant's name, business and residence address, the name of the company to be represented, present occupation, occupation for the last twelve months, and such other information as the auditor may require. If the state auditor is satisfied that the applicant is a fit and proper person to engage in the sale of stock he shall issue the license. The state auditor may revoke the license of any agent for misrepresentation or when convicted in any court for violation of the criminal statutes, or when satisfied that said agent is not a fit and proper person to be engaged in the business of selling savings (building) and loan association stock. [L. '19, p. 509, § 22.]

§ 3748. License Fee.

Each agent granted a license under this provision shall pay an annual fee to the state auditor of two dollars (\$2). [L. '19, p. 510, § 23.]

CHAPTER II.

CONVERSION OF BUILDING, LOAN AND SAVINGS ASSOCIATIONS INTO MUTUAL SAVINGS BANKS.

§ 3749. Authority for Change.

Any going building and loan or savings and loan association or society organized under the laws of this state, may, if its contingent fund regularly accumulated, exclusive of any reserve fund stock, amounts to not less than five thousand dollars (\$5,000), be converted into a mutual savings bank in the following manner. [L. '17, p. 622, § 1.]

This section is superseded. See the following sections.

§ 3750. Resolution by Board of Directors—Publication.

The board of directors of such association shall pass a resolution declaring their intention to convert the association into a mutual savings bank, and shall cause a copy thereof, certified by the secretary of the association, to be filed in the office of the state auditor, and a like copy to be delivered to the state bank examiner, and shall cause a copy thereof to be published once a week for four successive weeks in a newspaper to be designated by the state bank examiner, such publication to be commenced within thirty (30) days after such designation. [L. '17, p. 622, § 1(a).]

"Bank examiner" means bank commissioner. See § 3208, *supra*.

Duties devolve upon director of taxation and examination. See § 10812, *infra*.

§ 3751. Investigation by Bank Examiner—Appeal.

Within ten (10) days after the date of the last publication of such resolution, the board of directors shall file with the state bank examiner proof of the publication thereof and of the filing of a copy with the state auditor, and shall apply to the state bank examiner for leave to submit to the shareholders of the association the question whether the same shall be converted into a mutual savings bank. Thereupon the state bank examiner shall make the same investigation and determine the same questions that he would be required by law to make and determine in case of the submission to him of a certificate of incorporation of a proposed new mutual savings bank, and he shall also determine, after conference with the state auditor, whether by the proposed conversion the business needs and conveniences of the shareholders of such association would be served with facility and safety: Provided, that if the association's contingent fund be five thousand dollars (\$5,000) or more, the applicants shall create an initial guaranty fund and an initial expense fund and shall also enter into such an agreement or undertaking with the state bank examiner as trustee for the depositors with the savings bank as he may require to make such further contributions in cash to the expense fund of such savings bank as may be necessary and as is required from the incorporators of mutual savings banks. The contingent fund of such building and loan or savings and loan association may be applied to the creation of such guaranty fund and expense fund. After the state bank examiner shall have satisfied himself by such investigation whether it is expedient and desirable to permit the proposed conversion, he shall, within sixty (60) days after the filing of said application, indorse thereon over his official signature the word "granted," or the word "refused," with the date of such indorsement, and shall immediately notify the secretary of such association of his decision. In case of refusal, said board of directors, or a majority of the members thereof, may, within thirty (30) days after receiving the notice of such refusal, appeal to a board of appeal composed of the governor, the attorney general and the state bank examiner, in the same manner and under the same procedure as that prescribed by law for an appeal to such board from the state bank examiner's refusal to permit the original organization of a mutual savings bank. [L. '17, p. 622, § 1(b).]

See notes to § 3750, *supra*.

§ 3752. Submission to Vote of Shareholders—Notice of Meeting—Vote.

If such application be granted by the state bank examiner or by the board of appeal, as the case may be, the board of directors of such association shall, within sixty (60) days thereafter, submit the question of the proposed conversion to the shareholders of the association at a special meeting called for that purpose. Notice of such meeting shall be given in the manner prescribed by the by-laws of the association and also by the mailing of a copy of such notice to each shareholder at his last known postoffice address at least fifteen (15) days before the date of the meeting, and also by publication of such notice in ten (10) successive issues of a daily, or if there be no daily, then in two successive issues of a weekly newspaper published and of general circulation in the county wherein the principal office of such association is located, the last insertion to be not less than five (5) nor more than fifteen (15) days before the date of the meeting. Such notice shall state the time, place and purpose of the meeting, and that the only question to be voted upon will be, "shall the (naming the association) be converted into a mutual savings bank under the laws of the state of Washington?" The vote on said question shall be by ballot. Any shareholder may vote by proxy or may transmit his ballot by mail if the by-laws provide a method for so doing. If two-thirds ($\frac{2}{3}$) or more in number of the shareholders voting on the question vote affirmatively, then the board of directors shall have power, and it shall be their duty, to proceed to convert such association into a mutual savings bank; otherwise, the proposed conversion shall be abandoned and shall not be again submitted to the shareholders within three (3) years from the date of said meeting. [L. 17, p. 623, § 1 (c).]

See notes to § 3750, *supra*.

§ 3753. Certificate of Reincorporation—Contents.

If authority for the proposed conversion has been voted by the shareholders as hereinabove required, the directors shall, within thirty (30) days thereafter, subscribe and acknowledge and file with the state bank examiner in quadruplicate a certificate of reincorporation, stating:

(1) The name by which the converted corporation is to be known, which name shall include the words "mutual savings bank."

(2) The place where the bank is to be located and its business transacted, naming the city or town and county, which city or town shall be the same as that where the principal place of business of the corporation has theretofore been located.

(3) The name, occupation, residence and postoffice address of each signer of the certificate.

(4) The amount of the assets of the corporation, the amount of its liabilities and the amount of its contingent fund as of the first day of the then calendar month, and if the contingent fund be less than ten thousand dollars (\$10,000), the amount which each signer has contributed in cash to the initial expense fund.

(5) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a trustee of the savings bank, and is free from all the disqualifications specified in the laws applicable to mutual savings banks. [L. '17, p. 624, § 1 (d).]

§ 3754. Authorization Certificate—Filing of Articles and Certificates.

Upon the filing of said certificate in quadruplicate the state bank examiner shall, within thirty (30) days thereafter, if satisfied that all the provisions of this act have been complied with, issue in quadruplicate an authorization certificate stating that the corporation has complied with all the requirements of law, and that it has authority to transact at the place designated in its certificate of incorporation the business of a mutual savings bank. One of the examiner's quadruplicate certificates of authorization shall be attached to each of the quadruplicate certificates of reincorporation, and one set of these shall be filed and retained by the state bank examiner, one set shall be filed in the office of the county auditor of the county in which such bank is located, one set shall be filed in the office of the secretary of state, and one set shall be transmitted to the bank for its files. Upon the receipt from the corporation of the same fees as are required for filing and recording other incorporation certificates or articles the county auditor and secretary of state shall file said certificates in their respective offices and the secretary of state shall record the same; whereupon the conversion of such association shall be deemed complete, and the signers of said reincorporation certificate and their successors shall thereupon become and be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to mutual savings banks, and the time of existence of such corporation shall continue for the period of fifty (50) years from the date of the filing of such certificate, unless sooner terminated pursuant to law. [L. '17, p. 625, § 1 (e).]

See notes to § 3750, *supra*.

§ 3755. Association Shareholder as Bank Depositor—Withdrawal.

Upon the conversion of any association into a mutual savings bank, every person who was a shareholder of the association at the time of the conversion shall become and be deemed to be a depositor of the bank in a sum equal to the withdrawal value of his shares as of the day on which the conversion was consummated, and every such depositor shall share in the earnings of the corporation to that day as though the conversion had not been effected: Provided, however, that any person who was a shareholder shall be entitled at any time within sixty (60) days after the conversion was consummated to withdraw the value of his shares including his portion of the contingent fund as though no conversion had taken place, and in such case the value of the shares shall not be diminished by any fee, fine, forfeiture or penalty charged, imposed or incurred within one (1) year before the conversion or upon withdrawal. [L. '17, p. 626, § 2.]

§ 3756. Return of Securities—Guaranty Fund of Bank.

All mortgages, notes and other securities of any association that has been converted into a mutual savings bank, shall on request of the bank, be delivered to it by the state auditor or under his direction by any trust company or other depository having possession thereof. The contingent fund of the association shall become the guaranty fund of the

bank; and every such bank shall, as soon as practicable and within such time and by such methods as the state bank examiner may direct, cause its organization, its securities and investments, the character of its business and its methods of transacting the same to conform to the laws applicable to mutual saving banks. [L. '17, p. 626, § 3.]

§ 3757. Definitions.

In this chapter, unless repugnant to the context, the word "association" means "building and loan or savings and loan association or society"; the word "director" means one of the managing board of such a corporation; and the word "bank" means "mutual savings bank." [L. '17, p. 626, § 4.]

Bulk Sales Law. See "Frauds," § 5832.

Bureau. See "State and State Boards."

Burial. See "Health," § 6020.

Of Soldiers, see "Soldiers and Sailors," § 10757.

Business Names. See "Partnerships and Business Names," § 9976.

Canals. See "Navigation," § 9664.

Capitol Building Lands. See "Lands of the State," § 7896.

Carriers. See "Public Utilities and Railroads."

Cattle. See "Animals."

TITLE XXII.

CEMETERIES AND CEMETERY ASSOCIATIONS.

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| 3758. Association for establishing burying grounds, etc. | 3768. Burial lots entitled to all exemptions. |
| 3759. Cemetery sites in school lands. | 3769. Plan of grounds—Recording—Duties. |
| 3760. Lot in burying ground exempt from process. | 3770. Trust funds—Authority to accept. |
| 3761. Reservation by private owner. | 3771. Mutilation, etc., prohibited—Penalty. |
| 3762. Plat and survey—Dedication. | 3772. County, town, and city may provide for burial of dead. |
| 3763. Exemption from taxes and debts. | 3773. Cemeteries—Cities may own and regulate. |
| 3764. Cemetery associations—Method of incorporation. | 3774. Cemetery board, duty. |
| 3765. Corporate powers. | 3775. Investments. |
| 3766. Lands exempt from taxation—Funds irreducible—Application—Debts. | 3776. Separate fund. |
| 3767. May sell unsuitable land. | 3777. Records—Audit. |
| | 3778. Management of funds. |

§ 3758. [3639.] Association for Establishing Burying Grounds, etc.

Any number of individuals, in any portion of this state, may associate for the purpose of procuring and establishing a burying ground or place of sepulture; and, being so associated, they shall, on complying with the provisions of this section, be a body politic and corporate, may choose a president and other officers, may enact by-laws for regulating the affairs of such corporation not inconsistent with the laws of this state, and compel the observance thereof by suitable penalties, may sue and be sued, and do all acts necessary and proper for the well-ordering of the affairs of such corporation: Provided, that, before any such association shall be entitled to the privileges granted in this section, they shall lodge with the secretary of state a copy of their articles of association, and shall also cause the same to be recorded in the records of the county where such burying ground is situated. [L. '56, p. 28, § 1; Abb. R. P. S., p. 322.]

See *infra*, § 3764, method of incorporation, a later enactment.

Cited in 59 Wash. 46, 47.

§ 3759. [3639-1.] Cemetery Sites on School Lands.

Any cemetery association may purchase, under the provision of law governing the sale thereof, a cemetery site or sites, of not less than one acre nor more than ten acres each, of any school lands of the state of Washington. [L. '15, p. 419, § 15.]

See *infra*, § 11378, townships may establish.

§ 3760. [3640.] Lot in Burying Ground Exempt from Process.

Whenever any part of such burying ground shall have been designated and appropriated by the proprietors thereof as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant or execution, for any tax or debt whatever; nor shall the same be liable to be sold to satisfy the demands

of creditors whenever the estate of such owner shall be insolvent. [L. '56, p. 28, § 2; 1 H. C., § 2426.]

See Const., Art. VII, § 2, exemptions from taxation.

See *infra*, § 11104, exemption from taxation.

Cited in 59 Wash. 44, 46, 48.

This section is broad enough to exempt from local assessments the burial lots in a cemetery deeded to private owners, to be used exclusively for burial purposes, although the cemetery is owned by a cemetery company organized as a private corporation for profit, and not as a charitable association as contemplated by section 3758, *supra*: Sixth Avenue West,

Seattle, *In re*, 59 Wash. 41, 109 Pac. 1052, Ann. Cas. 1912A, 1047.

A cemetery company organized as a private corporation, which has sold burial lots to be used for that purpose only, is not entitled to the exemption of its unsold property from local improvement assessments, under this section and section 3766: Sixth Avenue West, Seattle, *In re*, 59 Wash. 41, 109 Pac. 1052, Ann. Cas. 1912A, 1047.

§ 3761. [3640½.] Reservation by Private Owner.

Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial and cemetery purposes by complying with the terms of the next section, provided said lands so sought to be reserved shall not exceed in area one acre. [L. '01, p. 307, § 1.]

§ 3762. [3641.] Plat and Survey—Dedication.

Such person or persons shall cause such land to be surveyed and platted. A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid. [L. '01, p. 308, §§ 2, 3.]

§ 3763. [3642.] Exemption from Taxes and Debts.

Upon compliance with the requirements of the preceding section said lands shall forever be exempt from taxation, judgment and other liens and executions. [L. '01, p. 308, § 4.]

See note to § 3760.

§ 3764. [3643.] Cemetery Associations—Method of Incorporation.

Ten or more persons residing within any county of this state may associate themselves together by [by] an agreement in writing in the manner and form prescribed in sections 3872 to 3883, inclusive, *infra*, for the purpose of organizing themselves into a cemetery association, and upon complying with the provisions of said act, so far as applicable, they shall be and remain a corporation. [L. '99, p. 44, § 1.]

See, also, *supra*, § 3758.

Cited in 59 Wash. 44, 47.

§ 3765. [3644.] Corporate Powers.

All such associations shall have power to prescribe the terms on which members may be admitted, the number of its trustees and officers and the time and manner of their election or appointment and the time

and place of meeting for the trustees and for the association, and to pass all such other by-laws as may be necessary for the good government of such association. [L. '99, p. 45, § 2.]

§ 3766. [3645.] Lands Exempt from Taxation—Funds Irreducible—Application—Debts.

Such association shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes, for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes, and in no wise with a view to profit of the members of such association: Provided, that when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. Such association may by its by-laws provide that a stated percentage of the moneys realized from the sale of lots, donations or other sources of revenue, shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof may deem proper. The interest or income arising from the irreducible fund, provided for in any by-laws, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the lots sold to the members of such association, and where any by-law has been enacted for the creation of an irreducible fund as herein provided for it cannot thereafter be amended in any manner whatever except for the purpose of increasing such fund. After paying for the land all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents or otherwise, shall be applied exclusively to laying out, preserving, protecting and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts except for originally purchasing, laying out and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots. [L. '99, p. 45, § 3.]

See *supra*, § 3760, note.

See *infra*, § 11104, exemption from taxation.

Cited in 59 Wash. 44.

Whether cemeteries subject to assessments for local improvements.
33 Am. St. Rep. 409; Ann. Cas.

1912A, 1051; Ann. Cas. 1916B, 78;
35 L. R. A. 36; 44 L. R. A. (N. S.) 57; L. R. A. 1916F, 865; L. R. A. 1918A, 157.

§ 3767. [3646.] May Sell Unsuitable Land.

It shall be lawful for said trustees, wherever in their opinion any portion or portions of their lands are unsuitable for burial purposes, to

sell such portion or portions, and apply the avails thereof to the general purposes of such association. [L. '99, p. 46, § 4.]

Sale, when acquiesced in: *Tacoma v. Tacoma Cemetery*, 28 Wash. 238, 68 Pac. 723.

§ 3768. [3647.] Burial Lots Entitled to All Exemptions.

Burial lots, sold by such association, shall be for the sole purpose of interment, and shall be exempt from taxation, execution, attachment or other claims, lien or process whatsoever, if used as intended, exclusively for burial purposes and in no wise with a view to profit. [L. '99, p. 46, § 5.]

See *infra*, § 11104, exemption from taxation.

§ 3769. [3649.] Plan of Grounds—Recording—Duties.

All such associations shall cause a plan of their grounds and of the blocks and lots by them laid out, to be made and recorded, such blocks and lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve and adorn the grounds and avenues, to erect buildings for the use of the association and to prescribe rules for the designation and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem improper. An annual exhibit shall be made of the affairs of the association. The plan, or plat, hereinbefore required, shall be recorded by the proper county auditor for a fee not to exceed ten cents a lot, and if the actual cost of recording the same shall be less than ten cents a lot, then said auditor shall record the same at the actual cost thereof. [L. '99, p. 46, § 6; L. '05, p. 123, § 1.]

§ 3770. [3650.] Trust Funds—Authority to Accept.

All associations and companies owning cemeteries may take and hold any property, real and personal, bequeathed or given upon trust, to apply the income thereof under the direction of the trustees or managers of such associations or companies, for the improvement or embellishment of such cemeteries, or the erection or preservation of any buildings, structures, fences or walks erected or to be erected upon the lands of such cemetery associations or companies, or upon the lots or plots of any of the proprietors, or for the repair, preservation, erection or removal of any tomb, monument, gravestone, fence, railing, or other erection in or around any cemetery lot or plot, or for planting and cultivating trees, shrubs, flowers or plants in or around any such lot or plot, or for improving or embellishing such cemeteries or any of the lots or plots in any other manner or form consistent with the design and purposes of such associations and companies, according to the terms of such grant, devise or bequest. [L. '05, p. 231, § 1.]

§ 3771. [3651.] Mutilation, etc., Prohibited—Penalty.

Any person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure in any cemetery, or any fence railing or other work for the protection or ornament of a cemetery or tomb, monument or gravestone or other structure

aforesaid or of any cemetery lot within a cemetery or shall willfully destroy, cut, break or injure any tree, shrub or plant within the limits of a cemetery shall be deemed guilty of a misdemeanor and shall upon conviction thereof before any court of competent jurisdiction be punished by a fine of not less than five dollars nor more than five hundred dollars, and imprisonment in the county jail for a term not less than one nor more than thirty days, according to the nature and aggravation of the offense and such offender shall also be liable in an action of trespass in the name of said association, to pay all such damages as have been occasioned by his unlawful act or acts, which wrong, when recovered shall be applied to the reparation and restoration of the property destroyed or injured as above. [L. '99, p. 47, § 7.]

See supra, § 2491, opening grave to steal body.

See supra, § 2493, opening road through, prohibited.

See infra, § 6027, interments without permit prohibited.

§ 3772. [3652.] County, Town, and City may Provide for Burial of Dead.

Each and every county, town, or city shall have power to provide a hearse and pall for burial of the dead, and to procure and hold lands for burying grounds, and to make regulations, and fence the same, and to preserve the monuments erected therein, and to levy and collect the necessary taxes for that purpose, in the same manner as other taxes are levied and collected. [L. '56, p. 28, § 3; 1 H. C., § 2427.]

See infra, § 8966, power of first class cities over.

See infra, § 9034, second class cities may provide.

See infra, § 11378, townships may establish.

§ 3773. [3653.] Cemeteries—Cities may Own and Regulate.

Any city may acquire, hold or improve land for cemetery purposes and may sell lots therein and may provide by ordinance that a certain specified percentage of the moneys for any lot sold may be set aside and invested, and the income from said investment be used in the care of said lots, and may take and hold any property, real and personal, bequeathed or given upon trust, and apply the income thereof for the improvement or embellishment of such cemeteries or the erection or preservation of any buildings or structures, fences or walks erected or to be erected upon the cemeteries of such city, or for the repair, preservation, erection or renewal of any tomb, monument, gravestone, fence, railing or other erection at or around any cemetery, lot or plat, or for planting and cultivating trees, shrubs, flowers or plants in or around such lot or plat or for improving or embellishing such cemetery in any other manner or form consistent with the design and purpose of such city, according to the terms of such grant, devise or bequest. [L. '09, p. 602, § 1.]

See § 3772, supra.

§ 3774. [3654.] Cemetery Board, Duty.

It shall be the duty of the cemetery board and other body or commission having in charge the care and operation of cemeteries to invest all sums set aside from the sale of lots, and all sums of money received, and to care for the income of all money and property held in trust

for the purposes designated herein: Provided, however, that all investments shall be made in municipal, county, school or state bonds, or in first mortgages on good and improved real estate. [L. '09, p. 603, § 2.]

§ 3775. [3655.] Investments.

All investments shall be approved by the council or legislative body of the city. [L. '09, p. 603, § 3.]

§ 3776. [3656.] Separate Fund.

All moneys received or obtained in the manner herein provided shall be deposited with the city treasurer of said city, and shall be kept separate and apart in a fund known as the cemetery improvement fund, and shall be paid out by the said treasurer only upon warrants drawn by the order of the cemetery board and indorsed by the mayor and attested by the city comptroller of said city, or other authorized officer. [L. '09, p. 603, § 4.]

§ 3777. [3657.] Records—Audit.

Accurate books of account shall be kept of all transactions pertaining to said fund, which books shall be open to the public for inspection and shall be audited by the auditing committee of said city. [L. '09, p. 603, § 5.]

§ 3778. [3658.] Management of Funds.

The said city shall, by ordinance, make all necessary rules and regulations concerning the control and management of said fund to properly safeguard the same, but shall in no wise be liable for any of said funds except a misappropriation thereof, and shall not have power to bind the city or said fund for any further liability than whatever net interest may be actually realized from such investments, and shall not be liable to any particular person for more than the proportionate part of such net earnings. [L. '09, p. 603, § 6.]

Census. See "Education," §§ 4807, 4842; Municipal Corporations, §§ 8933, 8952.

Certificates of Public Necessity. See "Highways," § 6390; "Public Utilities," § 10412.

Certiorari. See § 1001.

Charitable Institutions. See "Corporations," § 3863.

TITLE XXIII.

CHATTEL MORTGAGES AND CONDITIONAL SALES.

CHAPTER I.—CHATTEL MORTGAGES.

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| 3779. Property subject to. | 3785. Recording mortgages in excess of three hundred dollars. |
| 3780. Affidavit of good faith—Acknowledgment—Recording. | 3786. Property in two counties. |
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CHAPTER II.—CONDITIONAL SALES.

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CHAPTER I.

CHATTEL MORTGAGES.

§ 3779. [3659.] Property Subject to.

Mortgages may be made upon all kinds of personal property, and upon the rolling stock of a railroad company and upon all kinds of machinery, and upon boats and vessels, and upon portable mills, and such like property, and upon growing crops and upon crops before the seed thereof shall have been sown or planted: Provided, that the mortgaging of crops before the seed thereof shall have been sown or planted, for more than one year in advance, is hereby forbidden, and all securities or mortgages hereafter executed on such unsown or unplanted crops are declared void and of no effect, unless such crops are to be sown or planted within one year from the time of the execution of the mortgage. [L. '99, p. 157, § 1. Cf. L. '79, p. 104, § 1; Cd. '81, § 1986; 1 H. C., § 1646.]

For former laws on this subject, see L. '63, pp. 426, 427; L. '65, p. 26; L. '75, pp. 43—46; L. '77, pp. 286, 287.

See *supra*, § 1104 et seq., and notes, foreclosure of chattel mortgages.

Cited in 1 Wash. 546, 583; 4 Wash. 249; 6 Wash. 91; 8 Wash. 573; 21 Wash. 275; 77 Wash. 492; 78 Wash. 140; 92 Wash. 218; 93 Wash. 601; 97 Wash. 648.

NATURE AND ESSENTIALS OF TRANSFERS OF CHATTELS AS SECURITY: See Remington's Digest, Chat. Mtg., §§ 1—11.

§ 1. Mortgage Distinguished from Other Transactions—Sale: Miller v. Auserig, 2 W. T. 22, 3 Pac. 111; Sayward v. Nunan, 6 Wash. 87, 32 Pac. 1022.

Where an automobile was consigned to the purchaser subject to payment of draft attached to the bill of lading, one who advanced money to pay the draft, immediately delivering the bill of lading to the consignee who took possession of the car, cannot secure the advance

by the giving and recording of a conditional bill of sale to the consignee, under the fiction of a sale to and resale by him; since it is not the office of a conditional bill of sale to secure money loaned without the formalities required of a chattel mortgage: Lyon v. Nourse, 104 Wash. 309, 176 Pac. 359.

A bill of sale to a bank cashier of a donkey engine, purchased for the use of loggers, was not intended as a chattel mortgage to secure the loggers' note for \$300 advanced by the bank, where the agreement gave the makers of the note an option to pay it and take title to the engine, or to pay a sum agreed upon as rental for the engine and take back the note; since there was no obligation to pay the note, and there could be no security for a debt when there was no

debt: *Hays v. Bashor*, 108 Wash. 491, 185 Pac. 814.

§ 2. — **Pledge:** *Marsh v. Wade*, 1 Wash. 538, 20 Pac. 578.

§ 3. **Property Which may be Subject of Mortgage—Crops:** *Harker v. Woolery*, 10 Wash. 484, 39 Pac. 100; *Tipton v. Martzell*, 21 Wash. 273, 57 Pac. 806, 75 Am. St. Rep. 838; *Woody v. Wagner*, 89 Wash. 429, 154 Pac. 819; *German-American State Bank v. Seattle Grain Co.*, 89 Wash. 376, 154 Pac. 443.

A chattel mortgage for an antecedent debt upon a crop of wheat, executed by purchasers in possession under an executory contract of sale, the mortgagee having at the time knowledge of the vendor's right to take and retain all growing crops on the land by reason of defaults, is subject to the rights of the vendors, there being, as to them, no constructive severance of the crop by the giving of the mortgage: *Union Farm Land Co. v. Isaacs*, 106 Wash. 168, 179 Pac. 84.

§ 3-1. — **Chose in Action:** *Heermans v. Blakeslee*, 93 Wash. 595, 161 Pac. 489 (overruling on rehearing, *Id.*, 93 Wash. 595; *Heermans v. Blakeslee*, 97 Wash. 647, 167 Pac. 128).

§ 4. — **Stock in Trade:** *Wineburgh v. Schaer*, 2 W. T. 328, 5 Pac. 299; *Byrd v. Forbes*, 3 W. T. 318, 13 Pac. 715.

§ 5. — **Waterworks System:** *Dunsmuir v. Port Angeles etc. P. Co.*, 24 Wash. 104, 63 Pac. 1095.

§ 6. **Debts or Liabilities Which may be Secured—Indemnity Mortgages:** *Warren v. His Creditors*, 3 Wash. 48, 28 Pac. 257.

§ 7. **Consideration:** *Warren v. His Creditors*, 3 Wash. 48, 28 Pac. 257; *Otto v. England*, 99 Wash. 529, 169 Pac. 964.

§ 9. **Evidence as to Character of Transaction or Instrument—Burden of Proof:** *Voorhies v. Hennessy*, 7 Wash. 243, 34 Pac. 931.

§ 10. — **Parol Evidence:** *Voorhies v. Hennessy*, 7 Wash. 243, 34 Pac. 931.

§ 11. — **Weight and Sufficiency:** *Hammer v. O'Loughlin*, 8 Wash. 393, 36 Pac. 257; *Collins v. Denny Clay Co.*, 41 Wash. 136, 82 Pac. 1012.

Railroad Property: See *Remington's Digest*, R. R., § 41; *National Bank of Commerce v. Lock*, 17 Wash. 528, 50 Pac. 478, 61 Am. St. Rep. 923; *Radebaugh v. Tacoma & Puyallup R. Co.*, 8 Wash. 570, 36 Pac. 460.

Crop Mortgage by Indian: *Rider v. La Clair*, 77 Wash. 488, 138 Pac. 3.

Increase of mortgaged animals as included under chattel mortgage. 13 Ann. Cas. 100; Ann. Cas. 1917C, 1173; 14 L. R. A. (N. S.) 431; 17 L. R. A. (N. S.) 203.

Term "increase" in description in chattel mortgage on animals as including increase other than by generation. 1 A. L. R. 554.

Validity of mortgage or agreement to mortgage crops to be planted. 5 Ann. Cas. 400; 23 L. R. A. 449; L. R. A. 1917C, 8.

Sufficiency of description of stock of merchandise in chattel mortgage and additions thereto as included under mortgage. Ann. Cas. 1915D, 783; Ann. Cas. 1916D, 1215, 1228; Ann. Cas. 1918E, 743.

Goodwill as passing under chattel mortgage of business without mention thereof. 18 Ann. Cas. 434.

Validity and construction of chattel mortgage given to secure future advances. 9 Ann. Cas. 1151.

§ 3780. [3660.] Affidavit of Good Faith—Acknowledgment—Recording.

A mortgage of personal property is void as against all creditors of the mortgagor, both existing and subsequent, whether or not they have or claim a lien upon such property, and against all subsequent purchasers, pledgees, and mortgagees and encumbrancers for value and in good faith, unless it is accompanied by the affidavit of the mortgagor that it is made in good faith, and without any design to hinder, delay, or defraud creditors, and unless it is acknowledged and filed within ten days from the time of the execution thereof in the office of the county auditor of the county in which the mortgaged property is situated as provided by law. [L. '15, p. 277, § 1. Cf. L. '79, p. 105, § 2; Cd. '81, § 1987; 1 H. C., § 1648.]

See references to last section.

See *infra*, § 3782, a later enactment, making a mortgage that is merely "filed and indexed" notice to "all the world," and § 3785, making it "optional" to record mortgages for over three hundred dollars.

See *infra*, § 10601, auditor to record.

Cited in 6 Wash. 91; 9 Wash. 26; 11 Wash. 385, 402; 12 Wash. 193; 14 Wash. 361, 455; 16 Wash. 517; 19 Wash. 445; 20 Wash. 19; 22 Wash. 63; 24 Wash. 112, 598; 30 Wash. 590; 50 Wash. 18; 60 Wash. 251; 73 Wash. 498; 77 Wash. 354; 78 Wash. 136, 139; 82 Wash. 67; 84 Wash. 230, 232; 86 Wash. 204; 88 Wash. 221; 90 Wash. 304; 91 Wash. 299; 92 Wash. 218, 474, 478, 479; 93 Wash. 599, 600; 95 Wash. 641; 97 Wash. 647; 101 Wash. 558, 560, 626, 627; 107 Wash. 434; 112 Wash. 10, 11.

FORM AND CONTENTS OF INSTRUMENTS—Necessity and Sufficiency of Writing in General: See Remington's Digest, Chat. Mtg., §§ 12—15; Marsh v. Wade, 1 Wash. 538, 20 Pac. 578; Heermans v. Blakeslee, 93 Wash. 595, 161 Pac. 489 (overruling on rehearing, Id., 93 Wash. 595); Heermans v. Blakeslee, 97 Wash. 647, 167 Pac. 128.

§ 13. Description of Property—Certainty in General: McDonald v. Tower Lumber etc. Co., 10 Wash. 474, 38 Pac. 112; Mendenhall v. Kratz, 14 Wash. 453, 44 Pac. 872; Bonneviere v. Cole, 90 Wash. 526, 156 Pac. 527; Otto v. England, 99 Wash. 529, 169 Pac. 964.

See, also, Mott v. Johnson, 112 Wash. 18, 191 Pac. 844.

§ 14. — Animals: Darland v. Levins, 1 Wash. 582, 20 Pac. 309.

§ 15. — Stock in Trade: Dillon v. Dillon, 13 Wash. 594, 43 Pac. 894.

EXECUTION AND DELIVERY: See Remington's Digest, Chat. Mtg., §§ 16, 17.

§ 16. Acknowledgment: Howard v. Gemming, 10 Wash. 30, 38 Pac. 766; Smith v. Allen, 78 Wash. 135, 138 Pac. 683, Ann. Cas. 1915D, 300.

§ 17. Affixing Revenue Stamps: Foster v. Pacific Clipper Line, 30 Wash. 515, 71 Pac. 48.

Affidavit Accompanying Instrument: See Remington's Digest, Chat. Mtg., § 18; Vincent v. Snoqualmie Mill Co., 7 Wash. 566, 35 Pac. 396; Reed v. Bank of Commerce, 8 Wash. 539, 36 Pac. 484; Sayward v. Thayer, 9 Wash. 22, 36 Pac. 966, 38 Pac. 137; Harker v. Woolery, 10 Wash. 484, 39 Pac. 100; Chase v. Tacoma Box Co., 11 Wash. 377, 39 Pac. 639; Roy & Co. v. Scott, Hartley & Co., 11 Wash. 399, 39 Pac. 679; Mendenhall v. Kratz, 14 Wash. 453, 44 Pac. 872; Sligh v. Shelton etc. R. Co., 20 Wash. 16, 54 Pac. 763; Hicks v. National Surety Co., 50 Wash. 16, 96 Pac. 515, 126 Am. St. Rep. 883; Watson v. First National Bank of Clarkston, 82 Wash. 65, 143 Pac. 451; Belcher v. Young, 90 Wash. 303, 155 Pac. 1060; Kato v. Union Oil Co. of California, 92 Wash. 473, 159 Pac. 692.

A chattel mortgage by a corporation without an affidavit of good faith is

void as to a receiver for creditors, who was appointed on insolvency and took possession of the mortgaged property before the mortgagee or any person had acquired a valid lien thereon; as the property is a trust fund for creditors in custodia legis, and no creditor could thereafter obtain a preference over others: Mutual Investment Co. v. Walton Machine Co., 91 Wash. 298, 157 Pac. 682.

A chattel mortgage will not be held void as to creditors by reason of failure of the notary taking the acknowledgment and affidavit of good faith to impress his notarial seal upon the certificate to the affidavit of good faith, where such seal was duly affixed to his certificate to the acknowledgment, made by the same person who swore to the affidavit which immediately followed the acknowledgment, all constituting one instrument executed in all its parts at the same time: Woods v. Young Lumber Co., 107 Wash. 432, 181 Pac. 865.

Affidavit—Notarial certificate—Sufficiency: Woods v. Young Lbr. Co., 107 Wash. 432, 181 Pac. 865.

Lack of affidavit and recording—Possession by mortgagee—Evidence: Robinson, Thieme & Morris v. Whittier, 112 Wash. 6, 191 Pac. 763.

Delivery: See Remington's Digest, Chat. Mtg., § 19; Day's Assignment, In re, 15 Wash. 525, 46 Pac. 1048; Fenby v. Hunt, 53 Wash. 127, 101 Pac. 492.

Acceptance: See Remington's Digest, Chat. Mtg., § 20; Griswold v. Case, 13 Wash. 623, 43 Pac. 876; Day's Assignment, In re, 15 Wash. 525, 46 Pac. 1048.

VALIDITY: See Remington's Digest, Chat. Mtg., §§ 21—22½.

§ 21. Fraud: Warren v. His Creditors, 3 Wash. 48, 28 Pac. 257; Benham v. Ham, 5 Wash. 128, 31 Pac. 459, 34 Am. St. Rep. 851; McCarty v. Fletcher, 12 Wash. 244, 40 Pac. 939; West Coast Grocery Co. v. Stinson, 13 Wash. 255, 43 Pac. 35; Melbye v. Melbye, 15 Wash. 648, 47 Pac. 16; Hotaling Co. v. Clancy, 21 Wash. 1, 56 Pac. 929.

§ 22. Waiver as to Defects or Objections: Marsh v. Wade, 1 Wash. 538, 20 Pac. 578; Urquhart v. Coss, 60 Wash. 249, 110 Pac. 1001.

§ 22½. Cancellation for Invalidity: Melbye v. Melbye, 15 Wash. 648, 47 Pac. 16.

FILING AND RECORDING: See Remington's Digest, Chat. Mtg., §§ 23—26.

§ 23. Purpose of Requirements: Darland v. Levins, 1 Wash. 582, 20 Pac. 309.

§ 24. Effect of Failure to Record or Defective Record: Baxter v. Smith, 2

W. T. 97, 4 Pac. 35; Chase v. Tacoma Box Co., 11 Wash. 377, 39 Pac. 639; Roy & Co. v. Scott & Co., 11 Wash. 399, 39 Pac. 679; Hinchman v. Point Defiance R. Co., 14 Wash. 349, 44 Pac. 867; Mendenhall v. Kratz, 14 Wash. 453, 44 Pac. 872; Van Brocklin v. Queen City Printing Co., 19 Wash. 552, 53 Pac. 822; Carstens v. Moyer, 22 Wash. 61, 60 Pac. 51; Blumauer v. Clock, 24 Wash. 596, 64 Pac. 844, 85 Am. St. Rep. 966; Vincent v. Snoqualmie Mill Co., 7 Wash. 566, 35 Pac. 396; Hall v. Matthews, 8 Wash. 407, 36 Pac. 262; Willamette Casket Co. v. Cross Undertaking Co., 12 Wash. 190, 40 Pac. 729; Johnston v. Wood, 19 Wash. 441, 53 Pac. 707; Pacific Coast Biscuit Co. v. Perry, 77 Wash. 352, 137 Pac. 483; Heal v. Evans Creek Coal & Coke Co., 71 Wash. 225, 128 Pac. 211; Puget Sound Realty Associates v. Catlett, 83 Wash. 495, 145 Pac. 617; Spokane Merchants' Assn. v. First National Bank of Colville, 86 Wash. 367, 150 Pac. 434, L. R. A. 1918A, 323; Keyes v. Sabin, 101 Wash. 618, 172 Pac. 835.

See, also, Robinson, Thieme & Morris v. Whittier, 112 Wash. 6, 191 Pac. 763.

§ 25. **Agreement not to Record:** Brockway v. Ablett, 37 Wash. 263, 79 Pac. 924.

§ 26. **Time:** First Nat. Bank of Aberdeen v. Carter, 6 Wash. 494, 33 Pac. 824; Willamette Casket Co. v. Cross etc. Co., 12 Wash. 190, 40 Pac. 729; Manhattan Trust Co. v. Seattle Coal & Iron Co., 16 Wash. 499, 48 Pac. 333, 737.

CONSTRUCTION AND OPERATION: See Remington's Digest, Chat. Mtg., §§ 30—36.

§ 30. **Construing Instruments Together:** Mansfield v. First Nat. Bank, 5 Wash. 665, 32 Pac. 789, 999.

§ 31. **Future Advances:** Inland Trading Co. v. Edgecombe, 57 Wash. 257, 106 Pac. 768.

§ 32. **Fees and Costs:** Fenby v. Hunt, 53 Wash. 127, 101 Pac. 492; Gay v. Schaefer, 52 Wash. 269, 100 Pac. 334.

§ 33. **Animals and Increase:** Libert v. Unfried, 47 Wash. 186, 91 Pac. 776.

§ 34. **Additions to and Renewals of Stock:** Byrd v. Forbes, 3 W. T. 318, 13 Pac. 715; Howard v. Gemming, 10 Wash. 30, 38 Pac. 766; Armstrong v. Ford, 10 Wash. 64, 38 Pac. 866.

§ 35. **Extension to or Substitution of Other Property:** McDonald v. Tower Lumber Mfg. Co., 10 Wash. 474, 38 Pac. 1122; Moore v. Terry, 17 Wash. 185, 49 Pac. 234.

§ 36. **Estates and Interests of Parties:** Silsby v. Aldridge, 1 Wash. 117, 23 Pac. 836; Byrd v. Forbes, 3 W. T. 318,

13 Pac. 715; Ephriam v. Kelleher, 4 Wash. 243, 29 Pac. 985, 18 L. R. A. 604; Binnian v. Baker, 6 Wash. 50, 32 Pac. 1008; Sayward v. Nunan, 6 Wash. 87, 32 Pac. 1022; Richter v. Buchanan, 48 Wash. 32, 92 Pac. 782.

LIEN AND PRIORITY: See Remington's Digest, Chat. Mtg., §§ 37—43. **Scope and Extent of Lien:** Binnian v. Baker, 6 Wash. 50, 32 Pac. 1008; Duns-muir v. Port Angeles etc. P. Co., 24 Wash. 104, 63 Pac. 1095; Levitch v. Link, 95 Wash. 639, 164 Pac. 233.

§ 38. **Waiver of Lien:** Murphy v. Currie, 21 Wash. 232, 57 Pac. 795.

§ 39. **Priorities of Debts Secured by Same Mortgage:** First Nat. Bank of Seattle v. Woolery, 6 Wash. 215, 33 Pac. 357.

§ 40. **Priorities of Mortgages in General:** Hall v. Matthews, 8 Wash. 407, 36 Pac. 262; Howard v. Gemming, 10 Wash. 30, 38 Pac. 766.

§ 41. **Priority of Execution or Delivery:** Griswold v. Case, 13 Wash. 623, 43 Pac. 876.

§ 42. **Priority of Record:** Commercial Bank of Tacoma v. Chilberg, 14 Wash. 47, 44 Pac. 112; Olsen v. Smith, 84 Wash. 228, 146 Pac. 572.

A prior chattel mortgage is superior to the lien given by section 1154, and in view of this section, reaffirming the standing of chattel mortgages under sections 3779 to 3789, which was not intended to be impliedly repealed by the chattel lien law: Rothweiler v. Winton Motor Car Co., 92 Wash. 215, 158 Pac. 737.

§ 43. **Notice Affecting Priority—Actual Notice:** Howard v. Gemming, 10 Wash. 30, 38 Pac. 766; Roy & Co. v. Scott, Hartley & Co., 11 Wash. 399, 39 Pac. 679; Hinchman v. Point Defiance R. Co., 14 Wash. 349, 44 Pac. 867; Mendenhall v. Kratz, 14 Wash. 453, 44 Pac. 872; Fenby v. Hunt, 53 Wash. 127, 101 Pac. 492, Smith v. Allen, 78 Wash. 135, 138 Pac. 683, Ann. Cas. 1915D, 300.

RIGHTS, LIABILITIES AND REMEDIES: See Remington's Digest, Chat. Mtg., §§ 45—54.

§ 45. **Creditors Entitled to Attack Mortgage:** Meacham Arms Co. v. Swartz, 2 W. T. 412, 7 Pac. 859; Puget Sound Realty Associates v. Catlett, 83 Wash. 495, 145 Pac. 617; Spokane Merchants' Assn. v. First National Bank of Colville, 86 Wash. 367, 150 Pac. 434, L. R. A. 1918A, 323.

§ 46. **Possession or Control of Property:** Byrd v. Forbes, 3 W. T. 318, 13 Pac. 715; Marsh v. Wade, 1 Wash. 538, 20 Pac. 578 (modifying Byrd v. Forbes, 3 W. T. 318, 13 Pac. 715); Reed v. Bank

of Commerce, 8 Wash. 539, 36 Pac. 484; Vincent v. Snoqualmie Mill Co., 7 Wash. 566, 35 Pac. 396; Brockway v. Abbott, 37 Wash. 263, 79 Pac. 924; Jones v. North Pacific Fish etc. Co., 42 Wash. 332, 84 Pac. 1122, 114 Am. St. Rep. 131, 6 L. R. A. (N. S.) 940; American Packing Co. v. Luketa, 98 Wash. 6, 167 Pac. 87.

The rule that a chattel mortgagee has no right to recover possession of the mortgaged property has no application to a mortgage which contemplates the actual transfer of possession; and after such transfer of possession to the mortgagee has actually been made, the mortgagee may maintain replevin when the property is wrongfully taken and withheld: Burke v. Wilson, 107 Wash. 454, 181 Pac. 984.

Crops—Right of mortgagee—Notice of termination of lease: Hinkhouse v. Wacker, 112 Wash. 253, 191 Pac. 881.

§ 46-1. — **Before Default in General:** Binnian v. Baker, 6 Wash. 50, 32 Pac. 1008.

§ 47. **Necessity for Notice of Levy to Mortgagee:** Byrd v. Forbes, 3 W. T. 318, 13 Pac. 715.

§ 48. **Sufficiency of Transfer of Possession:** Armstrong v. Ford, 10 Wash. 64, 38 Pac. 866.

§ 48-1. — **Provisions of Mortgage:** Armstrong v. Ford, 10 Wash. 64, 38 Pac. 866.

§ 48-2. — **After Default:** Voorhies v. Hennessy, 7 Wash. 243, 34 Pac. 931; Sanders v. Main, 9 Wash. 46, 36 Pac. 1049; Kidder v. Beavers, 33 Wash. 635, 74 Pac. 819; McClellan v. Gaston, 18 Wash. 472, 51 Pac. 1062.

§ 48-3. — **Effect of Possession or Control by Mortgagor in General:** Langert v. Brown, 3 W. T. 102, 13 Pac. 704; Wineburgh v. Schaer, 2 W. T. 328, 5 Pac. 299; Byrd v. Forbes, 3 W. T. 318, 13 Pac. 715; Warren v. His Creditors, 3 Wash. 48, 28 Pac. 257; Benham v. Ham, 5 Wash. 128, 31 Pac. 459, 34 Am. St. Rep. 851; Van Winkle v. Mitchum, 66 Wash. 296, 119 Pac. 748; Haskins v. Fidelity National Bank, 93 Wash. 63, 159 Pac. 1198.

See, also, Simpson v. Combes, 107 Wash. 575, 182 Pac. 566.

§ 49. **Use and Disposition of Property or Proceeds—By Mortgagor:** Ephraim v. Kelleher, 4 Wash. 243, 29 Pac. 985, 18 L. R. A. 604; Sanders v. Main, 12 Wash. 665, 42 Pac. 122; Dillon v. Dillon, 13 Wash. 594, 43 Pac. 894; Nason & Co. v. Stack, 81 Wash. 147, 142 Pac. 477; Keyes v. Sabin, 101 Wash. 618, 172 Pac. 835.

A mortgage of a stock of goods is valid, although it leaves the mortgagor

in possession with power to sell in the course of trade under an agreement to apply a portion of receipts to a discharge of the mortgage indebtedness: Simpson v. Combes, 107 Wash. 575, 182 Pac. 566.

A chattel mortgage upon a shifting stock of merchandise, leaving the mortgagors to sell in the course of trade, to be valid as against creditors, should identify the property and must provide for application of the proceeds on the mortgage debt and for accounting and payments; and is void as to creditors where the mortgagors were permitted to dispose of the stock and apply the proceeds to their own use, without making agreed payments on the debt: Miller v. Scarborough, 108 Wash. 646, 185 Pac. 625.

Notwithstanding a chattel mortgage creates a lien only and conveys no title, a mortgagor of abstract books has no right to impair the security by taking and selling photographic reproductions of the books, in view of section 1111, supra, giving the mortgagee the right to maintain an immediate action for foreclosure, if there is reasonable cause to believe that the property will be destroyed, lost or removed, and section 3789, making injury to the same a misdemeanor; since making the secret information public must be considered an unlawful destruction of the security: Wintler Abstract & Loan Co. v. Sears, 108 Wash. 461, 184 Pac. 309, 7 A. L. R. 152.

§ 49-1. — **By Mortgagee in Possession:** Sheehan v. Levy, 1 Wash. 149, 23 Pac. 802; Warren v. His Creditors, 3 Wash. 48, 28 Pac. 257; Edmonds v. Eubanks, 57 Wash. 529, 107 Pac. 387.

§ 49-2. — **Accounting for Proceeds of Property:** Inland Trading Co. v. Edgecomb, 57 Wash. 257, 106 Pac. 768.

§ 50. **Conversion of or Injury to Property:** Brotton v. Langert, 1 Wash. 227, 23 Pac. 803; Brockway v. Abbott, 37 Wash. 263, 79 Pac. 924; Richter v. Buchanan, 48 Wash. 32, 92 Pac. 782.

§ 51. **Action for Possession of Property—Against Third Persons:** Langert v. Brown, 3 W. T. 102, 13 Pac. 704; Kerron v. North Pac. Lumber Co., 1 Wash. 241, 24 Pac. 445; Sayward v. Nunan, 6 Wash. 87, 32 Pac. 1022.

§ 52. **Actions for Damages—Against Third Persons:** Brotton v. Langert, 1 Wash. 227, 23 Pac. 803; Sheehan v. Levy, 1 Wash. 149, 23 Pac. 802.

§ 53. — **Between Mortgagees:** Binnian v. Baker, 6 Wash. 50, 32 Pac. 1008; White v. Brooke, 11 Wash. 99, 39 Pac. 237.

§ 54. **Waiver or Estoppel:** First Nat. Bank v. Fowler, 54 Wash. 65, 102 Pac. 1038.

Registration of, and failure to record, chattel mortgages. 21 *Am. St. Rep.* 282; 137 *Am. St. Rep.* 471.

Place of filing chattel mortgage given by more than one person. *Ann. Cas.* 1913C, 839.

Necessity and sufficiency of acknowledgment of chattel mortgage. *Ann. Cas.* 1915D, 304.

Effect of failure to execute chattel mortgage as prescribed by statute. 137 *Am. St. Rep.* 471.

§ 3781. [3661.] Must be Filed Within Ten Days.

Every such instrument within ten days from the time of the execution thereof shall be filed in the office of the county auditor of the county in which the mortgaged property is situated, and such auditor shall file all such instruments when presented for the purpose, upon the payment of the proper fees therefor, indorse thereon the time of reception, the number thereof, and shall enter in a suitable book to be provided by him at the expense of his county, with an alphabetical index thereto, used exclusively for that purpose, ruled into separate columns with appropriate heads: "The time of filing," "Name of mortgagor," "Name of mortgagee," "Date of instrument," "Amount secured," "When due," and "Date of release." An index to said book shall be kept in the manner required for indexing deeds to real estate, and the county auditor shall receive for the services required by this act the sum of fifteen cents for every instrument, and the moneys so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public. [L. '99, p. 158, § 2.]

"Every such instrument," refers to the mortgages mentioned in § 3779.

See *supra*, § 3780, and *infra*, § 3788, when to be recorded.

See *infra*, § 3785, recording mortgages over three hundred dollars.

Recording assignments of, see *infra*, § 10616.

Cited in 66 Wash. 298, 299; 90 Wash. 529; 101 Wash. 627; 112 Wash. 11.

Book in Which Record Made: See Remington's Digest, Chat. Mtg., § 27; Radebaugh v. Tacoma & Puyallup R. Co., 8 Wash. 570, 36 Pac. 460; Dunsmuir v. Port Angeles Gas etc. Co., 24 Wash. 104, 63 Pac. 1095; Manhattan Trust Co. v. Seattle Coal Co., 16 Wash. 499, 48 Pac. 333, 737; Bonneviere v. Cole, 90 Wash. 526, 156 Pac. 527.

Filing in Lieu of Recording: See Remington's Digest, Chat. Mtg., § 29; Fenby v. Hunt, 53 Wash. 127, 101 Pac. 492; Van Winkle v. Mitchum, 66 Wash. 296, 119 Pac. 748.

The filing puts upon notice a subsequent lienor, without recording the same as in the case of real estate mortgages: Averill Mach. Co. v. Allbritton, 51 Wash. 30, 97 Pac. 1082.

Record of Mortgage as Notice: See Remington's Digest, Chat. Mtg., § 43-1; Radebaugh v. Tacoma & Puyallup R. Co., 8 Wash. 570, 36 Pac. 460; Manhattan Trust Co. v. Seattle Coal & Iron Co., 16 Wash. 499, 48 Pac. 333, 737; Dunsmuir v. Port Angeles Gas etc. Co., 24 Wash. 104, 63 Pac. 1095; University State Bank v. Steeves, 85 Wash. 55, 147 Pac. 645; Boeringa v. Perry, 96 Wash. 57, 164 Pac. 773.

Subsequent Bona Fide Purchasers or Mortgagees: See Remington's Digest, Chat. Mtg., § 43-2; Commercial Bank of Snohomish County, *In re*, 57 Wash. 381, 106 Pac. 1124; Urquhart v. Coss, 60 Wash. 249, 110 Pac. 1001; Best v. Felger, 77 Wash. 115, 137 Pac. 334; Embagi v. Northwestern Imp. Co., 101 Wash. 558, 172 Pac. 834.

§ 3782. [3662.] Constructive Notice.

Every mortgage filed and indexed in pursuance of this act shall be held and considered to be full and sufficient notice to all the world, of the existence and conditions thereof, but shall cease to be notice, as against creditors of the mortgagors and subsequent purchasers and mortgagees in good faith after the expiration of the time such mortgage becomes due, unless before the expiration of two years after the time such

mortgage becomes due, the mortgagee, his agent or attorney, shall make and file as aforesaid an affidavit setting forth the amount due upon the mortgage, which affidavit shall be annexed to the instrument to which it relates and the auditor shall indorse on said affidavit the time it was filed. [L. '99, p. 158, § 3.]

This act refers to §§ 3779 and 3781—3787.

Cited in 77 Wash. 116, 117; 90 Wash. 529; 96 Wash. 62; 113 Wash. 681, 683.

§ 3783. [3663.] Effect of Affidavit—Limitation.

The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against such creditors and subsequent purchasers and mortgagees in good faith; unless before the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit be filed and annexed as provided in the preceding section, and with like effect. [L. '99, p. 159, § 4.]

§ 3784. [3664.] Form of Mortgage for Less Than One Hundred Dollars.

A mortgage contemplated by this act which is given to secure the sum of one hundred dollars or less, exclusive of interest and costs of foreclosure, may be made in substantially the following form:

This mortgage made this — day of — in the year — by A. B., of —, mortgagor, to C. D., of —, mortgagee.

Witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of — dollars, on (or before) the — day of — in the year —, with interest thereon (or security for the payment of a note or obligation, describing it, etc.).

A. B.

Signed and delivered in the presence of

E. F.

G. H.

[L. '99, p. 159, § 5.]

See note to § 3782.

§ 3785. [3665.] Recording Mortgages in Excess of Three Hundred Dollars.

A mortgage given to secure the sum of three hundred dollars or more exclusive of interest, costs and attorneys or counsel fees may be recorded and indexed with like force and effect as if this act had not been passed, but such mortgage or a copy thereof must also be filed and indexed as required by this act. [L. '99, p. 159, § 6.]

See note to § 3782.

Cited in 66 Wash. 299.

§ 3786. [3666.] Property in Two Counties.

In case the property mortgaged exists in two or more counties, a copy of such mortgage may be filed in each of such counties with like force and effect as the original mortgage. [L. '99, p. 159, § 7.]

§ 3787. [3667.] Certificate of Satisfaction.

Whenever any mortgage, filed under the provisions of this act, has been paid, or the conditions thereof satisfied, the mortgagee, or his assignee or personal representatives, shall make to the mortgagor, his assignee or personal representatives a certificate in writing, under his hand, stating the date of the mortgage and a description of the property thereby mortgaged, and that the same has been discharged in full; and on delivering said certificate in writing to the officer with whom such mortgage is filed, the said officer shall deliver said mortgage to the person producing such certificate on payment of the sum of ten cents for filing said certificate, and shall file said certificate in his office, indorsing thereon the true date of filing the same, and shall keep and preserve said certificate among the records in his office, and shall write the word "satisfied" with the date opposite to such mortgage, in the index in which such mortgages are entered under the heading "release." [L. '99, p. 159, § 8.]

Satisfaction after record of an assignment, see *infra*, § 10616.

See *infra*, § 10615, court may order cancellation.

ASSIGNMENT AND SATISFACTION:
See Remington's Digest, Chat. Mtg., §§ 55—59.

§ 55. Assignments—In General: Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753.

§ 56. — Recording: Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753.

§ 57. Rights and Liabilities of Parties—Equities and Defenses Between Original Parties: Presby v. Melgard, 48 Wash. 689, 94 Pac. 641.

§ 58. Validity of Satisfaction: McKnight v. Shadbolt, 98 Wash. 665, 168 Pac. 473.

§ 59. Tender: Helphrey v. Strobach, 13 Wash. 128, 42 Pac. 537; Hidden v. German Sav. & Loan Soc., 48 Wash. 384, 93 Pac. 668; Thomas v. Seattle Brewing & Malting Co., 48 Wash. 560, 94 Pac. 116, 125 Am. St. Rep. 945, 15 L. R. A. (N. S.) 1164; Woodward v. Lutsch, 69 Wash. 59, 124 Pac. 393.

§ 3788. [3668.] Recording, Effect of Failure.

[A mortgage of personal property must be recorded in the office of the county auditor of the county in which the mortgaged property is situated, in a book kept exclusively for that purpose.] When personal property mortgaged is thereafter removed from the county in which it is situated, it is, as except between the parties to the mortgage, exempted from the operation thereof, unless either:

1. The mortgagee within thirty days after such removal causes the mortgage to be recorded in the county to which the property has been removed; or

2. The mortgage be recorded in the custom-house; or

3. The mortgagee within thirty days after such removal takes possession of the property: Provided, that a mortgage on any vessel or boat, or part of a vessel or boat, over twenty tons burden, shall be recorded in the office of the collector of customs, where such vessel is registered, enrolled, or licensed, and need not be recorded elsewhere. [L. '79, p. 105, § 3 in pt.; Cd. '81, § 1988; 1 H. C., § 1649.]

See *supra*, § 3781, superseding the first sentence of this section.

Cited in 11 Wash. 385; 15 Wash. 275; 16 Wash. 517; 24 Wash. 112; 30 Wash. 590; 44 Wash. 144, 145; 90 Wash. 529.

Effect of Removal of Goods: See Remington's Digest, Chat. Mtg., § 28; Turner

v. Caldwell, 15 Wash. 274, 46 Pac. 235; Jones v. North Pacific Fish etc. Co., 42 Wash. 332, 84 Pac. 1122, 114 Am. St. Rep. 131, 6 L. R. A. (N. S.) 940; Merritt v. Russell & Co., 44 Wash. 143, 87 Pac. 70.

§ 3789. [3669.] Penalty for Removing Mortgaged Property.

Any mortgagor of personal property, or the successor in interest of such mortgagor, who, with intent to hinder, delay or defraud the mortgagee thereof, or his or her assigns or legal representatives, shall injure or destroy such property or any part thereof, or shall conceal such property or any part thereof, or shall remove the same or any part thereof from the county where it was situated at the date of the mortgage before it is duly released, without the consent in writing of the mortgagee, or shall sell or dispose of the same, or any interest therein, where he parts with the possession thereof, without the consent in writing of the mortgagee, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months or by a fine of not more than twice the value of such property, or by both such fine and imprisonment. [Cf. L. '79, p. 106, § 14; Cd. '81, § 1999; 1 H. C., § 1662; L. '93, p. 224, § 1.]

See notes to § 1104, *supra*.

Cited in 108 Wash. 465.

Rights and Liabilities of Purchaser—
Assumption of Debt: See Remington's Digest, Chat. Mtg., § 60; Bicknell v. Henry, 69 Wash. 408, 125 Pac. 156.

See, also, *First National Bank v.*

Northwest Motor Co., 108 Wash. 167, 183 Pac. 81.

Effect of removal of property to another state on the lien of a chattel mortgage. 30 *Am. St. Rep.* 324.

CHAPTER II.

CONDITIONAL SALES.

§ 3790. [3670.] Contracts to be Filed, When.

That all conditional sales of personal property, or leases thereof, containing a conditional right to purchase, where the property is placed in the possession of the vendee, shall be absolute as to all bona fide purchasers, pledgees, mortgagees, encumbrancers and subsequent creditors, whether or not such creditors have or claim a lien upon such property, unless within ten days after the taking of possession by the vendee, a memorandum of such sale, stating its terms and conditions and signed by the vendor and vendee, shall be filed in the auditor's office of the county, wherein, at the date of the vendee's taking possession of the property, the vendee resides. [L. '15, p. 276, § 1. Cf. L. '93, p. 253, § 1; L. '03, p. 6, § 1.]

See *infra*, § 5827, bill of sale to be recorded if vendor retains possession.

Cited in 50 Wash. 647, 648; 55 Wash. 333, 339, 540, 544; 58 Wash. 620; 63 Wash. 309; 65 Wash. 652, 653; 72 Wash. 245, 475, 605; 79 Wash. 534; 80 Wash. 383; 82 Wash. 211, 255; 83 Wash. 78; 84 Wash. 73, 427; 86 Wash. 206; 88 Wash. 221; 91 Wash. 177; 93 Wash. 316; 94 Wash. 497, 499; 101 Wash. 626; 103 Wash. 137, 208; 104 Wash. 553, 558; 108 Wash. 539, 657.

The Contract in General: See Remington's Digest, Sales, §§ 167—174. **Nature of Sales on Condition:** Quinn v. Parke & Lacy Mach. Co., 5 Wash. 276, 31 Pac.

860; Cherry v. Arthur, 5 Wash. 787, 32 Pac. 744; Edison General Elec. Co. v. Walter, 10 Wash. 14, 38 Pac. 752; Page v. Urick, 31 Wash. 601, 72 Pac. 455, 96 Am. St. Rep. 924; Peterson v. Chess, 92 Wash. 682, 159 Pac. 894.

§ 168. Conditional Sales Distinguished from Other Transactions—In General: Rumpf v. Barto, 10 Wash. 382, 38 Pac. 1129; Lundberg v. Kitsap County Bank, 79 Wash. 75, 139 Pac. 769.

§ 169. — Lease With Option to Purchase: De Saint Germain v. Wind, 3 W. T. 189, 13 Pac. 753; Quinn v. Parke

& Lacy Mach. Co., 5 Wash. 276, 31 Pac. 866; Kidder v. Wittler-Corbin Mach. Co., 38 Wash. 179, 80 Pac. 301.

§ 170. — **Chattel Mortgage:** Sayward v. Nunan, 6 Wash. 87, 32 Pac. 1022; Worley v. Metropolitan Motor Car Co., 72 Wash. 243, 130 Pac. 107.

§ 171. — **Consignment for Sale or Other Agency:** Eilers Music House v. Fairbanks, 80 Wash. 379, 141 Pac. 885; Ransom v. Wickstrom & Co., 84 Wash. 419, 146 Pac. 1041, L. R. A. 1916A, 588; Jordan v. Peek, 103 Wash. 94, 173 Pac. 726.

§ 172. **Contracts Creating Conditions on Transfer of Title in General:** Edison General Elec. Co. v. Walter, 10 Wash. 14, 38 Pac. 752; Peterson v. Woolery, 9 Wash. 390, 37 Pac. 416; Lundberg v. Kitsap County Bank, 79 Wash. 75, 139 Pac. 769; Sunel v. Riggs, 93 Wash. 314, 160 Pac. 950; Union Machinery & Supply Co. v. Thompson, 98 Wash. 119, 167 Pac. 95.

§ 173. **Effect of Taking Mortgage or Collateral Security for Price:** Cherry v. Arthur, 5 Wash. 787, 32 Pac. 744; North Coast Dry Kiln Co. v. Montecoma Investment Co., 82 Wash. 247, 144 Pac. 58.

§ 174. **Effect of Execution of Bill of Sale by Buyer to Seller:** McCorvey v. Potvin, 4 Wash. 698, 30 Pac. 1057, 32 Pac. 295.

Form and Contents of Instrument: See Remington's Digest, Sales, § 175; Wittler-Corbin Mach. Co. v. Martin, 53 Wash. 65, 101 Pac. 494; Union Machinery & Supply Co. v. Thompson, 98 Wash. 119, 167 Pac. 95.

Filing, Recording and Registration: See Remington's Digest, Sales, § 176; Johnston v. Wood, 19 Wash. 441, 53 Pac. 707; Eisenberg v. Nichols, 22 Wash. 70, 60 Pac. 124, 79 Am. St. Rep. 917; Wittler-Corbin Mach. Co. v. Martin, 47 Wash. 123, 91 Pac. 629; Springer v. Ayer, 50 Wash. 642, 97 Pac. 774; American Multi-graph Sales Co. v. Jones, 58 Wash. 619, 109 Pac. 108; Worley v. Metropolitan Motor Car Co., 72 Wash. 243, 130 Pac. 107; Woods v. McIvor, 74 Wash. 359, 133 Pac. 590; First Nat. Bank v. Wilcox, 72 Wash. 473, 130 Pac. 756, 131 Pac. 203; Casey-Hedges Co. v. Wilcox, 72 Wash. 605, 131 Pac. 205; Malmo v. Washington Rendering & Fertilizing Co., 79 Wash. 534, 140 Pac. 569, L. R. A. 1917C, 440; North Coast Dry Kiln Co. v. Montecoma Investment Co., 82 Wash. 247, 144 Pac. 58; Secor v. Close, 83 Wash. 77, 145 Pac. 56; Cook v. Washington-Oregon Corp., 84 Wash. 68, 146 Pac. 156, 149 Pac. 325; Eilers Music House v. Ritner, 88 Wash. 218, 152 Pac. 1008, 154 Pac. 787; Anderson v. Langford, 91 Wash. 176, 157 Pac. 456; Sunel v. Riggs,

93 Wash. 314, 160 Pac. 950; Jennings v. Schwartz, 82 Wash. 209, 144 Pac. 39 (overruled on rehearing); Jennings v. Schwartz, 86 Wash. 202, 149 Pac. 947; Barbour v. Hodge, 99 Wash. 578, 170 Pac. 115; Brady & Son v. Bell, 94 Wash. 496, 162 Pac. 865.

Under Rem. Code, § 3790, requiring all conditional sales contracts to be signed by the vendor and vendee, a contract is not sufficiently signed by the vendor by appending at the foot in typewriting as follows: "Times Square Garage, By —, Vendor": Kennery v. Northwestern Junk Co., 108 Wash. 656, 185 Pac. 636, 190 Pac. 330.

Constructive notice by recording a conditional sales contract is not essential to protect the vendor's title, where the city had actual notice, prior to installation, that the machinery for a power plant was sold to the contractor under a conditional sales contract reserving title in the vendor, and that the purchase price was not paid: Allis-Chalmers Mfg. Co. v. Ellensburg, 108 Wash. 533, 185 Pac. 811.

Where a substantial part of machinery sold under a conditional bill of sale, and constituting when put together a complete sawmill, was not furnished until after the bill of sale was filed for record, the filing was within time: Mentzer v. Commercial Lumber Co., 110 Wash. 155, 188 Pac. 9.

Operation and Effect: See Remington's Digest, Sales, § 177—179-1. **Conditions as to Third Persons:** De Saint Germain v. Wind, 3 W. T. 189, 13 Pac. 753; Quinn v. Parke & Lacy M. Co., 5 Wash. 276, 31 Pac. 866; Dodd v. Bowles, 3 W. T. 383, 19 Pac. 156.

See, also, Allis-Chalmers Mfg. Co. v. Ellensburg, 108 Wash. 533, 185 Pac. 811.

§ 178. — **Bona Fide Purchasers from Buyer:** National Cash Register Co. v. Wapples, 52 Wash. 657, 101 Pac. 227; Scott v. Farnam, 55 Wash. 336, 104 Pac. 639; Sunel v. Riggs, 93 Wash. 314, 160 Pac. 950.

§ 179. — **Creditors of Buyer:** Pratt v. Scandinavian Am. Bank, 103 Wash. 134, 174 Pac. 462.

§ 179-1. **Effect of Assignment of the Contract:** Duarte v. Minnick, 85 Wash. 539, 148 Pac. 600; MacLeod v. Aberdeen Brewing Co., 82 Wash. 74, 143 Pac. 440; Robbins v. Milwaukee Mechanics Ins. Co., 102 Wash. 539, 173 Pac. 634.

Where a conditional sales contract provided that the vendor could assign the contract, his assignee for value becomes entitled to all his rights, notwithstanding the assignee had guaranteed the payments and the contract was for security

only: *Western Lumber Exchange v. Johnson*, 110 Wash. 200, 188 Pac. 388.

See, also, *State Bank of Black Diamond v. Johnson*, 104 Wash. 550, 177 Pac. 340.

Since "creditors" under this section (prior to amendment in 1915) included only those who have acquired a specific lien against the property, a receiver for creditors having no specific lien has no right to property conditionally sold under an unrecorded contract, as against the vendor claiming the same on account of the vendee's default in the payment of the purchase price (overruling *Id.*, on rehearing): *Eilers Music House v. Ritner*, 88 Wash. 218, 152 Pac. 1008, 154 Pac. 787.

Waiver of Condition or of Forfeiture for Breach: See *Remington's Digest*, Sales, §§ 180—181-1. **Taking New or Additional Security on Same or Other Property:** *Cherry v. Arthur*, 5 Wash. 787, 32 Pac. 744; *Hinchman v. Point Defiance R. Co.*, 14 Wash. 349, 44 Pac. 867; *Ramey v. Smith*, 56 Wash. 604, 106 Pac. 160.

§ 181. — **Delivery of Goods to Buyer:** *Meeker v. Johnson*, 3 Wash. 247, 28 Pac. 542; *Quinn v. Parke & Lacy Mach. Co.*, 5 Wash. 276, 31 Pac. 866.

§ 181-1. — **Effect of Payment:** *Barbour v. Hodge*, 99 Wash. 578, 170 Pac. 115.

Remedies of Seller: See *Remington's Digest*, Sales, §§ 182, 183. **Against Buyer:** *Singer Mfg. Co. v. Hatley*, 3 W. T. 198, 21 Pac. 384; *Page v. Urick*, 31 Wash. 601, 72 Pac. 454, 96 Am. St. Rep. 924; *National Cash Register Co. v. Petsas*, 43 Wash. 376, 86 Pac. 622; *Winton Motor Carriage Co. v. Broadway Automobile Co.*, 65 Wash. 650, 118 Pac. 817, 37 L. R. A. (N. S.) 71; *Eilers Music House v. Oriental Co.*, 69 Wash. 618, 125 Pac. 1023; *Thompson Co. v. Murphine*, 79 Wash. 672, 140 Pac. 1073; *Kohler & Chase v. Turner*, 84 Wash. 192, 146 Pac. 393; *Winton Motor Carriage Co. v. Blomberg*, 84 Wash. 451, 147 Pac. 21; *Carabin v. Wilhelm*, 87 Wash. 52, 151 Pac. 87; *Sunel v. Riggs*, 93 Wash. 314, 160 Pac. 950; *Breaks v. Spokane Auto Co.*, 93 Wash. 143, 160 Pac. 291; *Norman v. Meeker*, 91 Wash. 534, 158 Pac. 78, Ann. Cas. 1917D, 462; *Shepard v. Wexler*, 99 Wash. 610, 170 Pac. 133; *Jordon v. Peek*, 103 Wash. 94, 173 Pac. 726.

The expenses of a visit by the vendor to the vendee in a conditional sales contract, in an endeavor to adjust the claim, and expenses in returning the property, are not recoverable as expenses incurred in collecting the claim or returning the property as stipulated in the contract, in the absence of any proof that the expenses were reasonable or necessary:

Union Machinery & Supply Co. v. McCush, 104 Wash. 62, 175 Pac. 559.

Under a conditional sales contract expressly agreeing to repay freight and the cost of insurance, advanced by the vendor, such items are recoverable as being in addition to the purchase price, whether there was a forfeiture of the contract or not: *Union Machinery & Supply Co. v. McCush*, 104 Wash. 62, 175 Pac. 559.

Damages for detention after default of machinery conditionally sold cannot be recovered until lapse of a reasonable time for its return: *Union Machinery & Supply Co. v. McCush*, 104 Wash. 62, 175 Pac. 559.

Damages stipulated in a conditional sales contract for wrongful detention after demand cannot be allowed as a claim against an insolvent vendee's estate, where the property has passed into the hands of a receiver and the default was that of the receiver: *Union Machinery & Supply Co. v. McCush*, 104 Wash. 62, 175 Pac. 559.

In an action to recover property conditionally sold, upon an issue as to the amount due, the construction of a hauling contract and the state of the account thereon is properly excluded where it involved the rights and interests of an additional party on each side of that contract other than the parties to the suit: *Western Lumber Exchange v. Johnson*, 110 Wash. 200, 188 Pac. 388.

The vendors in a conditional sales contract providing that they may retake the property if they "shall at any time deem themselves insecure," cannot retake possession unless they have reasonable cause to believe that they are insecure: *Hines v. Pacific Car Co.*, 110 Wash. 75, 188 Pac. 29.

Before the vendor in a conditional sales contract can take possession of the property under the insecurity clause in the contract, it must show that the vendee had committed or was about to commit some act tending to impair the security, and it is not sufficient to show unpaid storage charges which did not impair the security: *Richardson v. Great Western Motors*, 109 Wash. 324, 187 Pac. 333.

Where a conditional sales contract retaining title in the vendor embodied a promissory note for the balance due, all as part of one instrument, an assignment of the conditional bill of sale and note guaranteeing its payment and fulfillment, merely renders the assignor liable as a guarantor should the assignee elect to seek recovery of the balance of the debt, and does not constitute an election that would vest title to the article sold in the conditional sales ven-

dee: *State Bank of Black Diamond v. Johnson*, 104 Wash. 550, 177 Pac. 340.

The weight of the evidence sustains findings that the purchaser of a sawmill under a conditional sales contract was in default, entitling the vendors to forfeit the contract, notwithstanding conflicting evidence as to a verbal extension of time, there being evidence that the extension was for but two weeks, and that the purchaser defaulted on demand made thereafter: *Johnson v. Clements*, 108 Wash. 332, 184 Pac. 318.

§ 183. — **Against Third Persons—Recovery of Goods:** *Brunswick & Balke Co. v. Tacoma Mill Co.*, 3 W. T. 164, 13 Pac. 902; *Wittler-Corbin Mach. Co. v. Martin*, 47 Wash. 123, 91 Pac. 629; *Stewart & Holmes Drug Co. v. Reed*, 74 Wash. 401, 133 Pac. 577.

Where machinery was conditionally sold by plaintiff to a contractor to be installed in a municipal power plant, a complaint primarily seeking recovery of the machinery after it was installed, but alleging that the city agreed and assumed to pay the balance due, and in the prayer presenting an alternative for the recovery of the balance due upon the

purchase price, does not show an election on the part of plaintiff to waive title to the machinery and sue for the price: *Allis-Chalmers Mfg. Co. v. Ellensburg*, 108 Wash. 533, 185 Pac. 811.

Remedies of Buyer: See *Remington's Digest, Sales*, § 184; *Eilers Music House v. Oriental Co.*, 69 Wash. 618, 125 Pac. 1023; *First Church of Christ, Scientist, v. Southern Seating & Cabinet Co.*, 76 Wash. 367, 136 Pac. 127; *Stotts v. Puget Sound Tr., L. & P. Co.*, 94 Wash. 339, 162 Pac. 519, L. R. A. 1917D, 214; *State v. Brummett*, 98 Wash. 182, 167 Pac. 120; *Shepard v. Wexler*, 99 Wash. 610, 170 Pac. 133.

Jurisdictions wherein conditional sale contracts are required to be recorded. *Ann. Cas.* 1916A, 1273.

Effect of failure to record contract of conditional sale on vendor's right to relief in case of purchaser's bankruptcy. 38 L. R. A. (N. S.) 554.

Necessity of recording conditional sale in state to which property is subsequently removed. 64 L. R. A. 356; 35 L. R. A. (N. S.) 387; L. R. A. 1917D, 942.

§ 3791. [3671.] Auditor to Index.

It shall be the duty of the county auditor wherein any such memorandum is presented to him for that purpose, to file all such instruments, upon payment of proper fees therefor, indorse thereon the time of reception, the number thereof, and he shall enter in a suitable book to be provided by him at the expense of his county, with an alphabetical index thereto, and exclusively for that purpose, ruled into separate columns with appropriate heads, "The time of filing," "Name of vendor," "Name of vendee," "Date of instrument," "Amount of purchase price," and "Date of release." An index of said book shall be kept in the manner required for indexing deeds to real estate, and the county auditor shall receive for the services required by this chapter the sum of twenty-five cents for each instrument, and the money so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public until full payment has been made thereon, and shall be satisfied or canceled in the same manner and upon payment of same fees as chattel mortgages are satisfied or canceled. [L. '93, p. 254, § 2; L. '03, p. 6, § 2.]

Cited in 50 Wash. 647, 648; 103 Wash. 208; 104 Wash. 553, 558.

Children. Adoption of, see §§ 1696—1699.

Employment of, see "Labor Law," § 7621.

Delinquent children, see §§ 1987-1—1987-18.

Homeless or neglected, see §§ 1700—1707.

Mothers' pensions for, see § 9993.

Cities. See "Municipal Corporations."

- Citizens.** See § 5695.
- City Boards of Health.** See "Health," § 6085.
- City Depositories.** See "Finance," § 5568.
- Claim and Delivery.** See §§ 707—717.
- Claims.** Adverse claims to property levied upon, see §§ 573—577.
Laborers and materialmen. See § 1161.
Against decedent's estates, see § 1477.
Before legislature. See "Legislature," § 8195.
- Clerk.** Of superior courts, see §§ 70—81.
Of supreme court, see "State Officers," § 11055.
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- Commissioner of Labor.** See "Labor Law," § 7586.
- Commissioner of Public Lands.** See "Lands of the State," § 7815.
- Commissioners.** To convey real estate, see §§ 605—612.
- Common Carriers.** See "Railroads."
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- Conditional Sales.** See "Chattel Mortgages and Conditional Sales," § 3779.
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TITLE XXIV.

CONGRESSIONAL DISTRICTS AND ELECTIONS AND VACANCIES.

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 3796. Fifth district.
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§ 3792. [3673a.] First District.

The city of Seattle and Kitsap county shall constitute the first congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 275, § 1.]

§ 3793. [3674a.] Second District.

The counties of Clallam, Jefferson, Snohomish, Skagit, Whatcom, San Juan Island and that portion of King county outside of Seattle, shall constitute the second congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 275, § 2.]

§ 3794. [3675a.] Third District.

The counties of Chehalis, Mason, Thurston, Pierce, Pacific, Lewis, Wahkiakum, Cowlitz, Clarke and Skamania shall constitute the third congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 275, § 3.]

§ 3795. [3675-1.] Fourth District.

The counties of Klickitat, Yakima, Benton, Kittitas, Whitman, Grant, Adams, Franklin, Walla Walla, Columbia, Garfield and Asotin shall constitute the fourth congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 276, § 4.]

§ 3796. [3675-2.] Fifth District.

The counties of Ferry, Stevens, Lincoln, Spokane, Chelan, Okanogan, Douglas and Pend Oreille shall constitute the fifth congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 276, § 5.]

§ 3797. [3676.] Election in Each District.

At the next general election to be held on the first Tuesday after the first Monday in November, 1914, one representative in the congress of the United States shall be elected in each of the congressional districts by the qualified electors therein and the votes for said representatives shall be given, received, returned and canvassed as the same are now given, received, returned and canvassed for electors for President and Vice-President of the United States. [L. '13, p. 276, § 6.]

§ 3798. United States Senators—Appointment to Fill Vacancy.

When a vacancy happens in the representation of this state in the senate of the United States the governor shall be, and he is hereby, empowered to make a temporary appointment until the people fill the vacancy by election at the next ensuing general state election. [L. '21, p. 117, § 1.]

§ 3799. [3676a.] Election to Fill Vacancy—Primary—Time for Writ.

That whenever any vacancy exists in the office of United States senator or representative in congress from this state, or representative in congress from any congressional district of this state by death, resignation, disability or failure to qualify, of persons elected to such office, and there shall be a necessity for the filling of such vacancy, or threatened vacancy, for the term or the remainder of the unexpired term, the governor shall issue a writ of election to fill such vacancy, which writ shall fix the time for such election not less than twenty-five days after the issuance thereof, and such writ shall also fix a day not less than fifteen days after the issuance of the writ, and not less than ten days before the special election called therein, for the holding of a special primary for the purpose of nominating candidates to be voted for at such special election. [L. '15, p. 232, § 1. Cf. L. '13, p. 276, § 5; L. '09, Ex. Sess., p. 62, § 1.]

Elections do not follow by reason of a vacancy, as there can be no election without express statutory authority: State ex rel. Fish v. Howell, 59 Wash.	492, 110 Pac. 386, 50 L. R. A. (N. S.) 336. Power of state to regulate nominations for congress: State ex rel. Zent v. Nichols, 50 Wash. 508, 97 Pac. 728.
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§ 3800. [3676b.] Contents of Writ—Notice of Election and Primary.

The writ shall name the district in and the term or part of term for which the vacancy exists, or is about to exist, and the governor shall immediately notify each county auditor within such district of the issuance of such writ, and each such auditor shall publish notices of such special election and such special primary in accordance with such writ, by publishing such notices at least once in the county official paper, if there be one, and if there be no county official paper, then in some other paper of general circulation in the county, and also by posting such notices in each precinct in his county: Provided, however, that when the time named in such writ for the holding of such special primary is not more than fifteen (15) days before the time fixed for the holding of the special election, the notices of such official election shall be combined in and be made a part of the notices of such special primary: And provided further, that the time for either such special election or such special primary may be held at the same time as holding the corresponding regular elections and when either such special election or such special primary is so held, the writ shall so provide that for such election names of the candidates for such congressional office may be placed on the regular ballots and voted for as other candidates at such election. [L. '09, Ex. Sess., p. 62, § 2.]

§ 3801. [3676c.] Registration—Conduct of Election—Canvass of Vote.

Whenever either such special election or special primary shall be held at the same time as the regular corresponding election, the registration of voters for such general election, in precincts where registration is required, shall be sufficient for such special election or special primary, and the officers of the election shall be the same, and the election shall be merged with and become a part of the regular election. Whenever the writ of election shall fix a different date for either such special election or such special primary, the election officers of the last preceding corresponding election shall be taken to be the election officers for such special election or such special primary, as the case may be, and the registration for the last general election in precincts where registration is required, shall be deemed a sufficient registration for such special election or such special primary: Provided, however, any person having registered since such last general election, and otherwise qualified may vote, but no person shall be allowed to vote at such special election or special primary, who shall have registered within three (3) days of the election at which he offers to vote. Canvass of votes at any such special primary shall be made in each county within five (5) days after such primary, and returns sent immediately to the secretary of state, where the returns from all the counties shall be canvassed and the candidate of each party shall be determined in the same manner as now provided by law, and the names thereof shall be certified at once to the several county auditors in the district. No name shall be printed on the primary ballots that shall not have been filed with the secretary of state at least ten (10) days before the special primary. [L. '09, Ex. Sess., p. 63, § 3.]

§ 3802. [3676d.] General Election Laws to Apply.

The general election laws and the laws relating to primary elections shall apply to the special elections herein provided for, in so far as the same are not inconsistent with this act and shall be construed with and made a part of this act for the purpose of carrying out the spirit and intent thereof. [L. '09, Ex. Sess., p. 64, § 4.]

Constables. See "Justices of the Peace and Constables," § 7555.

Construction. Rules of, etc., see §§ 143—152.

Contempt. See §§ 1049—1082.

Before justices of the peace, see §§ 1891—1897.

Continuance. See § 322.

Conveyances. See "Real Property," § 10550.

Commissioners to convey real estate, see §§ 605—612.

Convicts. Employment of, see "Prison and Reformatories," § 10257.

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CORPORATIONS.

TITLE XXV. CORPORATIONS.

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CHAPTER I.

ORGANIZATION AND MANAGEMENT GENERALLY.

§ 3803. [3677.] **How Organized—Conditions and Liabilities.**

Corporations for manufacturing, mining, milling, wharfing and docking, mechanical, banking, mercantile, improvement and building purposes, or for the building, equipping and managing water flumes for the transportation of wood and lumber, or for the purpose of building, equipping and running railroads, or constructing canals or irrigation canals, or engaging in any other species of trade or business, may be formed according to the provisions of this chapter; such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to none others: Provided, that no such corporation shall commence business or institute proceedings to condemn land for corporate purposes until the whole amount of its capital stock has been subscribed: And provided further, that the provisions of the foregoing proviso shall not apply to corporations engaged exclusively in loaning money on real estate, nor to corporations engaged exclusively in raising money from, and loaning or repaying it to, their own members, and which confine their loaning and business operations wholly to the counties of their principal place of business, respectively, and to the counties adjacent and adjoining thereto. [Cf. L. '66, p. 57, § 1; L. '67, p. 137, § 1; L. '69, p. 330, § 1; L. '73, p. 398, § 1; Cd. '81, § 2421; L. '86, p. 84, § 1; L. '91, p. 214, § 1; 1 H. C., § 1497; L. '95, p. 338, § 1.]

Superseded as to banks and trust companies. See notes following.

See supra, § 921 et seq., appropriation by private corporations.

See supra, § 2984, farm marketing associations.

See supra, § 3184, humane societies.

See supra, § 3227, incorporation of banks and trust companies.

See supra, § 3313, mutual savings banks.

See supra, § 3716, building and loan associations.

See supra, § 3758, incorporation of cemetery associations.

See infra, § 3852, foreign corporations.

See infra, § 3872, social, charitable and educational societies.

See infra, § 3884, corporations sole.

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See infra, § 3904, co-operative associations.

See infra, § 5430, electric light and power companies.

See infra, § 7130, insurance companies.

See infra, § 7420, irrigation district.

See infra, § 8359, toll logging roads.

See infra, § 8399 et seq., boom companies.

See infra, § 8608, mining corporations.

See infra, § 9688, port districts.

See infra, § 9993, pipe-line companies.

See infra, § 10460, railway and other corporations.

See infra, § 11082, street and electric railway companies.

See infra, § 11570, water and water power companies.

Cited in 1 Wash. 570, 571; 6 Wash. 136; 11 Wash. 253; 20 Wash. 357, 458; 21 Wash. 510; 29 Wash. 230; 36 Wash. 382, 383; 40 Wash. 439, 442; 44 Wash. 110; 51 Wash. 350; 53 Wash. 371, 538; 54 Wash. 371; 56 Wash. 214; 71 Wash. 501, 664; 76 Wash. 618, 619; 78 Wash. 522; 86 Wash. 450; 96 Wash. 131.

Incorporation and Organization, in General: See Remington's Digest, Corp., §§ 3—15, and cases cited.

Corporate Existence and Franchise: See Remington's Digest, Corp., § 16—21, and cases cited.

Purpose of Incorporation: See Remington's Digest, Corp., § 5; Ellis v.

Pomeroy Imp. Co., 1 Wash. 572, 21 Pac. 27; Brown v. Elwell, 17 Wash. 442, 49 Pac. 1068; State ex rel. Gorman v. Nichols, 40 Wash. 437, 82 Pac. 741.

Amount of Capital Subscribed and Paid: See Remington's Digest, Corp., § 6; Denny Hotel Co. v. Schram, 6 Wash. 134, 32 Pac. 1002, 36 Am. St. Rep. 130; Birge v. Browning, 11 Wash. 249, 39 Pac. 643; Brown v. Elwell, 17 Wash. 442, 49 Pac. 1068; American Radiator Co. v. Kinnear, 56 Wash. 210, 105 Pac. 630, 35 L. R. A. (N. S.) 453.

The stock of a mining corporation must be subscribed or the company must be possessed in its own right of a mining claim for the working and development of which it was formed, or the issue of its stock will be against public policy

and in contravention of this section: Borde v. Kingsley, 76 Wash. 613, 136 Pac. 1172.

Pleading and Proof of Necessary Subscription to Stock: See State ex rel. Biddle v. Superior Court, 44 Wash. 198, 87 Pac. 40; State ex rel. Hulme v. Grays Harbor & Puget Sound R. Co., 54 Wash. 530, 103 Pac. 809; State ex rel. Columbia Valley R. Co. v. Superior Court, 45 Wash. 316, 88 Pac. 332; State ex rel. Clark v. Superior Court, 62 Wash. 612, 114 Pac. 444; Pacific Drug Co. v. Hamilton, 71 Wash. 469, 128 Pac. 1069; Eastman v. Watson, 72 Wash. 522, 130 Pac. 1144.

At what stage in the proceedings is a corporation deemed to be organized. 18 L. R. A. (N. S.) 748.

§ 3804. [3678.] Provisions Extend to Water Companies.

The provisions of this chapter shall extend to and apply to all associations already formed under any law of this state [or] hereafter to be formed under the provisions of this act, for the purpose of supplying any cities or towns in this state, or the inhabitants thereof, with pure and fresh water. [L. '69, p. 340, § 29; L. '73, p. 408, § 27; Cd. '81, § 2447; 1 H. C., § 1521.]

Water and water-power companies, see *infra*, § 11570 et seq.

Cited in 51 Wash. 390.

§ 3805. [3679.] Articles of Incorporation, Contents, Amendments.

Any two or more persons, who may desire to form a company for one or more of the purposes specified in section 3803, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgment of deeds, and file one of such articles in the office of the secretary of state, and another in the office of the county auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation. Said articles shall state the corporate name of the company, the objects for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years: Provided, that this limit of existence shall not apply to any life, accident and health insurance company, the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for such length of time (not less than two nor more than six months) as may be designated in such certificate, and the name of the city, town, or locality and county in which the principal place of business of the company is to be located. Amendments may be made to the articles of incorporation by a majority vote of its trustees and the vote or written assent of two-thirds of the capital stock of such corporation. If the written assent of two-thirds of the capital stock has not been obtained then the vote of said stock may be taken at any regular meeting of the stockholders, or at any special meeting of the

stockholders called for that purpose in the manner provided in the by-laws of such corporation for special meetings of the stockholders. The president and secretary of said corporation shall certify said amendments in triplicate under the seal of said corporation to be correct and file and keep the same as in the case of original articles and from the time of filing said amendments such corporation shall have the same powers and it and the stockholders thereof shall be subject to the same liabilities as if such amendments had been embraced in the original articles of incorporation. Nothing contained in this section shall be construed to cure or amend any defect existing in any original articles of incorporation in that such articles did not set forth the matters required to make the same valid at the time of filing, nor to cure or amend any defect in the execution thereof. The time of existence of such corporation shall not be extended by amendments beyond the time fixed in the original articles of incorporation:

Provided, that when valid articles of incorporation have heretofore been duly filed with the secretary of state and errors have been made in the duplicate filed with the county auditor, such defects may be cured by filing with said county auditor, a certified copy of the original articles filed with the secretary of state, and when said certified copy is filed, it shall have the same force and effect as though the duplicate had been filed with the county auditor at the same time the original was filed with the secretary of state. [L. '15, p. 272, § 1. Cf. L. '05, p. 27, § 1. Cf. L. '66, p. 57, § 2; L. '69, p. 330, § 2; L. '73, p. 398, § 2; L. '79, p. 155, §§ 1-3; Cd. '81, § 2422; 1 H. C., § 1498.]

Cited in 1 Wash. 131; 4 Wash. 687; 6 Wash. 137; 21 Wash. 510; 54 Wash. 371; 71 Wash. 501; 72 Wash. 475, 478; 78 Wash. 530; 86 Wash. 450; 93 Wash. 112.

The mere fact that a corporation had power under its articles to engage in other business than that of loaning money would not deprive it of the right to do business before the whole amount of its capital stock had been subscribed, if in fact its business was confined to the loaning of money upon real estate, such corporations being expressly excepted from the restriction of the statute: *Brown v. Elwell*, 17 Wash. 442, 49 Pac. 1068.

The articles of incorporation of a corporation constitute a contract entered into by all the stockholders, whose terms cannot be abrogated without the consent of all: *Parsons v. Tacoma Smelting & Refining Co.*, 25 Wash. 492, 65 Pac. 765.

This section does not make a domestic corporation, organized by aliens, an alien or foreign corporation, except as to holding lands under Const., Art. II, § 33: *Hastings v. Anacortes Packing Co.*, 29 Wash. 224, 69 Pac. 776.

The fact that a fishing company had its real and active place of business outside of the state during certain

seasons of the year would not make it a nonresident, where it had otherwise fully complied with the requirements of our corporation laws, nor would such fact justify the seizure of its fishing site by a stranger: *Id.*

Amendment of Articles: See *Remington's Digest, Corp.*, § 20; *First Nat. Bank v. Wilcox*, 72 Wash. 473, 130 Pac. 756, 131 Pac. 203.

Domicile or Place of Business: See *Remington's Digest, Corp.*, § 25; *Hastings v. Anacortes Packing Co.*, 29 Wash. 224, 69 Pac. 776; *First Nat. Bank v. Wilcox*, 72 Wash. 473, 130 Pac. 756, 131 Pac. 203; *Casey-Hedges Co. v. Wilcox*, 72 Wash. 605, 131 Pac. 205.

Under this section, expressly limiting the term of the first trustees of a corporation to six months, there is no presumption that they hold over after such term: *Barnard Mfg. Co. v. Ralston Milling Co.*, 93 Wash. 111, 160 Pac. 309.

Right of majority stockholders to accept amendment of charter as against will of minority. *Ann. Cas.* 1912C, 1203.

Power of corporation to amend charter so as to shorten term of corporate existence. *Ann. Cas.* 1914C, 657.

§ 3806. [3680.] Duplication of Corporate Names Prohibited.

Private corporations may be formed in the manner prescribed by the laws of this state governing corporations for any purpose for which individuals may lawfully associate. No corporation shall take the name of a corporation theretofore organized under the laws of this state, nor of any foreign corporation having complied with the laws of this state, nor one so nearly resembling the name of such other corporation as to be misleading. The secretary of state shall refuse to file said articles of incorporation of any association or corporation violating the provisions of this section. [L. '03, p. 124, § 1.]

Cited in 51 Wash. 620—622; 56 Wash. 694; 59 Wash. 434; 80 Wash. 650; 96 Wash. 166—169; 106 Wash. 79, 80, 83.

Use of Similar Name by Others: See Remington's Digest, Corp., § 24; State ex rel. Baker River & Shuiksan R. Co. v. Nichols, 51 Wash. 619, 99 Pac. 876; State ex rel. Harper v. Howell, 56 Wash. 694, 106 Pac. 470; State ex rel. Collins v. Howell, 80 Wash. 649, 141 Pac. 1157.

Under this section, the secretary of state has no authority to file articles and issue a license to a foreign corporation upon allegations and proof to the effect that a domestic corporation of the same name had theretofore unlawfully and fraudulently appropriated the foreign corporation's trade name, and wrongfully filed its articles and procured a license; since the secretary of state has no authority to determine the right to the trade name in question: State ex rel. Progressive Motion Picture Co. v. Howell, 96 Wash. 163, 164 Pac. 917.

Under this section the discretion of the secretary of state in allowing a

filing will not be interfered with; but the courts can by injunction prevent the second company from continuing the use of a name in violation of the statute: Diamond Drill Contracting Co. v. International Diamond Drill Contracting Co., 106 Wash. 72, 179 Pac. 120.

The name "International Diamond Drill Contracting Company" is not so similar to "Diamond Drill Contracting Company" as to be misleading, within this section, in view of the evidence indicating a limited field of activities and a remoteness of the chance of any persons being misled: Diamond Drill Contracting Co. v. International Diamond Drill Contracting Co., 106 Wash. 72, 179 Pac. 120.

Infringement of name of corporation by use of similar name. 2 Ann. Cas. 415; 16 Ann. Cas. 596; Ann. Cas. 1915B, 352; Ann. Cas. 1918A, 229.

Right of corporation organized for other than pecuniary profit to use name similar to that of another corporation: Ann. Cas. 1912A, 825; Ann. Cas. 1913E, 642.

§ 3807. [3681.] Change of Name—Procedure.

Whenever any corporation heretofore or hereafter organized under the laws of this state (including such as were organized under the laws of the territory of Washington) shall execute and file in the office of the secretary of state and in the office of the county auditor of the proper county supplemental articles of incorporation changing its corporate name, such corporation shall file in the office of such county auditor, at the time of filing such supplemental articles or within ten days thereafter, a written notice, signed by its president, vice-president or secretary, setting forth its former corporate name and its corporate name as changed and stating that supplemental articles making such change of name have been filed in the office of the secretary of state and in the office of the county auditor of the county (naming it). It shall be the duty of the county auditor, on payment of the proper recording fee, to record such notice as deeds are recorded and to index such notice in the general index in his office under the former corporate name as grantor and under the changed corporate name as grantee. A like notice may at the option of such corporation be filed in the office of the county auditor of any other county, and the county auditor of

such other county shall record and index the same in the manner hereinbefore provided. Corporations which have heretofore filed supplemental articles changing their corporate names shall file the notice herein provided for within six months after the taking effect of this act. [L. '05, p. 215, § 1.]

Change of Name: See Remington's Digest, Corp., § 22; *King v. Ilwaco R. & Nav. Co.*, 1 Wash. 127, 23 Pac. 924.

Change of name of private corporation. 19 Ann. Cas. 1238.

§ 3808. [3682.] Copies of Articles as Evidence.

A copy of any certificate of incorporation filed in pursuance of this chapter, and certified by the auditor of the county in which it is filed, or his deputy, or by the secretary of state, shall be received in all the courts and places as prima facie evidence of the facts therein stated. [Cf. L. '66, p. 57, § 3; L. '69, p. 331, § 3; L. '73, p. 399, § 3; Cd. '81, § 2423; 1 H. C., § 1499.]

Cited in 21 Wash. 511; 62 Wash. 617; 71 Wash. 470.

Evidence of Corporate Existence: See Remington's Digest, Corp., § 17; *Yakima National Bank v. Knipe*, 6 Wash. 348, 33 Pac. 834; *National Bank of Commerce v. Galland*, 14 Wash. 502, 45 Pac. 35; *Spokane & Idaho Lumber Co. v. Loy*, 21

Wash. 501, 58 Pac. 672, 60 Pac. 1119; *Stanford Land Co. v. Steidle*, 28 Wash. 72, 68 Pac. 178; *State v. Pittam*, 32 Wash. 137, 72 Pac. 1042.

The existence of a corporation may be shown by parol evidence: *Umpqua Valley Fruit Union v. North Pacific Fruit Distributors*, 108 Wash. 265, 183 Pac. 101.

§ 3809. [3683.] Corporate Powers Enumerated.

When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and shall have power,—

1. To sue and be sued in any court having competent jurisdiction;
2. To make and use a common seal, and to alter the same at pleasure;
3. To purchase, hold, mortgage, sell, and convey real and personal property;

4. To appoint such officers, agents, and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation;

5. To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will; except that no trustee shall be removed from office unless by a vote of two-thirds of the stockholders, as hereinafter provided;

6. To make by-laws not inconsistent with the laws of this state or the United States;

7. The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company as expressed in the articles of incorporation. [Cf. L. '66, p. 57, § 4; L. '69, p. 331, § 4; L. '73, p. 339, § 4; Cd. '81, § 2424; 1 H. C., § 1500.]

Cited in 8 Wash. 286; 17 Wash. 672; 19 Wash. 173; 49 Wash. 492; 65 Wash. 320, 321; 88 Wash. 360; 91 Wash. 295—297; 106 Wash. 216; 108 Wash. 346.

CORPORATE POWERS AND LIABILITIES: See Remington's Digest, Corp., §§ 141—202, and cases cited. See also:

Extent and Exercise of Powers in General.

§ 141. Legality of business—Practice of law: *State ex rel. Lundin v. Merchants Protective Corp.*, 105 Wash. 12, 177 Pac. 694.

§§ 151, 152. Ultra vires—Estoppel to deny corporate powers: *United States Fid. & Guar. Co. v. Cascade Construction Co.*, 106 Wash. 478, 180 Pac. 463; *Moore v. American Sav. Bank & Trust Co.*, 111 Wash. 148, 189 Pac. 1010; *Flanagan v. American Minerals Producing Co.*, 108 Wash. 569, 185 Pac. 609.

Representation of Corporation by Officers and Agents.

§ 154. Representation—Persons holding stock: *Clark v. Schwaegler*, 104 Wash. 12, 175 Pac. 300.

§ 156. Representation of different corporations by same person—Fraud—Evidence—Insufficiency: *American Savings Bank & Tr. Co. v. Earles*, 113 Wash. 629, 194 Pac. 555.

§ 158. Contracts—Expenditures—Insolvency—Reimbursements for loss—Repudiation of contract by third party: *Hurley-Mason Co. v. Pacific Commissary Co.*, 111 Wash. 439, 191 Pac. 642.

Property and Conveyances.

§ 172. Power to sell all corporate assets—Consideration for sale—Performance of contract—Stock in other corporation: *Logie v. Mother Lode Copper Mines Co.*, 106 Wash. 208, 179 Pac. 835.

Contracts and Indebtedness.

§ 174. Contract with promoters—Construction—Adoption: *Wilson v. Mears*, 105 Wash. 296, 177 Pac. 815.

§ 189. Preferred rights—Authority to issue—Ultra vires: *Biel v. Union Fuel & Ice Co.*, 105 Wash. 41, 177 Pac. 813.

Torts.

§ 190. Representation by agents—Slander: *Ecuyer v. New York Life Ins. Co.*, 107 Wash. 411, 181 Pac. 871, 186 Pac. 327.

Civil Actions.

§ 190. Payment of license fee—Waiver: *Commercial Bank & Trust Co. v. Wenatchee Park Land & Irr. Co.*, 106 Wash. 181, 179 Pac. 798; *Erickson v. Perica*, 113 Wash. 510, 194 Pac. 963.

§ 195. Venue—"Transacting business": *Cohagen v. Big Bend Land Co.*, 109 Wash. 404, 186 Pac. 1070; *State ex rel. Wells Lbr. Co. v. Superior Court*, 113 Wash. 77, 193 Pac. 229.

— Venue — Jurisdiction — Demurrer: *Willapa Power Co. v. Public Service Com.*, 110 Wash. 193, 188 Pac. 464.

§ 196. Process—Agents: *Gordon v. Hillman*, 105 Wash. 529, 178 Pac. 625.

§ 201. Account stated—Conclusiveness—Evidence—Sufficiency: *Hurley-Mason Co. v. Pacific Commissary Co.*, 111 Wash. 439, 191 Pac. 642.

A domestic corporation is expressly authorized by this section to hold, sell and convey real estate; and where the articles authorize it to hold real estate for specific purposes, a properly executed deed vests it fully with title, even though the property is acquired for other purposes: *Milton v. Crawford*, 65 Wash. 145, 118 Pac. 32.

Although corporations in this state have power under this section to mortgage real and personal property, such power must be confined within the purposes for which the corporation was created, and does not authorize corporations to mortgage their property to secure the debt of any, or all, of its stockholders, to the injury of its creditors: *Washington Mill Co. v. Sprague Lumber Co.*, 19 Wash. 165, 52 Pac. 1067.

A "Merchants Protective Corporation" ostensibly organized to "collect accounts" due its members, but whose sole operation is to solicit legal business for attorneys through the issuance of membership cards which directly challenge its articles and engage, in consideration of a fee, to attend to certain legal business of its members free of charge, is engaged in the practice of law, which is not open to a commercial corporation, and has no right to do business in this state or legal excuse for existence: *State ex rel. Lundin v. Merchants Protective Corporation*, 105 Wash. 12, 177 Pac. 694.

In an action on promissory notes made by a corporation, the defense of ultra vires is not available where the defendant has accepted and enjoyed the benefit of the services and expenses for which the note was given: *Flanagan v. American Minerals Producing Co.*, 108 Wash. 569, 185 Pac. 609.

The issuance of certificates of "preferred rights," under the corporation's general power to borrow money and incur indebtedness, is not ultra vires: *Biel v. Union Fuel & Ice Co.*, 105 Wash. 41, 177 Pac. 813.

OFFICERS AND AGENTS: See *Remington's Digest, Corp.*, §§ 114—140, and cases cited. See, also:

§ 123. Compensation—Contract for services—Evidence—Sufficiency: *Pesha v. Pratt*, 111 Wash. 382, 191 Pac. 639.

— Resolutions by trustees: *Wonderful Group Mining Co. v. Rand*, 111 Wash. 557, 191 Pac. 631.

§ 131. Actions between trustee member and corporation—Notice to other members: *Grunden v. German*, 110 Wash. 237, 188 Pac. 491.

§ 132. Lawful acts ratified by majority: *Logie v. Mother Lode Copper Mines Co.*, 106 Wash. 208, 179 Pac. 835.

The defense of ultra vires not being favored in law or allowed when it defeats the ends of justice, an industrial corporation not organized for the purpose of becoming a surety, is estopped to plead ultra vires in indemnifying a surety company against loss as surety for contractors, where it appears that its officers represented that it was interested in the contract indemnified, and the corporation had protected itself by securing indemnity from the contractors, and allowed the obligee to proceed and pay out shortages to its detriment: *United States Fidelity & Guaranty Co. v. Cascade Construction Co.*, 106 Wash. 478, 180 Pac. 463.

Removal of Officers: See *Remington's*

Digest, Corp., § 121; *Badere v. Goodrich*, 63 Wash. 650, 116 Pac. 274; *Llewellyn v. Aberdeen Brewing Co.*, 65 Wash. 319, 119 Pac. 30, *Ann. Cas.* 1913B, 667; *Murray v. MacDougall & Southwick Co.*, 88 Wash. 358, 153 Pac. 317.

Under this section, the term "servants" includes an "assistant horticulturalist" employed for one year by an "orchards" company, and is not to be restricted to employees in a fiduciary capacity: *Barager v. Arcadia Orchards Co.*, 91 Wash. 294, 157 Pac. 675.

Under this section, the term "servants" includes one employed by a railroad company as a switchman, and is not restricted to employees in a fiduciary capacity: *Williams v. Great Northern Railway Co.*, 108 Wash. 344, 184 Pac. 340.

§ 3810. [3684.] May Own Stock of Other Corporations.

That any corporation heretofore or hereafter organized under the laws of this state or of any other state or territory of the United States and doing business in this state shall have power and authority to subscribe for, acquire by purchase or otherwise and to own, hold, sell, assign and transfer shares of the capital stock of any other corporation and by its duly authorized officer or proxy to vote such shares at any and all stockholders' meetings of the corporation whose shares are so held, and to have and exercise all the rights, powers and privileges of any other stockholder, except that such corporate owner cannot be a member of the board of trustees. All existing holdings by any such corporation in the shares of the capital stock of any other corporation are hereby validated. [L. '05, p. 51, § 1.]

See *supra*, § 3243, powers of banks and trust companies as to holding stock.

Cited in 56 Wash. 217; 103 Wash. 251; 106 Wash. 218.

Purchasing and Holding Corporation's Own Stock: See *Remington's Digest, Corp.*, § 146; *Miller v. Washington Southern R. Co.*, 11 Wash. 414, 39 Pac. 673; *Barto v. Nix*, 15 Wash. 563, 46 Pac. 1033.

Purchasing and Holding Stock in Other Corporations: See *Remington's Digest, Corp.*, § 147; *Denny Hotel Co. v. Schram*, 6 Wash. 134, 32 Pac. 1002, 36 Am. St. Rep. 130; *Denny Hotel Co. v. Gilmore*, 6 Wash. 152, 32 Pac. 1004; *Parsons v. Tacoma Smelting & Refining Co.*, 25 Wash. 492, 65 Pac. 765.

This section authorizing corporations to own and hold stock in other corporations is constitutional: *State ex rel.*

McIntosh v. Superior Court, 56 Wash. 214, 105 Pac. 637.

Under this section, the acceptance of stock in another corporation is a valid consideration for the sale of its assets: *Logie v. Mother Lode Copper Mines Co.*, 106 Wash. 208, 179 Pac. 835.

Power of corporation to deal in shares of other corporations. 28 Am. Rep. 15; 36 Am. St. Rep. 134; 8 Ann. Cas. 64; 18 L. R. A. 252.

Power of corporation to purchase its own capital stock. 33 Am. St. Rep. 339; 17 Ann. Cas. 1261; Ann. Cas. 1914B, 1016; 18 L. R. A. 254; 61 L. R. A. 621; 25 L. R. A. (N. S.) 50; 30 L. R. A. (N. S.) 694; 44 L. R. A. (N. S.) 156; L. R. A. 1916F, 286.

§ 3811. [3685.] Certain Corporations Authorized to Hold Property.

All private corporations incorporated by the legislative assembly of the territory of Washington, prior to the tenth day of June, eighteen hundred and seventy-two, other than for religious purposes, be and they

are hereby authorized to hold, acquire, own, and possess real and personal property to the extent and to such an amount as to said corporations may seem meet, anything in the acts incorporating said private corporations to the contrary notwithstanding. [L. '91, p. 73, § 1; 1 H. C., § 1501.]

§ 3812. [3686.*] Corporate Powers, How Exercised — By-laws — Voting Powers of Stock, etc.

The corporate powers of a corporation shall be exercised by a board of not less than two trustees, who shall be stockholders in the company, and at least one of whom shall be a resident of the state of Washington, and a majority of them citizens of the United States, who shall, before entering upon the duties of their office, respectively take and subscribe to an oath, as provided by the laws of this state, and who shall, after the expiration of the term of the trustees first elected, be actually elected by the stockholders, at such time and place, within this state, and upon such notice and in such manner, as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he may own, or represent by proxy, shares of stock, and the person or persons receiving the greatest number of votes shall be trustee or trustees: Provided, that nothing herein contained shall prevent any corporation, by its by-laws, limiting such bona fide shareholder to a single vote, or one vote for every full share of paid-up stock, or its equivalent in assessable stock, disregarding the number of shares of stock he may own: Provided further, that any corporation issuing preferred stock in accordance with the provisions hereinafter contained applicable thereto may provide that such preferred stock shall have no voting power or shall have only such limited or conditional voting power as may be specified. It shall be competent, at any time, for two-thirds of the stockholders of any corporation organized under this chapter to expel any trustee from office, and to elect another to succeed him. In all cases where a meeting of the stockholders is called for the purpose of expelling a trustee and electing his successor, such notice shall be given of the meeting as the by-laws of the company may require. Whenever any vacancy shall happen among the trustees by death, resignation or otherwise, except by removal and the election of his successor as herein provided, it shall be filled by appointment of the board of trustees. Every such corporation shall at all times keep at its principal place of business in this state an officer or officers, agent or agents, upon whom service of legal process may be made, in conformity with the law: Provided, that service of such process may be made at any time upon any resident trustee of such corporation. Every corporation may issue, in addition to its common stock, preferred stock or different classes of preferred stock in any of the following cases:

- (1) If the articles of incorporation so provide, or
- (2) By the unanimous consent of the stockholders expressed in writing and filed in the office of the secretary of state and in the office of the county auditor of the county where the principal place of business of the corporation is located, or
- (3) By the consent of the holders of record of two-thirds of the capital stock given at a meeting called for that purpose upon notice such as is

required by section 3831. In case this third method is pursued, a certificate of the proceedings of such meeting shall be made and filed as required by section 3832.

(4) In the case of corporations heretofore organized where provisions regarding preferred stock have received either formally or informally the unanimous approval or acquiescence of the stockholders, preferred stock may be issued in accordance with such provisions, all preferred stock heretofore issued not inconsistent with the provisions of this act is hereby validated.

Where the provisions heretofore or hereafter adopted by the corporation under which preferred stock is issued provide for the calling in or redemption of such preferred stock or any part thereof, it shall be lawful for the corporation to call in and redeem the same in accordance with such provisions by filing in the offices designated in subdivision 2, a certificate signed and sworn to by the president or a vice-president, and by the secretary or assistant secretary of the corporation, showing compliance with the provisions adopted by the corporation concerning the calling in or redemption of such preferred stock, and also showing the amount of capital actually paid in, the whole amount of debts and liabilities of the corporation and the amount to which the capital stock is to be diminished: Provided, that no calling in or redemption of preferred stock shall be made which would have the effect of reducing the capital stock in violation of the provisions of section 3830. [L. '19, p. 512, § 1. Cf. L. '66, p. 58, § 5; L. '69, p. 332, § 5; L. '73, p. 400, § 5; Cd. '81, § 2425; 1 H. C., § 1502; L. '95, p. 61, § 1.]

Cited in 22 Wash. 200; 29 Wash. 230; 34 Wash. 220; 37 Wash. 287; 43 Wash. 375; 46 Wash. 164; 58 Wash. 68; 63 Wash. 71; 77 Wash. 162; 98 Wash. 246, 249; 106 Wash. 217.

A majority stockholder has a right to control the business policy of the company if he acts in a reasonably competent and efficient manner: *Kahan v. Alaska Junk Co.*, 111 Wash. 39, 189 Pac. 262.

MEMBERS AND STOCKHOLDERS:
See *Remington's Digest, Corp.*, §§ 71—113, and cases cited. See, also:

Rights and Liabilities as to Corporation.

§ 76. Rights of majority stockholders: *Kahan v. Alaska Junk Co.*, 111 Wash. 39, 189 Pac. 262.

§ 81. Actions between members—Limitations—Discovery of fraud—Duty of officers: *Mohney v. Davis*, 104 Wash. 209, 176 Pac. 31.

Meetings.

§ 82. Notice—Stating purpose: *Logie v. Mother Lode Copper Mines Co.*, 106 Wash. 208, 179 Pac. 835.

Suing or Defending on Behalf of Corporation.

§ 87. Action for accounting—Right to sue: *Kriegler v. Spokane Merchants' Assoc.*, 111 Wash. 179, 189 Pac. 1004.

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Liability for Corporate Debts and Acts.

§ 99. Stock subscriptions—Persons entitled to sue: *Lumpp v. McDonald*, 110 Wash. 692, 188 Pac. 913.

§ 107. Actions to enforce liability—Defenses: *Benner v. Billings*, 107 Wash. 1, 181 Pac. 19.

This section, prior to amendment required a vote of two-thirds of the shares of stock instead of two-thirds of the stockholders, in order to expel a trustee from office: *State ex rel. Mitchell v. Horan*, 22 Wash. 197, 60 Pac. 135.

A trustee of a corporation, by a sale of all his stock therein, ipso facto ceases to be a trustee, in view of this section requiring trustees to be stockholders: *Oudin & Bergman etc. Min. Co. v. Conlan*, 34 Wash. 216, 75 Pac. 798.

A voting trust agreement does not contravene this section in the absence of fraud or any unlawful purpose: *Clark v. Foster*, 98 Wash. 241, 167 Pac. 908.

The action of a majority of a board of trustees is voidable upon the complaint of a stockholder, where the vote of a trustee interested adversely to the corporation was necessary to effect such action; and this section is inapplicable in such cases, since the policy of the law forbids a trustee to assume a double function where there are adverse interests to be

considered: *Parsons v. Tacoma Smelting etc. Co.*, 25 Wash. 492, 65 Pac. 765.

By-laws: See *Remington's Digest, Corp.*, §§ 26, 27. **In General:** *Blair v. Metropolitan Savings Bank*, 27 Wash. 192, 67 Pac. 609. **Operation and Effect:** *Seattle Trust Co. v. Pitner*, 18 Wash. 401, 51 Pac. 1048; *Starwich v. Washington Cut Glass Co.*, 64 Wash. 42, 116 Pac. 459, *Ann. Cas.* 1913A, 262; *State ex rel. Gwinn v. Bucklin*, 83 Wash. 23, 145 Pac. 58, *L. R. A.* 1915D, 285; *Pennecard v. Giant Ledge Mining Co.*, 97 Wash. 384, 166 Pac. 629; *Huxtable v. Berg*, 98 Wash. 616, 168 Pac. 187.

What by-laws corporation may adopt. 85 *Am. Dec.* 617.

Limitations on power of corporation to enact by-laws. 43 *Am. St. Rep.* 152.

Validity of by-law regulating alienation of stock. 19 *Ann. Cas.* 702; *Ann. Cas.* 1916D, 1202.

Irrevocable proxies. 56 *Am. St. Rep.* 138.

Right to vote by proxy under by-laws. 18 *L. R. A.* 584; 29 *L. R. A.* 582; *Ann. Cas.* 1912C, 865.

Effect of by-laws on power of president of corporation to employ, control or discharge agents or employees. 5 *A. L. R.* 1492.

Validity of by-law inconsistent with charter or general statute. *Ann. Cas.* 1914C, 665.

Mandamus to enforce provision of by-laws of corporation. 32 *L. R. A.* 575.

§ 3813. [3687.] Not to be Dissolved Because Trustees were not Elected, etc.

If it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not, for that reason, be dissolved; but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding upon the company until their successors are elected and qualified. [Cf. *L.* '66, p. 59, § 6; *L.* '69, p. 333, § 6; *L.* '73, p. 400, § 6; *Cd.* '81, § 2426; 1 *H. C.*, § 1503.]

Cited in 93 Wash. 114.

Under this section, trustees of a corporation do not hold over as a matter of

law, in the absence of any evidence on the subject: *Barnard Mfg. Co. v. Ralston Milling Co.*, 93 Wash. 111, 160 Pac. 309.

§ 3814. [3688.] Decision of Majority as Quorum is Valid as Corporate Act.

A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act. [*L.* '66, p. 59, § 7; *L.* '69, p. 333, § 7; *L.* '73, p. 401, § 7; *Cd.* '81, § 2427; 1 *H. C.*, § 1504.]

Cited in 25 Wash. 496; 37 Wash. 287.

§ 3815. [3689.] Notice of First Meeting, How to be Given.

The first meeting of the trustees shall be called by a notice, signed by one or more persons named as trustees in the certificate, setting forth the time and place of the meeting, which notice shall be delivered personally to each trustee, or published at least twenty days in some newspaper in the county in which the principal place of business of the corporation, or if no newspaper is published in the county, then in some newspaper nearest thereto in the state. [*L.* '66, p. 59, § 8; *L.* '69, p. 333, § 8; *L.* '73, p. 401, § 8; *Cd.* '81, § 2428; 1 *H. C.*, § 1505.]

It is not essential to legality of unstated meeting of the board of trustees of a corporation, that proof of notice of such meeting be spread upon its rec-

ords. Such proof may be supplied aliunde: *Budd v. Walla Walla Printing & Pub. Co.*, 2 *W. T.* 347, 7 *Pac.* 896.

§ 3816. [3690.] Place of Meetings.

Meetings of the stockholders of a corporation shall be held at its principal place of business within this state. Meetings of the board of trustees or directors of corporations, organized and existing under the laws of this state, may be held at such place or places within or without the state as may be designated in the articles of incorporation or by-laws. In case the meetings of the board of directors or trustees of a corporation shall be held outside of the state of Washington, either the original or full and complete copies or duplicate of all proceedings had at such meeting or meetings certified by the secretary under the corporate seal shall be sent to and kept at the principal office or place of business of the corporation in this state and shall be part of the records of the corporation in this state. [L. '07, p. 205, § 1.]

§ 3817. [3691.] Duty to File Statement.

Every corporation heretofore organized under the laws of the territory or state of Washington, and every corporation which may hereafter be organized under the laws of this state, shall, on or before the second Tuesday of January of each year, and at such other times as such corporations may elect so to do, file with the county auditor of the county in which such corporation has its principal place of business, a statement, sworn to by its president and attested by its secretary and sealed with its corporate seal, containing a list of all its officers and their respective titles of office, names and addresses, and the term of office for which they have been chosen. [L. '95, p. 355, § 1.]

Cited in 60 Wash. 549.

Failure to comply with this and the next section does not prevent the corporation from moving to set aside a judg-

ment secured on service upon one who was not an officer of the corporation: *Lushington v. Seattle Auto & Driving Club*, 60 Wash. 546, 111 Pac. 785.

§ 3818. [3692.] Corporations Hereafter Formed to File Statement.

Every corporation which shall be hereafter organized under the laws of this state shall, within thirty days after it shall have filed its certificate of incorporation with the county auditor of the county in which it has its principal place of business, file with such county auditor a statement, sworn to by its president and attested by its secretary and sealed with its corporate seal, containing a list of all of its officers and their respective titles of office, names and address, and the term of office for which they have been chosen. [L. '95, p. 356, § 2.]

Cited in 60 Wash. 549.

§ 3819. [3693.] Stock Personal Estate—Transfer of.

The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid except between the parties thereto, until the same shall have been entered upon the books of the company, so as to show the names of the parties, by and to whom transferred, the numbers and designation of the shares, and the date of the transfer. [L. '66, p. 59, § 9; L. '69, p. 333, § 9; L. '73, p. 401, § 9; Cd. '81, § 2429; 1 H. C. § 1506.]

See *infra*, § 11212, payment of inheritance tax as prerequisite to transfer.

Cited in 6 Wash. 598; 31 Wash. 571; 54 Wash. 121, 635; 67 Wash. 82, 289; 76 Wash. 602; 98 Wash. 249; 100 Wash. 184, 185, 187.

Registration or Transfer on Corporate Books—In General: See Remington's Digest, Corp., § 62; Port Townsend Nat. Bank v. Port Townsend Gas etc. Co., 6 Wash. 597, 34 Pac. 155; Dearborn v. Washington Sav. Bank, 18 Wash. 8, 50 Pac. 575; Lacaff v. Dutch Miller Min. & Smelting Co., 31 Wash. 566, 72 Pac. 112; Van Horn v. New Western Shingle Co., 54 Wash. 117, 103 Pac. 42; Whitfield v. Nonpareil Consolidated Copper Co., 67 Wash. 286, 123 Pac. 1078, 41 L. R. A. (N. S.) 187; Way v. International Portland Cement Co., 100 Wash. 182, 170 Pac. 553.

Effect of Transfers of Stock: See Remington's Digest, Corp., § 101; Iverson v. Bradrick, 54 Wash. 633, 104 Pac. 130.

Duty of corporations to transfer stock on their books. 136 Am. St. Rep. 1027.

To what extent transfers of stock may be restricted. 57 Am. St. Rep. 379.

Mandamus to compel transfer of stock. 48 L. R. A. (N. S.) 847.

Right of corporation to refuse to transfer stock on its books because of objections of former holder. 27 L. R. A. (N. S.) 200.

Right to damages for failure or refusal of corporation to transfer shares on books. 13 Ann. Cas. 299; 45 L. R. A. (N. S.) 1080.

Liability of corporation for transferring shares of stock without authority of owner. Ann. Cas. 1913E, 1173.

§ 3820. [3694.] Subscriptions, Assessments, Sale of Shares, etc.

The stockholders of any corporation formed under this chapter may, in the by-laws of the company prescribe the times, manner and amounts in which payments of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the trustees shall have the power to demand and call in from the stockholders the sums by them subscribed, at such time and in such manner, payments or installments, as they may deem proper. In all cases notice of each assessment shall be given to the stockholders personally, or by publication in some newspaper published in the county in which the principal place of business of the company is located; and if none be published in such county, then in the newspaper nearest to said principal place of business in the state. If after such notice has been given, any stockholder shall make default in the payment of assessments upon the shares held by him, so many of said shares may be sold as will be necessary for the payment of the assessment upon all the shares held by him, her, or them. The sale of said shares shall be made as prescribed in the by-laws by the company, but shall in no case be made at the office of the company. No sale shall be made except at public auction, to the highest bidder, after a notice of four weeks, published as above directed in this section, and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale for the smallest number of shares, or portion of a share as the case may be, shall be deemed the highest bidder: Provided, that the amount of the capital stock of any bank incorporated under this act shall not be less than twenty-five thousand dollars, to be divided into shares of one hundred dollars each, all of which shares shall be subscribed, and three-fifths of such capital stock shall be paid in before commencement of business, the remainder to be subject to the call of the trustees; and it shall be the duty of the trustees of any such bank to file with their articles of incorporation their affidavit that three-fifths of the capital stock of such bank has been actually paid in. [Cf. L. '66, p. 60, § 10; L. '69, p. 333, § 10; L. '73, p. 401, § 10; Cd. '81, § 2430; L. '86, p. 85, § 2; 1 H. C., § 1507.]

See *supra*, § 3226, amount of capital stock of banks and trust companies, a later enactment.

Cited in 8 Wash. 678; 18 Wash. 11; 19 Wash. 99; 41 Wash. 667; 45 Wash. 117; 48 Wash. 268; 73 Wash. 149; 92 Wash. 165; 98 Wash. 193, 194.

CAPITAL STOCK: See Remington's Digest, Corp., §§ 28—68, and cases cited. See, also:

Subscription to Stock.

§ 31. Preferred rights—Authority to issue—Ultra vires: *Biel v. Union Fuel & Ice Co.*, 105 Wash. 41, 177 Pac. 813.

Transfer of Shares.

§ 55. Stock—Transfer—Contract—Preferences: *Leezer v. Fluhart*, 105 Wash. 618, 178 Pac. 817.

— Right to dividends: *Rossi v. Rex Consolidated Mining Co.*, 108 Wash. 296, 183 Pac. 120.

§ 56. Preferred rights—Transfer—Rescission for fraud: *Biel v. Union Fuel & Ice Co.*, 105 Wash. 41, 177 Pac. 813.

§ 57. Contracts—Actions: *Abercrombie v. Cullen*, 108 Wash. 515, 185 Pac. 595.

§ 66. Rights of creditors: *Galland Bros. v. Rundel*, 108 Wash. 5, 182 Pac. 933.

§ 67...Insolvency—Preferences to officers: *Benner v. Billings*, 107 Wash. 1, 181 Pac. 19.

Forfeiture of Unpaid Shares: See Remington's Digest, Corp., § 48; *Dearborn v. Washington Savings Bank*, 18 Wash. 8, 50 Pac. 575; *Falk v. Schmitz Alaska Dredging & Mining Co.*, 44 Wash. 612, 87 Pac. 927; *Mitchell v. Blue Star Mining Co.*, 98 Wash. 191, 167 Pac. 130.

Conditions Precedent—Calls or Assessments: See Remington's Digest, Corp., §§ 45, 106; *Elderkin v. Peterson*, 8 Wash. 674, 36 Pac. 1089; *Adamant Mfg. Co. v. Wallace*, 16 Wash. 614, 48 Pac. 415; *McKay v. Elwood*, 12 Wash. 579, 41 Pac. 919; *Bergman Clay Mfg. Co. v. Bergman*, 73 Wash. 144, 131 Pac. 485.

Right of corporation to make assessment of stock. 76 *Am. St. Rep.* 126.

Assessments upon paid-up stock. 45 *L. R. A.* 648; 22 *L. R. A.* (N. S.) 1013.

Right to make successive assessments on stockholders to pay debts. 66 *L. R. A.* 971.

§ 3821. [3695.] Executor may Vote.

Whenever any stock is held by a person as executor, administrator, guardian or trustee, he shall represent such stock at all meetings of the company and may vote accordingly as a stockholder. [L. '66, p. 60, § 11; L. '69, p. 334, § 11; L. '73, p. 402, § 11; Cd. '81, § 2431; 1 H. C., § 1508.]

Cited in 22 Wash. 178; 98 Wash. 249.

§ 3822. [3696.] Pledge of Stock, Effect of.

Any stockholder may pledge his stock by a delivery of the certificate or other evidence of his interest, but may, nevertheless, represent the same at all meetings, and vote as a stockholder. [Cf. L. '66, p. 60, § 12; L. '69, p. 334, § 12; L. '73, p. 402, § 12; Cd. '81, § 2432; 1 H. C., § 1509.]

Cited in 6 Wash. 599, 602; 8 Wash. 369; 22 Wash. 177; 28 Wash. 662; 34 Wash. 12, 13.

Pledges: See Remington's Digest, Corp., § 59; *Dearborn v. Washington Savings Bank*, 18 Wash. 8, 50 Pac. 575; *Brown v. Union Sav. & L. Assn.*, 28 Wash. 657, 69 Pac. 383; *Kneeland Investment Co. v. Berendes*, 81 Wash. 372, 142 Pac. 869; *Dexter-Horton National Bank v. Washington-Alaska Bank*, 86 Wash. 452, 150 Pac. 1176.

— **Title Acquired and Remedies of Pledges:** See Remington's Digest, Corp., § 60; *Port Townsend Nat. Bank v. Port Townsend Gas etc. Co.*, 6 Wash. 597, 34 Pac. 155; *American Bonding & T. Co. v. Pacific Brewing Co.*, 34 Wash. 10, 74 Pac. 826; *Collins v. Denny Clay Co.*, 41

Wash. 136, 82 Pac. 1012; *Soderberg v. McRae*, 70 Wash. 235, 126 Pac. 538; *American Bonding Co. v. Loeb*, 50 Wash. 104, 96 Pac. 692, 126 *Am. St. Rep.* 891; *McVay v. Reese*, 62 Wash. 562, 114 Pac. 184; *Richardson v. Foster*, 100 Wash. 57, 170 Pac. 321.

It is not necessary for the pledgee to notify the corporation of the pledge, nor contemplated by the statute that the pledge be shown on the corporate books by a transfer of the stock: *Brown v. Union Sav. & L. Assn.*, 28 Wash. 657, 69 Pac. 383.

Right to vote pledged stock. *Ann. Cas.* 1912A, 206.

Necessity of writing to transfer of stock in pledge. 2 *L. R. A.* (N. S.) 804.

Rights of pledgee of corporate stock.
45 L. R. A. 394; L. R. A. 1917B,
326; L. R. A. 1916F, 491.

Duty of pledgee of corporate stock
to sell at maturity of debt. 3
L. R. A. (N. S.) 1199; L. R. A.
1918A, 442.

§ 3823. [3697.] Dividends — Capital Stock — Reduction — Liability of Trustees.

It shall not be lawful for the trustees to make any dividend except from the net profits arising from the business of the corporation, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock of the company unless in the manner prescribed in this chapter, or the articles of incorporation or by-laws; and in case of any violation of the provisions of this section, the trustees, under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual or private capacities, be jointly or severally liable to the corporation and the creditors thereof in the event of its dissolution, to the full amount so divided, or reduced, or paid out: Provided, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter. [L. '66, p. 60, § 13; L. '69, p. 334, § 13; L. '73, p. 402, § 13; Cd. '81, § 2433; 1 H. C., § 1510.]

See *supra*, § 3233, reduction of stock of banks and trust companies.

Cited in 19 Wash. 514; 32 Wash. 347; 37 Wash. 471; 38 Wash. 63; 44 Wash. 461; 56 Wash. 214; 67 Wash. 3; 71 Wash. 662; 74 Wash. 245; 76 Wash. 541; 85 Wash. 357; 88 Wash. 453; 93 Wash. 552; 96 Wash. 131.

Declaration of Dividends: See Remington's Digest, Corp., § 69; Seattle Trust Co. v. Pitner, 18 Wash. 401, 51 Pac. 1048; Gellerman v. Atlas Foundry & Machine Co., 45 Wash. 114, 87 Pac. 1059; Jorguson v. Apex Gold Mines Co., 74 Wash. 243, 133 Pac. 465, 46 L. R. A. (N. S.) 637; Northern Bank & Trust Co. v. Day, 83 Wash. 296, 145 Pac. 182.

Where a contract for the sale of shares of stock was placed in escrow and no reservation of dividends made by the vendor, the dividends accruing to the stock while in escrow belong to the vendee: Rossi v. Rex Consolidated Mining Co., 108 Wash. 296, 183 Pac. 120.

The assets of a dissolved corporation, authorized by the board of directors to be distributed according to law, are not a dividend, but are capital assets: Rossi v. Rex Consolidated Mining Co., 108 Wash. 296, 183 Pac. 120.

Unlawful Reduction of Capital Stock: See Remington's Digest, Corp., §§ 28, 98; Tait v. Pigott, 32 Wash. 344, 73 Pac. 364; Tacoma Ledger Co. v. Western Home Bldg. Co., 37 Wash. 467, 79 Pac. 992;

Tait v. Pigott, 38 Wash. 59, 80 Pac. 172; Barnard Mfg. Co. v. Ralston Milling Co., 71 Wash. 659, 129 Pac. 389; Brenaman v. Whitehouse, 85 Wash. 355, 148 Pac. 24; Shaw v. Carr, 93 Wash. 550, 161 Pac. 345; Mitchell v. Blue Star Mining Co., 98 Wash. 191, 167 Pac. 130; Tait v. Pigott, 32 Wash. 344, 73 Pac. 364; Tait v. Pigott, 38 Wash. 59, 80 Pac. 172; Tait v. Hofius, 38 Wash. 699, 80 Pac. 176; Murphy v. Panton, 96 Wash. 637, 165 Pac. 1074.

Where a corporation sells all of its assets to a corporation newly organized by part of the trustees, which assumed the old indebtedness, the balance of the consideration passing directly to the trustees and for their benefit, a trustee who participated therein and received benefits from the transaction is liable to the creditors of the corporation, under this section: Carstensen & Earles v. Hofius, 44 Wash. 456, 87 Pac. 631.

The transaction of business by a corporation before all of its capital stock is subscribed, contrary to Laws of 1895, page 338, does not render its officers individually liable for the debts upon the insolvency of the corporation, since the liability of officers is restricted to certain other cases by this and the next section: American Radiator Co. v. Kinnear, 56 Wash. 210, 105 Pac. 630, 35 L. R. A. (N. S.) 453.

An agreement by a corporation, in consideration of the sale of stock, to guarantee the payment of \$1,000 in dividends within eighteen months, is void, where there were no net profits, since to enforce it would contravene public policy and violate this section: *Jorguson v. Apex Gold Mines Co.*, 74 Wash. 243, 133 Pac. 465, 46 L. R. A. (N. S.) 637.

A contract whereby a corporation sold part of its capital stock agreeing to repurchase the same if the stockholder should become dissatisfied, is against public policy and void, in view of this section: *Kom v. Cody Detective Agency*, 76 Wash. 540, 136 Pac. 1155, 50 L. R. A. (N. S.) 1073.

As against creditors, under this section, the capital stock of a corporation cannot be classified as common and preferred, so that there could be an overissue of either class and any person could hold a share of either kind, within the limit of the authorized stock, without meeting the responsibilities and liabilities attached by law; since all but a nominal number of shares might be made unresponsive to the liability put upon the stock by law: *Gordon v. Cummings*, 78 Wash. 515, 139 Pac. 489.

The directors of a corporation are not individually liable for the fraud of the president and general manager of which

they had no knowledge, where the only allegation of negligence was that they failed to discharge him for other fraudulent acts under this section, making the directors liable for unlawful dividends or withdrawals of the capital stock, and section 3803 providing that they shall be subject to the liabilities imposed by the act and "to none others," and no provision of the statute makes them liable for the acts of the president or general manager: *Northern Codfish Co. v. Stiberg*, 96 Wash. 126, 164 Pac. 750.

Rights and remedies of stockholders with respect to dividends. 99 Am. Dec. 761.

Rights of holders of preferred stock in respect to dividends. 6 A. L. R. 802; 13 A. L. R. 426; 6 Ann. Cas. 216; 7 Ann. Cas. 617.

Liability of stockholders to refund unlawful payment of dividend out of capital. Ann. Cas. 1915A, 827; Ann. Cas. 1917A, 575; L. R. A. 1917C, 397.

Declaration of dividend as contract right of stockholders or vesting in discretion of directors. Ann. Cas. 1913D, 777.

When dividend becomes enforceable debt against corporation. Ann. Cas. 1913B, 553.

§ 3824. [3698.] Restrictions upon Issuing Notes, etc.—Liability.

No corporation organized under this chapter shall, by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidence of debt for circulation as money. Each and every stockholder shall be personally liable to the creditors of the company, to the amount of what remains unpaid upon his subscription to the capital stock, and not otherwise: Provided, that the stockholders of every bank incorporated under this act or the territory of Washington shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association accruing while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares; and all such banking corporations shall file, on the first Monday in June, each year, with the state auditor, a report sworn to by its president, vice-president, or cashier, of the resources and liabilities, stating the amount of deposits, the aggregate of loans, and the amount upon each class of securities, the names and residence of the shareholders and number of their shares, the directors or officers for the time being, and any other matters affecting the safety of their deposits or the interest of their creditors; and such banking corporations shall have power to exercise, by its board of trustees, or duly authorized officers or agents, all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits, buying and selling, exchange, coin and bullion, by loaning money on real estate or personal security; to accept and

execute all trusts, fiduciary or otherwise, as may be committed to such bank or corporation, by any person, persons, or corporation, or by the order or direction of any court; and may do any other business pertaining to banking. [L. '11, p. 379, § 1. Cf. L. '66, p. 61, § 15; L. '69, p. 335, § 15; L. '73, p. 403, § 14; Cd. '81, § 2434; L. '86, p. 85, § 3; L. '88, p. 65, § 1; 1 H. C., § 1511.]

See Art. XII, §§ 4 and 11, of the Constitution of the state, as to the liability of stockholders.

See supra, §§ 3255—3261, restrictions as to banks and trust companies.

No corporation can issue any of its notes or other evidences of debt to circulate as money: Const., Art. XII, § 11.

See infra, §§ 7594, 7596, penalty for payment of wages in orders, etc.

Cited in 12 Wash. 584; 19 Wash. 235, 513; 22 Wash. 196; 24 Wash. 381; 56 Wash. 214; 64 Wash. 300; 71 Wash. 662, 664; 78 Wash. 609; 80 Wash. 389; 96 Wash. 131.

Extent of Liability on Subscription to Stock—In General: See Remington's Digest, Corp., § 92; Burch v. Taylor, 1 Wash. 245, 24 Pac. 438; Chilberg v. Siebenbaum, 41 Wash. 663, 84 Pac. 598; Johns v. Clother, 78 Wash. 602, 139 Pac. 755.

— **Unpaid Subscriptions:** See Remington's Digest, Corp., § 93; Adamant Mfg. Co. v. Wallace, 16 Wash. 614, 48 Pac. 415; Davies v. Ball, 64 Wash. 292, 116 Pac. 833, Ann. Cas. 1914B, 750; Grady v. Graham, 64 Wash. 436, 116 Pac. 1098, 36 L. R. A. (N. S.) 177.

Under the trust fund doctrine, an officer in control of a failing corporation cannot evade his liability for treasury stock which the corporate records show that he purchased by claiming that the apparent sale was only an option, nor can his liability be limited to the prejudice of creditors by any arrangement between himself and the corporation or by a transfer of the shares: Benner v. Billings, 107 Wash. 1, 181 Pac. 19.

— **Paid-up Stock.** See Remington's Digest, Corp., §§ 94—97. **In General:** Turner v. Bailey, 12 Wash. 634, 42 Pac. 115.

§ 95. — **Liability of One Taking or Purchasing Stock at Less Than Par:** Campbell v. McPhee, 36 Wash. 593, 79 Pac. 206; Davies v. Ball, 64 Wash. 292, 116 Pac. 833, Ann. Cas. 1914B, 750; Johns v. Clother, 78 Wash. 602, 139 Pac. 755.

§ 96. — **Certificate of Payment:** Elderkin v. Peterson, 8 Wash. 674, 36 Pac. 1089.

§ 97. — **Stock Issued for Unauthorized or Insufficient Consideration:** Adamant Mfg. Co. v. Wallace, 16 Wash. 614, 48 Pac. 415; Kroenert v. Johnston, 19

Wash. 96, 52 Pac. 605; Davies v. Ball, 64 Wash. 292, 116 Pac. 833, Ann. Cas. 1914B, 750; Lantz v. Moeller, 76 Wash. 429, 136 Pac. 687, 50 L. R. A. (N. S.) 68; German-American State Bank v. Soap Lake Salts Remedy Co., 77 Wash. 332, 137 Pac. 461; Garrow v. Fraser, 98 Wash. 88, 167 Pac. 75.

Persons Entitled to Enforce Liability: See Remington's Digest, Corp., § 99; Burch v. Taylor, 1 Wash. 245, 24 Pac. 438; Burch v. Moore, 1 Wash. 249, 24 Pac. 439; Burch v. Glover, 1 Wash. 250, 24 Pac. 439; Elderkin v. Peterson, 8 Wash. 674, 36 Pac. 1089; Cole v. Satsop R. Co., 9 Wash. 487, 37 Pac. 700, 43 Am. St. Rep. 858; Childs v. Blethen, 40 Wash. 340, 82 Pac. 405; Montesano v. Carr, 80 Wash. 384, 141 Pac. 894; Murphy v. Panton, 96 Wash. 637, 165 Pac. 1074.

Persons Liable—Holders or Owners of Stock: See Remington's Digest, Corp., § 100; Cole v. Satsop R. Co., 9 Wash. 487, 37 Pac. 700, 43 Am. St. Rep. 858; Mitchell v. Jordan, 36 Wash. 645, 79 Pac. 311; Johnstone v. Black, 59 Wash. 144, 109 Pac. 367; Ivy Press v. McKechnie, 88 Wash. 643, 153 Pac. 1067.

Actions to Enforce Liability in General: See Remington's Digest, Corp., §§ 105—113, and cases cited.

Liability of stockholders for debts of corporation. 49 Am. Dec. 308; 99 Am. Dec. 432; 3 A. L. R. 806.

Necessity for exhausting remedy against corporation before enforcing stockholders' liability. 2 Ann. Cas. 28; 16 Ann. Cas. 1152.

Statutory liability of stockholder for debts of corporation as including liability for torts. 19 Ann. Cas. 138; 22 L. R. A. (N. S.) 256; 14 A. L. R. 267.

Creditor's knowledge that stock is unpaid as waiver of stockholder's liability. 10 Ann. Cas. 90; 7 A. L. R. 972.

§ 3825. [3699.] Power to Buy and Issue Notes, etc.

All private corporations incorporated by the legislative assembly of the territory of Washington prior to the first day of January, eighteen

hundred and sixty-two, other than corporations created for religious purposes, be and they are hereby authorized [and] empowered to issue notes, bonds, mortgages or other evidences of indebtedness and to secure the payment of the same by mortgage, trust deed or otherwise encumbering any real or personal property owned by said corporations. Said corporations shall have power to buy, sell or otherwise deal in notes, bonds and stock of other corporations and shall have power through their duly authorized officers to execute any and all instruments necessary to carry out the powers conferred upon said corporations by the provisions of this section. [L. '93, p. 279, § 1.]

Banks, see notes to last previous section.

§ 3826. [3700.] Liability of Executor, etc., Holding Stock as Collateral.

No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder, and the estate and funds in the hands of the executor, administrator, or guardian or trustee shall be liable in like manner and to the same extent as the testator, or intestate, or the ward or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her name. [L. '66, p. 62, § 17; L. '69, p. 335, § 17; L. '73, p. 403, § 15; Cd. '81, § 2435; 1 H. C., § 1512.]

Cited in 9 Wash. 491; 59 Wash. 146.

The pledgee of corporate stock, holding the same as collateral security for a loan made by him to the corporation, the stock being represented to him as issued to another and fully paid for, is not liable upon the statutory liability of stock-

holders to creditors for unpaid subscriptions, although the stock was reissued in his name and stands on the books as his absolute property, in view of this section: *Johnstone v. Black*, 59 Wash. 144, 109 Pac. 367.

§ 3827. [3701.] Books of Corporation to Show What.

It shall be the duty of the trustees of every company incorporated under this chapter, to keep a book containing the names of all persons, alphabetically arranged, who are or shall be stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares, which book, during the business hours of the day, on every day excepting Sunday and the legal holidays, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stockholder or creditor of the company shall have the right to make extract from such book, or to demand and receive from the clerk or other officer having the charge of such book, a certified copy of any entry therein, or to demand and receive from any clerk or officer a certified copy of any paper placed on file in the office of the company, and such book and certified copy shall be presumptive evidence of the fact therein stated in any action or proceeding against the company or any one or more of the stockholders. [L. '66, p. 62, § 18; L. '69, p. 336, § 18; L. '73, p. 403, § 16; Cd. '81, § 2436; 1 H. C., § 1513.]

See *supra*, § 3238, books of banks and trust companies.

Cited in 19 Wash. 513; 41 Wash. 670;
54 Wash. 635, 636; 58 Wash. 185, 189;
103 Wash. 159.

Inspection of Corporate Books and Records: See *Remington's Digest, Corp.*, § 74;
State ex rel. Weinberg v. Pacific Brewing

& Malting Co., 21 Wash. 451, 58 Pac. 584, 47 L. R. A. 208; *Brown v. Kildea*, 58 Wash. 184, 108 Pac. 452, 1135; State ex rel. Gwinn v. Bucklin, 83 Wash. 23, 145 Pac. 58, L. R. A. 1915D, 285; State ex rel. Beaty v. Guarantee Mfg. Co., 103 Wash. 151, 174 Pac. 459.

The creditor of an insolvent corporation cannot claim that his right of action against stockholders upon their unpaid stock subscriptions does not accrue until notice that there were unpaid subscriptions was brought home to him, in the absence of fraud or concealment, since

under this section the creditor had access to the corporate books and opportunity to ascertain the facts: *Chilberg v. Siebenbaum*, 41 Wash. 663, 84 Pac. 598.

Right of stockholder to inspect corporate books. 107 *Am. St. Rep.* 674; 1 *Ann. Cas.* 130; 10 *Ann. Cas.* 990; 20 *Ann. Cas.* 612; *Ann. Cas.* 1913E, 173; *Ann. Cas.* 1917A, 103; *Ann. Cas.* 1917D, 898; 45 *L. R. A.* 446; 42 *L. R. A. (N. S.)* 332.

Right of director to inspect books and papers of corporation. 17 *Ann. Cas.* 837; *Ann. Cas.* 1914B, 424.

§ 3828. [3702.] Official Acts—Misdemeanor as to Books and Papers.

If at any time the clerk or other officer having charge of such book shall make any false entry, or neglect to make any proper entry therein, or having the charge of any papers of the company shall refuse or neglect to exhibit the same or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the injured party a penalty of not less than one hundred dollars nor more than one thousand dollars, and all damages resulting therefrom, to be recovered in any action of debt in any court having competent jurisdiction; and for neglecting to keep such book for inspection as aforesaid, the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect, to be sued for and recovered in the name of the people in the superior court of the county in which the principal place of business of the corporation is located. [L. '66, p. 62, § 19; L. '69, p. 336, § 19; L. '73, p. 404, § 17; Cd. '81, § 2437; 1 H. C., § 1514.]

See *supra*, § 3287, violation of banking laws.

Cited in 36 Wash. 550; 58 Wash. 185, 189.

Construing strictly that portion of this section imposing a penalty in favor of the "injured party," there must be a demand for inspection of the book named or a designated paper or papers lodged with and kept by the corporation pertaining to the corporate business, and the demand must be made by a party having

an interest in such inspection; a demand to inspect the "books and papers," not being sufficient; and this is a penal statute in so far as the penalty is concerned, and to be strictly construed; since the penalty is not given as compensation for any injury, and was intended as a punishment, allegation and proof of actual injury being unnecessary: *Brown v. Kildea*, 58 Wash. 184, 108 Pac. 452, 1135.

§ 3829. [3703.] Officer's Misrepresentations to Stockholders or Persons Dealing in Stock—Penalty.

Any superintendent, director, secretary, manager, agent, or other officer of any corporation formed or existing under the laws of this state, or transacting business in this state, or any person pretending or holding himself out as such superintendent, director, secretary, manager, agent or other officer, who shall willfully subscribe, sign, indorse, verify or otherwise assent to the publication, either generally or privately, to the stockholders or to other persons dealing with such corporation, [or its stock,] any willfully untrue or willfully and fraudulently exaggerated report, prospectus, account, statement of operations, values, business profits, expenditures, or prospects, or other paper or document intended to produce

or give, or having a tendency to produce or give, to the shares of stock in such corporation a greater value than they really possess, or with the intention of defrauding any particular person or persons, or the public or persons generally, shall be deemed guilty of an offense against the laws of the state of Washington, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one nor more than five years, or in the county jail not more than one year, or by a fine not exceeding two thousand dollars or by both. [L. '03, p. 141, § 1.]

§ 3830. [3704.] Capital Stock, How Increased or Diminished.

Any company incorporated under this chapter may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital: Provided, that the deposits in any trust company or banking corporation shall not be included in ascertaining the debts and liabilities of such trust company or banking corporation for the purposes of this section: Provided further, that this act shall not relieve such trust company or banking corporation or the stockholders of any such trust company or banking corporation from liability, although contingent, or remote, incurred or entered into by such trust company or banking corporation prior to the reduction of its capital, including liability for deposits: Provided further, that before any banking corporation, or trust company, can reduce its capitalization, a notice, in writing, must be mailed to the last known postoffice address of its depositors setting forth the fact that the said banking corporation, or trust company, intends to decrease its capitalization, showing the amount of its capitalization and the amount to which it intends to decrease same; and proof of the mailing of such notices shall be made by affidavit of the party mailing the same, showing the names and addresses of the persons to whom mailed. [L. '99, p. 174, § 1. Cf. L. '66, p. 63, § 20; L. '69, p. 337, § 20; L. '73, p. 404, § 18; Cd. '81, § 2438; 1 H. C., § 1515.]

Cited in 32 Wash. 346; 38 Wash. 63; 67 Wash. 3.

Increase of Capital Stock: See Remington's Digest, Corp., § 29; Lantz v. Moeller, 76 Wash. 429, 136 Pac. 687, 50 L. R. A. (N. S.) 68.

Power to increase capital stock of corporation. 38 L. R. A. 616.

Right of existing stockholder to subscribe for increase of capital stock. 12 L. R. A. (N. S.) 969; L. R. A. 1918D, 741.

Injunction against reduction of capital stock. 1 L. R. A. (N. S.) 571.

Reduction of preferred, guaranteed, and interest-bearing stock. 27 L. R. A. 151.

§ 3831. [3705.*] Notice of Meeting Called to Increase or Diminish Stock.

Every increase or reduction of capital stock (other than a calling in or redemption of preferred stock made in the manner designated in section 3812) must be authorized by a vote of the stockholders holding at least two-thirds of the stock of the corporation possessing voting power on that question, taken at a meeting of the stockholders specially called for that purpose by at least a majority of the trustees. Notice of the meeting

stating the time, place and object of the meeting and the increase or reduction proposed, signed by at least a majority of the trustees, shall be published once a week for at least two successive weeks in a newspaper in the county where the principal place of business of the company is located, and a copy of such notice shall be duly mailed to each stockholder at his last known postoffice address at least two weeks before the meeting, or shall be personally served on him at least five days before the meeting. Unanimous consent of the stockholders expressed in writing and specifying the increase of capital stock agreed upon shall be equivalent to a meeting, and in case of such written consent no notice or actual meeting shall be required, in the case of a company a part of whose stock has no voting power on the question of an increase of capital stock, the proposition for such increase shall not be deemed authorized by the vote of the holders of two-thirds or more of the stock entitled to vote thereon, unless (1) those voting therefor are the holders of a majority in par value of the aggregate of all the shares of stock of the company of all classes, or else (2) there be filed with the company the written consent of the holder or holders of stock having no voting power sufficient, when added to the stock already voting affirmatively, to make such majority. [L. '19, p. 515, § 2. Cf. L. '66, p. 63, § 21; L. '69, p. 337, § 21; L. '73, p. 404, § 19; Cd. '81, § 2439; 1 H. C., § 1516.]

See supra, § 3233, notice of, for banks and trust companies.

Cited in 22 Wash. 200; 67 Wash. 3.

§ 3832. [3706.*] Certification of Increase or Reduction.

If at a meeting so called, a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, and the amount to which the capital stock is to be increased or diminished, shall be made out and signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the trustees, and filed as required by section 3805, and when so filed the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate: Provided that in case of a reduction of the capital stock such certificate shall also show the whole amount of debts and liabilities of the company. In case of increase by unanimous written consent of stockholders the certificate shall be signed and verified by the president, or a vice-president, and by the secretary or assistant secretary, certified to by a majority of the trustees, and shall be filed in the same manner and with the same effect. [L. '19, p. 516, § 3. Cf. L. '66, p. 63, § 22; L. '69, p. 337, § 22; L. '73, p. 405, § 20; Cd. '81, § 2440; 1 H. C., § 1517.]

Cited in 67 Wash. 3.

§ 3833. [3707.] Power of Trustees upon Dissolution of Corporation.

Upon the dissolution of any corporation formed under the provisions of this chapter, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation by the name of the trustees of such corporation,

collect and pay the outstanding debts, settle all its affairs and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses. [L. '66, p. 64, § 23; L. '69, p. 337, § 23; L. '73, p. 405, § 21; Cd. '81, § 2441; 1 H. C., § 1518.]

Cited in 28 Wash. 562; 49 Wash. 241.

INSOLVENCY AND RECEIVERS: See Remington's Digest, Corp., §§ 203—230, and cases cited. See, also:

§§ 207, 208. Preference—Trust fund doctrine—Extent of liability: Williams v. Davidson, 104 Wash. 315, 176 Pac. 334; Yates Machine Co. v. Lakin, 113 Wash. 45, 192 Pac. 982.

— Preferences to officers: Benner v. Billings, 107 Wash. 1, 181 Pac. 19.

— Unlawful preferences—Payment of checks by member of clearing-house association—Lien or liability incurred after insolvency—Statutes: Moore v. American Sav. Bank & Trust Co., 111 Wash. 148, 189 Pac. 1010.

§ 211. Stock—Transfers—Preferences to officers: Benner v. Billings, 107 Wash. 1, 181 Pac. 19.

§ 212. Preferences to creditors—Remedies of creditors—Right to bring action in equity: Yates Machine Co. v. Lakin, 113 Wash. 45, 192 Pac. 982.

§ 216. Appointment—Remedy by injunction: Kahan v. Alaska Junk Co., 111 Wash. 39, 189 Pac. 262.

§§ 217, 218. Diversion of assets: Biehn v. Aetna Investment Co., 110 Wash. 460, 188 Pac. 489.

— Receivers—Grounds—Discretion—Evidence—Sufficiency: Beeler v. Standard Investment Co., 107 Wash. 442, 181 Pac. 896, 5 L. R. A. 363; Kahan v. Alaska Junk Co., 111 Wash. 39, 189 Pac. 262; Holland v. Silver Basin Mining Co., 113 Wash. 63, 193 Pac. 500, 502.

§ 219. Appointment—Jurisdiction—Doing business in county: Holland v. Silver Basin Mining Co., 113 Wash. 63, 193 Pac. 500, 502.

§ 224. Powers—Representation of creditors: Wirkkala v. Wirkkala Bros. Logging Co., 109 Wash. 137, 186 Pac. 315.

§ 226. Stock—Actions to enforce—Liability—Defenses: Benner v. Billings, 107 Wash. 1, 181 Pac. 19.

Officers or Others Trustees for Purpose of Winding Up: See Remington's Digest, Corp., § 241; New York Nat. Exchange Bank v. Metropolitan Sav. Bank, 28 Wash. 553, 68 Pac. 905; Conlan v. Oudin, 49 Wash. 240, 94 Pac. 1074; Clark v. Groger, 102 Wash. 188, 172 Pac. 1164.

§ 3834. [3708.] Dissolution Proceedings—Publication of Notice—Order.

Any corporation formed under this chapter may dissolve and disincorporate itself by presenting to the superior judge of the county in which the office of the company is located, a petition to that effect, accompanied by a certificate of its proper officers, and setting forth that at a meeting of the stockholders called for the purpose, it was decided by a vote of two-thirds of all the stockholders, to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time and place appointed, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved. [L. '66, p. 64, § 24; L. '69, p. 338, § 24; L. '73, p. 405, § 22; Cd. '81, § 2442; 1 H. C., § 1519.]

Cited in 18 Wash. 422; 25 Wash. 505; 28 Wash. 562; 34 Wash. 27; 49 Wash. 241; 66 Wash. 409.

Proceedings for Voluntary Dissolution: See Remington's Digest, Corp., § 237;

Theis v. Spokane Falls Gas L. Co., 34 Wash. 23, 74 Pac. 1004.

Power of courts to decree dissolution of corporation. 96 Am. Dec. 756.

Power of majority stockholders to dissolve corporation. *Ann. Cas.* 1913A, 375; 2 *L. R. A. (N. S.)* 493.

Right of minority stockholders to maintain suit to wind up or dissolve corporation. 15 *Ann. Cas.* 422; *Ann. Cas.* 191SE, 424.

Effect of dissolution of corporation upon debts and pending actions. 40 *Am. Dec.* 737.

Power of corporation after dissolution to prosecute pending or new suit. 17 *Ann. Cas.* 225.

§ 3835. [3708½.] Removing Principal Place of Business—Notice.

Any corporation desiring at any time to remove its principal place of business into some other county in the state shall file in the office of the county auditor a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest to the city, town, or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of any corporation hereafter formed under this chapter shall not be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation: Provided, that within three months from the passage of this chapter, such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest the city, town, or locality, and where the principal place of business of such corporation has been in fact located, designating the city, town, or locality and county where its principal place of business shall be located. On compliance with the provisions of this section in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established, or removed at or to any designated city, town, or locality and county in the state. [L. '66, p. 65, § 26; L. '69, p. 339, § 26; L. '73, p. 406, § 24; Cd. '81, § 2444; 1 H. C., § 1520.]

Cited in 72 *Wash.* 476, 478.

§ 3836. [3709.] Fees for Filing Articles of Incorporation.

Every corporation incorporated under the laws of this state, or of any state or territory in the United States or of any foreign state or county, required by law to file articles of incorporation in the office of the secretary of state, shall pay to the secretary of state a filing fee of twenty-five dollars. [L. '07, p. 270, § 1. Cf. L. '97, p. 134, § 1.]

Cited in 42 *Wash.* 677, 678; 61 *Wash.* 91; 97 *Wash.* 107; 105 *Wash.* 102.

§ 3837. [3710.] Fees for Amendatory Articles.

Every corporation, foreign or domestic, desiring to file in the office of the secretary of state articles amendatory or supplemental, or certificates of increase or decrease of capital stock, shall pay to the secretary of state a fee of ten dollars. [L. '07, p. 270, § 2. Cf. L. '97, p. 134, § 2.]

§ 3838. [3711.] Fees for Filing Appointment of Agent.

Every foreign corporation filing in the office of the secretary of state a certificate of the appointment of an agent residing in this state, or a certificate of the revocation of such appointment of the resident

agent, shall pay to the secretary of state a fee of five dollars. [L. '07, p. 270, § 3.]

Cited in 105 Wash. 102.

§ 3839. [3712.] Fees for Certified Copies.

The fee for furnishing a certified copy of articles of incorporation, or articles amendatory or supplemental, or certificates of increase or decrease of capital stock, or certificate of appointment of resident agent, or certificate of revocation of appointment of resident agent, shall be five dollars. [L. '07, p. 271, § 4. Cf. L. '97, p. 134, § 3.]

Cited in 50 Wash. 488.

§ 3840. [3713.] Fees for Recording.

There shall be no charge for recording any of the documents mentioned in this act or for making or certifying to copies of same other than the fees in this act prescribed, unless the document to be recorded or the copy to be certified shall exceed twenty folios, in which case there shall be a further charge of fifteen cents per folio for all such excess. [L. '07, p. 271, § 5. Cf. L. '97, p. 134, § 4.]

"Act" in this section refers to §§ 3836—3842, 3848—3851.

See *supra*, § 3219, fees, banks and trust companies.

§ 3841. [3714.] Annual License Fee.

Every corporation incorporated under the laws of this state, and every foreign corporation having its articles of incorporation on file in the office of the secretary of state shall, on or before the first day of July of each and every year, pay to the secretary of state, for the use of the state, the following license fees: Every corporation having a capital stock, fifteen dollars. Every corporation failing to pay the said annual license fee, on or before the first day of July of each and every year, and desiring to pay the same thereafter, and before the first day of January next following, shall pay to the secretary of state, for the use of the state, in addition to the said license fees, the following further fee, as a penalty for such failure: The sum of two dollars and fifty cents: Provided, however, that building and loan companies paying special fees provided for in this [the] act under which same are incorporated shall not be required to pay the regular fee provided herein. [L. '07, p. 271, § 6. Cf. L. '97, p. 135, § 5.]

Cited in 22 Wash. 495; 32 Wash. 577; 42 Wash. 487; 81 Wash. 463; 97 Wash. 105; Wash. 677, 678; 68 Wash. 99, 459; 73 105 Wash. 102.

§ 3842. [3715.] Actions—Payment of Fee Condition Precedent—Prima Facie Evidence of Payment.

No corporation shall be permitted to commence or maintain any suit, action or proceeding in any court of this state, without alleging and proving that it has paid its annual license fee last due. A certificate of the payment of such annual license fee, or any duplicate of such certificate under the seal of the secretary of state, shall be prima facie evidence of such payment; and the secretary of state is hereby required to issue such duplicate certificates, upon request, at a charge of twenty-

five cents for each thereof. The state board of tax commissioners may institute suits to enforce the payment of any license fee, due from any corporation under this or any other law. Failure upon the part of any corporation to pay its annual license fee for a period of one year, from and after the date when such payment first became due, shall be prima facie evidence of the insolvency of such corporation, and the fact of such insolvency may be shown by the state or by any private person or corporation: Provided, that as to corporations now delinquent in the payment of their annual license fees for a period of one or more years, such presumption of insolvency shall not exist until after one year from the date of the passage of this act and the continuation of such delinquency. It shall be the duty of the secretary of state to strike from the records of his office the names of all incorporations which have neglected for a period of two years to pay their annual license fees; and any corporation thereafter organized may take and shall have the exclusive right to use the corporate name of any corporation so stricken from the records: Provided, that no corporate name shall be so stricken from the records for a period of one year, from the date of the passage of this act. [L. '07, p. 271, § 7.]

"Act" in this section refers to §§ 3836—3842, 3848—3851.

Cited in 50 Wash. 488; 51 Wash. 633, 634; 61 Wash. 91, 452, 548; 64 Wash. 378; 67 Wash. 296, 380; 68 Wash. 459; 71 Wash. 470, 663; 72 Wash. 524; 73 Wash. 487, 584; 81 Wash. 463; 84 Wash. 422; 89 Wash. 594; 97 Wash. 105, 106; 99 Wash. 540; 105 Wash. 102; 106 Wash. 183, 184.

Capacity to Sue and Prepayment of License Fee: See Remington's Digest, Corp., § 193; Thompson-Spencer Co. v. Thompson, 61 Wash. 547, 112 Pac. 655; Mutual Home Assn. v. Joe's Bay Trading Co., 73 Wash. 486, 131 Pac. 1140; Miller & Sons v. Simmons, 67 Wash. 294, 121 Pac. 462; North Star Trading Co. v. Alaska-Yukon-Pacific Exposition, 63 Wash. 376, 115 Pac. 835 (overruled in North Star Trading Co. v. Alaska-Yukon-Pacific Exposition, 68 Wash. 457, 123 Pac. 605); Ellensburg Lodge No. 20 I. O. O. F. v. Collins, 68 Wash. 94, 122 Pac. 602; Pacific Drug Co. v. Hamilton, 71 Wash. 469, 128 Pac. 1069; Eastman & Co. v. Watson, 72 Wash. 522, 130 Pac. 1144; Northwest Motor Co. v. Braund, 89 Wash. 593, 154 Pac. 1098; Washington Printing Co. v. Osner, 99 Wash. 537, 169 Pac. 958.

See, also, Erickson v. Perica, 113 Wash. 510, 194 Pac. 963.

This section is not unconstitutional as violative of the due process clauses of the state or federal constitutions: Peck v. Linney, 97 Wash. 103, 165 Pac. 1080.

Since this section is a revenue measure, the objection that there was no proof of such payment is waived if not specifically pointed out at the trial; and is not saved by a general motion to dismiss for failure of the evidence to make out a prima facie case: Commercial Bank & Trust Co. v. Wenatchee Park Land & Irr. Co., 106 Wash. 181, 179 Pac. 798.

Necessity of Judicial Proceedings: See Remington's Digest, Corp., § 235; Hawley v. Bonanza Queen Min. Co., 61 Wash. 90, 111 Pac. 1073.

The insolvency of a corporation is prima facie shown, under this section, by failure to pay its annual license fee for one year after due date: Barnard Mfg. Co. v. Ralston Milling Co., 71 Wash. 659, 129 Pac. 389.

A foreign corporation is not doing business in this state, within this section, when: Smith & Co. v. Dickinson, 81 Wash. 465, 142 Pac. 1133.

§ 3843. [3715a.] Striking Delinquent Corporations—Reinstatement.

Every corporation whose name has been, or shall hereafter be, stricken from the records of the office of the secretary of state in pursuance of law for failure to pay its annual license fee for two years is hereby authorized and permitted to apply to the secretary of state for reinstatement at any time after its name has been stricken from the records of the office of the secretary of state. Any corporation stricken

from the records and dissolved, as provided in this chapter may at any time thereafter hold a meeting of stockholders, in the same manner as provided during its corporate existence, and pass such resolutions as may be necessary to close out its affairs and wind up the business of such corporation, and where such stricken and dissolved corporation has heretofore held such meetings of stockholders for the purpose of passing resolutions to wind up their affairs, such method of procedure is hereby validated and approved. [L. '11, p. 135, § 1; L. '09, Ex. Sess., p. 57, § 1.]

Cited in 61 Wash. 91; 67 Wash. 381, 382; 93 Wash. 2; 97 Wash. 107.

Violation of Statute: See Remington's Digest, Corp., § 234; Hawley v. Bonanza Queen Min. Co., 61 Wash. 90, 111 Pac. 1073; Peck v. Linney, 97 Wash. 103, 165 Pac. 1080.

See, also, Yates Machine Co. v. Lakin, 113 Wash. 45, 192 Pac. 982.

This section modifies the former act, section 3846, *infra*, and the stockholders may meet and dispose of all assets by a sale to another company assuming the indebtedness, in consideration of an ex-

change of its shares, and are not limited to the statutory procedure for a dissolution: Grant v. Monterey Gold Mining Co., 93 Wash. 1, 159 Pac. 895.

This act does not violate constitution, article XII, section 3, prohibiting the legislature from remitting the forfeiture of any corporate franchise or charter, the striking of delinquent names for failure to pay license fees not being the forfeiture of a franchise or charter within the meaning of the constitution: State ex rel. Preston Mill Co. v. Howell, 67 Wash. 377, 121 Pac. 861.

§ 3844. [3715b.] Condition—Prepayment of Fees and Penalty.

Any corporation so applying for reinstatement shall at the time of its application pay to the secretary of state, for the use of the state, all license fees and penalties then due from it and the sum of one hundred dollars as additional penalty: Provided, that this shall apply to the reinstatement of corporations, the names of which shall have been stricken at the present time, and hereafter whenever any corporation shall have its name stricken from the records by the secretary of state it shall, in applying for reinstatement, pay all license fees and penalties then due from it and the additional sum of twenty dollars for each and every year that its name has been stricken from the records, and upon the making of such application and such payment, it shall be the duty of the secretary of state to enter upon his records a notation that such corporation is reinstated. [L. '11, p. 135, § 2; L. '09, Ex. Sess., p. 57, § 2.]

Cited in 67 Wash. 381.

§ 3845. [3715c.] Rights Restored.

Thereafter such corporation shall have and enjoy the same rights and powers as if its name had never been stricken from the records, and all things done by it in the exercise of its corporate powers before such reinstatement are hereby validated and confirmed. [L. '09, Ex. Sess., p. 57, § 3.]

§ 3846. [3715d.] Dissolution for Nonpayment.

If, however, within the period named within which a corporation may make application to be reinstated such corporation shall not have made such application, the secretary of state shall enter upon his records a notation that such corporation is dissolved, and it shall thereupon be dissolved and the trustees of such corporation shall hold the

title to the property of the corporation for the benefit of its stockholders and creditors to be disposed of under appropriate court proceedings. [L. '09, Ex. Sess., p. 57, § 4.]

Cited in 67 Wash. 381, 382; 70 Wash. 239, 679; 93 Wash. 2; 97 Wash. 105, 107.

Proceedings to Enforce Dissolution or Forfeiture: See Remington's Digest, Corp., §§ 238—240. **By Members or Officers of the Corporation:** Conlan v. Oudin, 49 Wash. 240, 94 Pac. 1074; Boothe v. Summit Coal Mining Co., 63 Wash. 630, 116 Pac. 269.

§ 239. — **By State:** State ex rel. Fishback v. Globe Casket & Undertaking Co., 82 Wash. 124, 143 Pac. 878, L. R. A. 1915B, 976.

§ 240. **Effect of Dissolution in General:** Taylor v. Interstate Investment Co., 75 Wash. 490, 135 Pac. 240; Droppelman v. Illinois Surety Co., 95 Wash. 476, 164 Pac. 70, L. R. A. 1917D, 1032.

Where the secretary of state has dissolved a corporation for nonpayment of its license fees, it is deemed effective until set aside, and an action to recover its property may be maintained by the only trustee who is a stockholder, in view of this section: Soderberg v. McRae, 70 Wash. 235, 126 Pac. 538.

Under this section, a dissolution is not invalid from the fact that the secre-

tary of state made the notation one day too soon, where the record was left standing subsequent to the time when it ought to have been made, since the making of the notation was a ministerial act: Peck v. Linney, 97 Wash. 103, 165 Pac. 1080.

Where a corporation was stricken from the records and dissolved under this section, for failing to pay its license fees or apply for reinstatement within six months, prior to the amendment of that act by the act of 1911, which authorized a reinstatement of stricken corporations at any time and rendered the former provision for dissolution inoperative, such dissolution is effectual while the corporation remains in a dormant condition, so that it cannot be sued in the absence of any steps for its reinstatement: Peck v. Linney, 97 Wash. 103, 165 Pac. 1080.

Officers or Other Trustees for Purpose of Winding Up: See Remington's Digest, Corp., § 241; New York Nat. Exchange Bank v. Metropolitan Sav. Bank, 28 Wash. 553, 68 Pac. 905; Conlan v. Oudin, 49 Wash. 240, 94 Pac. 1074; Soderberg v. McRae, 70 Wash. 235, 126 Pac. 538; Clark v. Groger, 102 Wash. 188, 172 Pac. 1164.

§ 3847. [3715e.] Adoption of Name of Delinquent Corporation.

The name of no corporation which has been stricken from the records of the office of the secretary of state for nonpayment of its annual license tax shall be adopted by another corporation until the expiration of the time within which such delinquent corporation is allowed in which to apply for reinstatement, or while such application for reinstatement is pending. [L. '09, Ex. Sess., p. 58, § 5.]

§ 3848. [3716.] Fee for Certifying to Corporation Laws.

The fee for furnishing and certifying to a printed compilation of the corporation laws of this state shall be five dollars. [L. '07, p. 272, § 8.]

§ 3849. [3717.] Certain Corporations Excepted.

This act shall not apply to domestic corporations organized for religious, social, charitable or educational purposes, or to foreign corporations organized for like purposes, when not engaged in this state in the loaning of money or the conducting of any other business pursuits for profit. [L. '07, p. 272, § 9. Cf. L. '97, p. 135, § 6.]

"Act" in this section refers to §§ 3836—3842, 3848—3851.

§ 3850. [3718.] Fees Due in Advance.

All fees provided for in this act are due in advance and shall be paid to the secretary of state before the services desired are performed. [L. '07, p. 272, § 10.]

See note to last section

§ 3851. [3719.] Disposition of Fees.

All fees received by the secretary of state under the provisions of this act shall be by him paid into the state treasury as provided by law. [L. '07, p. 273, § 11.]

See note to § 3849.

CHAPTER II.**FOREIGN CORPORATIONS.****§ 3852. [3720.] Power of, to Do Business in This State.**

Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state, or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this state, shall have full power and is hereby authorized to sue and to be sued in any court having competent jurisdiction, to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of, in the corporate name, all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its corporation, and also any interest in real estate, by mortgage or otherwise do [due] to or loans made by such foreign corporations within the boundaries of this state, either prior to or after the passage of this act, and generally do and perform every act and transact every kind of business within this state in the same manner and to the same extent as corporations incorporated and organized under the laws of this state are authorized to do under the laws of this state, by a compliance with all the conditions prescribed by the next two succeeding sections of this chapter: Provided, however, that this chapter shall not be [so] construed as to allow such foreign corporation to transact business within the state on more favorable conditions than are prescribed by law for a similar corporation organized under the laws of this state: And provided further, that no corporation, the majority of the capital stock of which is owned by aliens other than those who in good faith have declared their intention to become citizens of the United States, shall acquire the ownership of any lands in this state other than lands containing valuable deposits of minerals, metals, iron, coal, or fireclay, and the necessary land for mills and machinery to be used in the development thereof, and the manufacture of the products therefrom, except where acquired under mortgage, or in good faith in the ordinary course of justice in the collection of debts: Provided, further, that no foreign corporation which is hereafter organized which has among its other powers the business of dealing in real estate, and buying and selling the same, and for the purpose of carrying on a real estate brokerage business, shall be permitted to transact such business of buying and selling and dealing in real estate, and carrying on a brokerage business therein in this state; but this prohibition shall not extend to any other business for the transaction of which such corporation may be organized. [Cf. L. '71, p. 101, § 1; L. '75, p. 109, § 1; Cd. '81, § 2479; L. '86, p. 87, § 1; L. '90, p. 288, § 1; 1 H. C., § 1524.]

"This act": §§ 3852—3854, 3857.

See supra, §§ 226, 228, subd. 1, service on foreign corporations.

For power to appropriate lands, compare L. '79, p. 148.

See infra, § 3861, penalty for violating this chapter.

Cited in 4 Wash. 687; 5 Wash. 71, 437; 6 Wash. 490—493; 9 Wash. 143; 16 Wash. 167; 17 Wash. 444; 28 Wash. 424; 33 Wash. 550; 40 Wash. 537; 46 Wash. 490; 47 Wash. 118, 120; 48 Wash. 606; 51 Wash. 620; 76 Wash. 639; 80 Wash. 328; 91 Wash. 579; 96 Wash. 165; 105 Wash. 102.

Power to Exclude, Restrict or Regulate—Carrying on Business Within State: See Remington's Digest, Corp., § 247; Realty Co. v. Appolonio, 5 Wash. 437, 32 Pac. 219; Keene Guaranty Savings Bank v. Lawrence, 32 Wash. 572, 73 Pac. 680; Rich v. Chicago B. & Q. R. Co., 34 Wash. 14, 74 Pac. 1008; State ex rel. Ami Co. v. Superior Court, 42 Wash. 675, 85 Pac. 169; State ex rel. Baker River & Shuiksan R. Co. v. Nichols, 51 Wash. 619, 99 Pac. 876; Spokane Merchants Assoc. v. Clere Clothing Co., 84 Wash. 616, 147 Pac. 414.

Subjection to Laws Governing Domestic Corporations: See Remington's Digest, Corp., § 248; State ex rel. Amalgamated Republic Mines Co. v. Nichols, 47 Wash. 117, 91 Pac. 632; State ex rel. Baker River & Shuiksan R. Co. v. Nichols, 51 Wash. 619, 99 Pac. 876.

OBTAINING LICENSE: See Remington's Digest, Corp., § 252; State ex rel. Ami Co. v. Superior Court, 42 Wash. 675, 85 Pac. 669; Lilly-Brackett Co. v. Sonnemann, 50 Wash. 487, 97 Pac. 505; Smith & Co. v. Dickinson, 81 Wash. 465, 142 Pac. 1133.

Penalties for Violation of Statute: See Remington's Digest, Corp., §§ 253—257. **In General:** La France Fire Engine Co. v. Mount Vernon, 9 Wash. 142, 37 Pac. 287, 43 Am. St. Rep. 827; Rathbone-Sard & Co. v. Frost, 9 Wash. 162, 37 Pac. 298.

§ 255. — **Effect of Noncompliance With Statutes—Declaring Penalty:** Dearborn Foundry Co. v. Augustine, 5 Wash. 67, 31 Pac. 327; Whitman Agr. Co. v. Strand, 8 Wash. 647, 36 Pac. 682; Edison Gen. Elec. Co. v. Canadian Pac. Nav. Co., 8 Wash. 370, 36 Pac. 260, 40 Am. St. Rep. 910, 24 L. R. A. 315; Horrell v. California etc. Assn., 40 Wash. 531, 82 Pac. 889.

§ 256. — **Effect of Subsequent Compliance on Prior Transactions:** Sayward v. Gardner, 5 Wash. 247, 31 Pac. 761, 33 Pac. 389; Huttig Bros. Mfg. Co. v. Denny Hotel Co., 6 Wash. 122, 32 Pac. 1073.

§ 257. — **Estoppel to Question Compliance With Statutory Requirements:** Dearborn Foundry Co. v. Augustine, 5 Wash. 67, 31 Pac. 327; La France Fire Engine Co. v. Mt. Vernon, 9 Wash. 142, 37 Pac. 287, 43 Am. St. Rep. 827; Rathbone, Sard & Co. v. Frost, 9 Wash. 162, 37 Pac. 298.

The liability to personal service of a foreign corporation doing business in this state rests entirely upon statute; and where, under this section, a corporation had authority to do business and such authority had been formally revoked and forfeited for failure to pay its annual license fees, personal service cannot be made upon its former statutory agent, in an action which accrued subsequent to the forfeiture; and it is immaterial that his designation as agent had not been formally revoked: Gerrick & Gerrick Co. v. Llewellyn Iron Works, 105 Wash. 98, 177 Pac. 692.

Acquiring, Holding and Conveying Real Property: See Remington's Digest, Corp., § 258; Realty Co. v. Appolonio, 5 Wash. 437, 32 Pac. 219; Oregon Mtg. Co. v. Carstens, 16 Wash. 165, 47 Pac. 421, 35 L. R. A. 841; Goon Gan v. Richardson, 16 Wash. 273, 47 Pac. 762; State ex rel. Winston v. Hudson Land Co., 19 Wash. 85, 52 Pac. 574, 40 L. R. A. 430; Hastings v. Anacortes Packing Co., 29 Wash. 224, 69 Pac. 776; Ramsey v. Tacoma Land Co., 31 Wash. 351, 71 Pac. 1024; Latshaw v. Western Townsite Co., 91 Wash. 575, 158 Pac. 248.

A manufacturing company authorized to do a brokerage business in its home state is entitled to file its articles and do other business in this state: State ex rel. University Lumber & Shingle Co. v. Nichols, 48 Wash. 605, 94 Pac. 196.

The requirement that a foreign corporation pay a license fee and secure a certificate prior to its doing business in this state is a matter exclusively between the state and corporation, and cannot be raised by private citizens: State ex rel. Ami Co. v. Superior Court, 42 Wash. 675, 85 Pac. 669.

The purpose of this section is to protect parties dealing with foreign corporations from being imposed upon, and to provide means of obtaining service upon them in the courts of the state: Dearborn Foundry Co. v. Augustine, 5 Wash. 67, 31 Pac. 327.

Right to Sue: See Remington's Digest, Corp., § 259; Dearborn Foundry Co. v. Augustine, 5 Wash. 67, 31 Pac. 327; La France Fire Engine Co. v. Mt. Vernon, 9 Wash. 142, 37 Pac. 287, 43 Am. St. Rep. 827; Marble Savings Bank v. Williams, 23 Wash. 766, 63 Pac. 511; Port Blakely Mill Co. v. Springfield Fire & Marine Ins. Co., 59 Wash. 501, 110 Pac. 36, 140 Am. St. Rep. 863, 28 L. R. A. (N. S.) 596; Boston Tow Boat Co. v. Sesnon Co., 64 Wash. 375, 116 Pac. 1083.

Actions by and Against: See Remington's Digest, Corp., §§ 260—267, and cases cited.

Process Against: See notes to § 226, *supra*.

Jurisdiction over foreign corporations. 85 *Am. St. Rep.* 905.

Power of the states to discriminate against foreign corporations. 95 *Am. Dec.* 536.

What constitutes doing business in state by foreign corporation. 2 *Ann. Cas.* 307; 6 *Ann. Cas.* 744; 8 *Ann. Cas.* 942; 11 *Ann. Cas.* 320; *Ann. Cas.* 1912A, 553; *Ann. Cas.* 1913E, 1154; *Ann. Cas.* 1916A, 515;

Ann. Cas. 1918C, 539; *Ann. Cas.* 1918E, 1248; 9 *L. R. A. (N. S.)* 1214; 18 *L. R. A. (N. S.)* 142; *L. R. A.* 1916E, 236; *L. R. A.* 1916F, 334.

Effect of agreement by foreign corporation to install article within the state to bring transaction within state control. 14 *L. R. A. (N. S.)* 674; *L. R. A.* 1917C, 1014; 11 *A. L. R.* 614.

Mode of proving right as to doing business in state. 2 *A. L. R.* 1235.

§ 3853. [3721.] **Certified Copy of Charter, etc., to be Filed and Recorded.**

Such corporations shall cause to be filed and recorded in the office of the secretary of state a certified copy of its charter, articles of incorporation, memorandum of association, or certificate of incorporation, certified to by the officer who is the custodian of the same according to the laws of the state or territory, country or colony, where such corporation is incorporated, or who is authorized to issue certificates of incorporation according to the laws of such state, territory, or foreign country or colony. The instruments herein required to be filed and recorded shall be attested by such certifying officer under his hand and seal of office, which attestation shall be prima facie proof of the facts therein stated, and of the genuineness of the certificate. If such officer has no official seal, his certificate shall state that fact over his signature, and thereupon the secretary of state, or of the territory, in case of corporations within the United States, and the consul general, consul, vice-consul, deputy consul, consular agent, or commercial agent of the United States, at or nearest to the place where such certificate is made, in the case of corporations not within the United States, shall certify under his hand and seal of office to the genuineness of the signature of the officer making the certificate, and to the fact that at the time of making such certificate the person making the same held the office described in the certificate. [L. '71, p. 101, § 2; L. '75, p. 109, § 2; Cd. '81, § 2480; L. '86, p. 87, § 1; L. '90, p. 289, § 2; 1 H. C., § 1525.]

Cited in 51 *Wash.* 620; 96 *Wash.* 165; 105 *Wash.* 102.

Evidence of Incorporation: See Remington's Digest, Corp., §§ 245, 246; Knapp-Burrell & Co. v. Strand, 4 *Wash.* 686, 30 *Pac.* 1063; Lancaster Savings Bank v.

Elwell, 17 *Wash.* 446, 49 *Pac.* 1070; Daniel v. Gold Hill Mining Co., 28 *Wash.* 411, 68 *Pac.* 884; Fidelity Insurance etc. Co. v. Nelson, 30 *Wash.* 340, 70 *Pac.* 961; State ex rel. Ami Co. v. Superior Court, 42 *Wash.* 675, 85 *Pac.* 669.

§ 3854. [3722.] **Appointment of Agent to be Filed and Recorded.**

Such corporations shall also constitute and appoint an agent, who shall reside at the place in the state where the principal business of the corporation is to be carried on, to be designated as hereinafter required. Such appointment shall be in writing, signed by the president or chief officer of such corporation, and shall be attested by its corporate seal, and shall contain the name of the agent, his place of residence and the place where the principal business of such corporation is to be carried on, and shall authorize such agent to accept service of process in any action or suit pertaining to the property, business or

transactions of such corporation within this state in which such corporation may be a party. The signature of such president or chief officer, attested by the corporate seal to such written appointment, shall be sufficient proof of the appointment of such agent. Such appointment, when duly executed, shall be filed for record in the office of the secretary of state by such corporation, and shall be there recorded; and such corporation shall have and keep continually some resident agent, empowered as aforesaid during all the time such corporation shall conduct or carry on any business within this state, and service of any process, pleading, notice or other paper shall be taken and held as due service on such corporation. Such corporation may change its agent or its principal place of business, from time to time, by filing and recording with the secretary of state a new appointment, stating the change of such agent or the change in the principal place of business; and in the event such foreign corporation shall withdraw from this state and cease to transact business therein it shall continue to keep and maintain such agent within this state upon whom service of process, pleadings and papers may be made, until the statute of limitations shall have run against anyone bringing an action against said corporation, which accrued prior to its withdrawal from this state. In case said corporation shall revoke the authority of its designated agent after its withdrawal from this state and prior to the time when the statutes of limitations would have run against causes of action accruing against it, then in that event service of process, pleadings and papers in such actions may be made upon the secretary of state of the state of Washington, and the same shall be held as due and sufficient service upon such corporation. [L. '09, p. 72, § 1. Cf. L. '90, p. 290, § 3; 1 H. C., § 1526.]

Cited in 4 Wash. 688; 51 Wash. 620; 96 Wash. 165; 105 Wash. 102, 103.

The statute authorizing service of process upon the statutory agent of a foreign corporation is only cumulative, and service may be made under the general statute: *Barrett Mfg. Co. v. Kennedy*, 73 Wash. 503, 131 Pac. 1161.

This section, making a foreign corporation subject to service in actions arising upon its contracts after revocation of its authority, does not apply to a cause of action accruing upon a foreign contract after its withdrawal from this state: *Gerrick & Gerrick Co. v. Llewellyn Iron Works*, 105 Wash. 98, 177 Pac. 692.

A sheriff's return of service of summons reciting merely that he personally served same on a certain individual, "as agent of the defendant corporation," is insufficient to show jurisdiction over a foreign corporation, under the statute providing for the appointment of a statutory agent residing in the county of its principal place of business; since the sheriff's

return must describe an agent within the meaning of the statute, where words of description are employed therein: *Cunningham v. Spokane H. Co.*, 18 Wash. 524, 52 Pac. 235.

Validity of statute requiring appointment of resident agent for service of process on foreign corporation. 6 Ann. Cas. 42.

Who is "agent" within statute providing for service of process on foreign corporation. Ann. Cas. 1914D, 985.

Statute requiring foreign corporation to designate person upon whom process may be served as providing exclusive mode of service. 5 Ann. Cas. 953; 5 L. R. A. (N. S.) 298.

Revocation of agent's designation for service of process as affecting liability of foreign corporation to suit within the state. 6 Ann. Cas. 295; Ann. Cas. 1916D, 378; Ann. Cas. 1918A, 397; 30 L. R. A. (N. S.) 678.

§ 3855. [3723.] Penalty for Failure to File Copy of Charter and Appointment of Agent.

Any foreign corporation doing business in this state which shall fail to comply with the provisions of the two preceding sections, shall be

subject to a penalty of two hundred and fifty dollars to be recovered in a civil action to be instituted by the attorney general in the name of the state of Washington, upon his being furnished with a sworn statement of facts sufficient to justify such action. [L. '99, p. 100, § 1.]

Cited in 91 Wash. 580.

§ 3856. [3724.] Disposition of Penalties.

All penalties so recovered shall be paid into the general fund of the state treasury. [L. '99, p. 101, § 2.]

§ 3857. [3725.] Not to File or Record Certified Copies, When.

No corporation which has heretofore complied with the laws of the state or territory of Washington hitherto existing, regarding foreign corporations, and has kept a duly appointed agent within the boundaries of the state as heretofore required, shall be required to file for record, or cause to be recorded, the certified copies required by this act, or to execute or file for record, or cause to be recorded, a new appointment of agent as herein required. [L. '90, p. 290, § 4; 1 H. C., § 1527.]

"This act": See note to § 3852.

Compare L. '71, p. 102, § 3.

§ 3858. [3726.] Assessor to Ascertain Names of Corporations, Agents, etc.

It shall be the duty of each and every county assessor in this state to ascertain each and every year, at the time of the tax assessment of his county, the name of every foreign corporation doing business by agent or otherwise within his county, the nature of such business, and the name of the agent of each of such corporations, if any there be, together with such agent's place of address, and shall, within ten days from and after the compilation of such assessment, make out and deliver to the county auditor of his county a full and complete list of the names of such corporations doing business in his county, together with the nature of the business so carried on by each of such corporations, and the name of the resident agent of each of such corporations, if any there be, and the place of residence of each of such agents. [Cd. '81, § 2482; 1 H. C., § 1528.]

§ 3859. [3727.] County Auditors to Report Names of Corporations, Agents, etc.

It shall be the duty of each and every county auditor in this state to make out and transmit to the secretary of state, within thirty days next preceding the receipt by him from such county assessor of the lists provided in the last preceding section, a full, true, and concise statement of the names of such corporations, their place of business, the nature of business conducted by such corporations, together with the names of each and every agent of each of such corporations, if any there be, and the places of residence of such agents. [Cd. '81, § 2483; 1 H. C., § 1529.]

§ 3860. [3728.] Fees Allowed for Recording.

The fees for recording, under the provisions of this chapter, shall be the same as are allowed by law to the secretary of state for certified copies of papers on file in his office. [Cd. '81, § 2484; 1 H. C., § 1530.]

§ 3861. [3729.] Agent is Guilty of Misdemeanor, When—How Punished.

Any agent of any foreign corporation, conducting or carrying on business within the limits of this state, for and in the name of such corporation, contrary to any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail for a term not exceeding three months, or by both such fine and imprisonment. [Cd. '81, § 2485; 1 H. C., § 1531.]

Cited in 40 Wash. 538.

§ 3862. [3730.] Assessor is Guilty of Misdemeanor, When—How Punished.

Any county assessor failing to make out and deliver to the county auditor of his county a list, within the time and in the manner provided in section 3858, and any county auditor failing to make out and transmit to the secretary of state a statement, within the time and in the manner provided in section 3859, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars. [Cd. '81, § 2486; 1 H. C., § 1532.]

A violation of this section does not render the association's contracts void: *Horrell v. California etc. Assoc.*, 40 Wash. 531, 82 Pac. 889.

CHAPTER III.**EDUCATIONAL, RELIGIOUS, SOCIAL AND CHARITABLE CORPORATIONS AND ASSOCIATIONS.****§ 3863. [3731.] Benevolent and Charitable Institutions—Articles must Show What.**

Any two or more persons desirous of forming a corporation for a college, seminary, church, library, or benevolent, temperance, charitable or scientific society, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgments of deeds, and file one of such articles in the office of the secretary of state, and another in the office of the county auditor of the county in which the principal place [of] business of the corporation is intended to be located, and retain the third in the possession of the corporation. Such articles shall specify,—

1. The corporate name and location and chief place of business of such corporation;

2. If a joint stock company, the amount of capital stock, and the amount constituting a share; if not a joint stock company, then the terms of admission to membership;

3. The object for which the corporation is formed;

4. By what officers the affairs of said corporation shall be managed, and when such officers are to be elected, or, if appointed, when and by whom such appointments are to be made. [Cf. L. '66, p. 67, § 1; L. '69, p. 331, § 1; L. '73, p. 409, § 1; Cd. '81, § 2450; 1 H. C., § 1638; L. '95, p. 348, § 1.]

See *infra*, § 3872 et seq., associations for same purposes.

See next chapter, corporations not for profit.

§ 3864. [3732.] Powers of Such Corporations Enumerated.

When such articles shall have been filed as aforesaid, the persons who shall have signed and verified the same, and their successors, shall be a body politic and corporate, with perpetual succession, they shall be capable, in law, of suing and being sued, pleading and being impleaded, answering and being answered in all the courts of the state; they may have a common seal, alter and change the same at pleasure; acquire, mortgage and sell property, personal and real, for the purpose of carrying out the objects of the corporation, and make by-laws, rules and regulations, as they may deem proper and best for the welfare and the good order of the corporation; and may amend the articles of incorporation by supplemental articles, executed and filed the same as the original articles: Provided, that such by-laws, rules and regulations be not contrary to the Constitution and laws of the United States and the existing laws of the state. [L. '66, p. 68, § 2; L. '69, p. 342, § 2; L. '73, p. 409, § 2; Cd. '81, § 2451; L. '86, p. 86, § 1; 1 H. C., § 1639.]

§ 3865. [3733.] Fraternal Societies as Bodies Corporate—Articles of, to Show What.

Any lodge, encampment of [or] other subordinate lodge of Free and Accepted Masons, Independent Order of Odd Fellows, Knights of Pythias, or other fraternal society, desiring to incorporate, shall make articles of incorporation in triplicate, and file one of such articles in the office of the secretary of state and another in the office of the county auditor of the county in which the meetings of such lodge, chapter or encampment are held; such articles shall be signed by the presiding officer and the secretary of such lodge, chapter or encampment, and attested by the seal thereof, and shall specify:

(1) The name of such lodge or other society, and the place of holding its meetings; (2) the name of the grand body from which it derives its rights and powers as such lodge or society; (3) the names of the presiding officer and the secretary having the custody of the seal of such lodge or society; (4) what officers shall join in the execution of any contract by such lodge or society to give it force and effect in accordance with the usages of such lodges or society. [L. '03, p. 118, § 1. Cf. L. '73, p. 410, § 3; Cd. '81, § 2452; 1 H. C., § 1640.]

§ 3866. [3734.] Filing Fee.

The secretary of state shall file such articles of incorporation in his office and issue a certificate of incorporation to any such lodge or other society upon the payment of the sum of five dollars. [L. '03, p. 118, § 2.]

§ 3867. [3735.] Powers—Not Subject to License Fees.

Such lodge or other society shall be a body politic and corporate with all the powers and incidents of a corporation upon its compliance with sections 3865 and 3866; Provided, however, that such fraternal corporation shall not be subject to any license fee or other corporate tax of commercial corporations. [L. '03, p. 118, § 3.]

§ 3868. [3736.] Reincorporation.

Any lodge or society, or the members thereof, having heretofore attempted to incorporate as a body under the provisions of sections 3872—3883, such lodge or society may incorporate under its original corporate name by complying with the provisions of sections 3865 and 3866: Provided, that such lodge or society shall attach to and file with the articles of incorporation provided for in this act a certificate duly signed, executed and attested by the officers of the said corporation consenting to such reincorporation and waiving all rights of the original corporation to such corporate name. [L. '03, p. 119, § 4.]

“Act” includes this and the three preceding sections.

§ 3869. [3737.] Degrees may be Conferred by Incorporated Colleges.

Any college or seminary hereafter incorporated by the provisions of this chapter, shall have power, and is hereby invested with authority, to confer the degrees usually conferred by such institutions. [L. '66, p. 68, § 3; L. '69, p. 342, § 3; L. '73, p. 411, § 4; Cd. '81, § 2453; 1 H. C., § 1641.]

§ 3870. [3738.] Corporations, Manner of Dissolving.

Any corporation desiring its dissolution may, by a three-fourths vote of all its members at some regular meeting, execute a surrender of all its corporate powers, and upon the filing of duplicate surrenders with the said auditor and secretary of state, the said corporation shall be dissolved to all intents and purposes. [L. '66, p. 68, § 4; L. '69, p. 342, § 4; L. '73, p. 411, § 5; Cd. '81, § 2454; 1 H. C., § 1642.]

§ 3871. [3739.] Validating Defective Articles.

All instruments purporting to be articles of incorporation for a college, seminary, church, library, or benevolent, charitable, or scientific society, made and executed in accordance with the provisions of the foregoing sections of this chapter, except that the same have been acknowledged before an officer authorized by law to take the acknowledgment of deeds, and have not been sworn to by the trustees as by said laws required, or have been filed with the auditor of the county where the chief place of business of the corporation so purporting to be formed is located, instead of being recorded as by said laws required, or which are defective in both said respects, are hereby declared to be, and are hereby made to be, good and valid articles of incorporation; and the corporations formed, or attempted to be formed by virtue of said articles of incorporation, are hereby declared to be, and are hereby made, good and valid, and existing corporations, with the same and as full powers, rights and liabilities as they would have had if the said articles of incorporation had been executed and recorded as by law required, and that all acts, deeds, and proceedings had or done by said corporations, or under said articles of incorporation, and all rights acquired as to both real and personal property, and all obligations of every kind incurred by such corporations, are hereby made of the same force, effect and validity as if said articles of incorporation had been executed as required by law. [L. '95, p. 24, § 1.]

§ 3872. [3740.] Social and Charitable Associations—Agreement of Association.

Two or more persons within this state who associate themselves together by an agreement in writing, as hereinafter described, with the intention of forming a corporation for any of the purposes hereinafter specified, upon complying with the provisions of sections 3875, 3876 and 3877 of this chapter, shall be and remain a corporation. [L. '95, p. 400, § 1.]

See, also, § 3863, *supra*.

§ 3873. [3741.] Association, Objects of.

Such association may be formed for any educational, charitable, benevolent or religious purposes; for the prosecution of any antiquarian, historical, literary, scientific, medical, artistic, monumental or musical purpose; for supporting any missionary enterprise having for its object the dissemination of religious or educational instruction; for promoting temperance or morality in this state; or other charitable or social bodies of a like character and purpose; for the establishment and maintenance of social clubs, and of places for reading rooms, libraries or social meetings. [L. '95, p. 400, § 2.]

§ 3874. [3742.] Agreement to State What.

The agreement shall state that the subscribers thereto associate themselves with the intention of forming a corporation, the name of the corporation, the purposes for which it is formed, the town or city—which shall be in this state—in which it is located, and if it has a capital stock, the amount thereof, and the number and par value of its shares. The name shall be one not previously in use by any existing corporation, and shall be changed only as hereinafter provided. [L. '95, p. 400, § 3.]

§ 3875. [3743.] Subscribers, First Meeting of.

The first meeting of the subscribers to such agreement shall be called by a notice signed by one or more thereof, stating the time, place and purpose of the meeting; a copy of which notice shall, seven days at least before the day appointed for the meeting, be given to each subscriber, or left at his usual place of business or place of residence, or deposited in the postoffice, postpaid, and addressed to him at his usual place of business or of residence. And whoever gives such notices shall make affidavit of his doings, which shall be recorded in the records of the corporation. [L. '95, p. 400, § 4.]

§ 3876. [3744.] Temporary Secretary, Duties of.

At such first meeting, including any necessary or reasonable adjournment, an organization shall be effected by the choice by ballot of a temporary secretary, and by the adoption of by-laws, and the election of a president, secretary, treasurer and a board of trustees, not less than three nor more than twenty-five in number, and such other officers as may be provided for by the by-laws. At such first meeting no person shall be eligible as an officer or trustee who has not subscribed to the agreement of the association, but any corporation now or hereafter

organized under this act, may, by a by-law, increase or diminish the number of trustees, within the limits hereinbefore provided. The temporary secretary shall make and attest a record of the proceedings until the secretary has been chosen. [L. '95, p. 401, § 5; L. '05, p. 239, § 1.]

§ 3877. [3745.] Certificate, Contents and Filing of—Agreement, Form of, etc.

The president, secretary and a majority of the trustees shall forthwith make, sign and swear to a certificate setting forth a true copy of the agreement of association, with the names of the subscribers thereto, the date of the first meeting and the successive adjournments thereof, if any, and shall file such certificate in the office of the county auditor of the county wherein the organization is effected and in the office of the secretary of state, who, upon payment of a fee of five dollars, shall cause the same to be recorded in a book to be kept for that purpose, and shall thereupon issue a certificate in the following form:—

STATE OF WASHINGTON.

Be it known that, whereas, (here the names of the subscribers to the agreement of association shall be inserted) have associated themselves with the intention of forming a corporation under the name of (here the name of the corporation shall be inserted), for the purpose (here the purpose declared in the agreement of association shall be inserted), with a capital of (here the amount of the capital stock shall be inserted, or if there is no capital stock this clause shall be omitted), and have complied with the provisions of the laws of this state in such case made and provided, as appears from the certificate of the president, secretary and a majority of the trustees of said corporation, recorded in this office; now, therefore, I (here the name of the secretary shall be inserted), secretary of the state of Washington do hereby certify that said (here the names of the subscribers to agreement of association shall be inserted), their associates and successors, are legally organized and established as and are hereby made an existing corporation, under the name of (here the name of the corporation shall be inserted), with the powers, rights, and privileges and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature subscribed and the seal of the state of Washington hereunto affixed, this — day of —, in the year —. (In these blanks the day, month and year of execution of the certificate shall be inserted.)

The secretary shall sign the same and cause the seal of the state to be thereto affixed, and such certificate shall be conclusive evidence of the existence of such corporation. He shall also cause a record of such certificate to be made, and such corporation shall forthwith cause a certified copy of such record to be filed in the office of the auditor of the county wherein such corporation is located. [L. '95, p. 401, § 6.]

§ 3878. [3746.] By-laws to Contain What.

The corporation may prescribe by its laws the manner in which, and the officers and agents by whom the purposes of its incorporation may be carried out. The corporation may hold real and personal estate, and

may hire, purchase or erect suitable buildings for its accommodation, to be devoted to the purposes set forth in its agreement of association, and may receive and hold in trust, or otherwise, funds received by gift or bequest, to be devoted by it to such purposes. And for the purposes of the corporation shall have power to issue its promissory notes, bonds or other obligations, to be secured by mortgages on its real estate and other property in such manner as may be provided by its by-laws. The board of trustees shall have power to sell or dispose of the whole or any part of the property, either real or personal, which the corporation may from time to time own, and to acquire other property, but shall not sell or dispose of or purchase real estate unless authorized so to do by the vote of two-thirds of all the stock represented or two-thirds of the members present at a meeting called for that purpose, written notice of which shall have been given to all stockholders or members at least thirty days previous thereto by mail, in such manner as shall be provided by the by-laws, which two-thirds vote must comprise at least a majority of all the stock or of the members of the corporation. Such notice shall set forth in full the matter or proposition to be considered at such meeting. Voting by proxy shall be allowed at such meeting. [L. '95, p. 402, § 7; L. '07, p. 127, § 1.]

§ 3879. [3747.] Beneficiaries.

The corporation organized for any purpose mentioned in section 3873 may, for the purpose of assisting widows, orphans or other persons dependent upon deceased members, provide in its by-laws for the payment by each member of a fixed sum, to be held by such association until the death of a member occurs, and then to be forthwith paid to the person or persons entitled thereto; and such fund so held shall not be liable to attachment by garnishment or other process. And the associations may be formed under this act for the purpose of rendering assistance to such persons, and in the manner herein specified. [L. '95, p. 402, § 8.]

"Act" in this section refers to §§ 3872—3883.

§ 3880. [3748.] Death Fund.

Any such beneficiary corporation or society may hold at any one time as a death fund, belonging to the beneficiaries of anticipated deceased members, an amount not exceeding one assessment from a general or unlimited membership, or an amount not exceeding in the aggregate one assessment from each limited class or division of its members: Provided, that nothing in this section shall be held to restrict such fund to less than ten thousand dollars. Such funds, while held in trust, shall be deposited in safe banking institutions, subject to sight drafts for distribution to the beneficiaries aforesaid. [L. '95, p. 403, § 9.]

§ 3881. [3749.] Exempt from Operations of Insurance Laws.

The provisions of the general laws relating to life insurance companies shall not apply to such beneficiary corporations, associations and societies. [L. '95, p. 403, § 10.]

§ 3882. [3750.] Not Retroactive—Pre-existing Societies may Adopt—Certificate.

Nothing contained in this act shall affect the existence of any association or corporation heretofore formed under the provisions of any law in this state for any of the purposes mentioned in section 3873 of this chapter [and] any such corporation may, at a meeting called for the purpose, vote to adopt the provisions of this act, and upon so voting and complying with the provisions of this section shall have the powers and privileges and be subject to the duties and obligations of corporations formed under this act. After so voting the corporation may file with the secretary of the state a certificate signed and sworn to by its president, secretary, and a majority of its board of trustees, setting forth a copy of its articles of incorporation and of said vote, and the date of the meeting at which the vote was adopted, and the secretary of state, upon payment of a fee of five dollars, shall cause the same to be recorded, and shall issue a certificate in the following form:—

STATE OF WASHINGTON.

Be it known that, whereas, (here the names of the original incorporators shall be inserted) have formally associated themselves with the intention of forming a corporation under the name of (here the name of the incorporation shall be inserted) for the purpose (here the purpose declared in the original articles of incorporation shall be inserted). under the provisions of (here the designation of the statute under the provisions of which organization was effected, shall be inserted), with a capital of (here the amount of capital stock as it stands fixed at the date of the certificate shall be inserted; or if there is no capital stock this clause shall be omitted), and the provisions of the laws in this state in such case made and provided have been complied with, as appears from a certificate of the proper officers of said corporation, recorded [in] this office; now, therefore, I (here the name of the secretary is to be inserted), secretary of the state of Washington, do hereby certify that said (here the name of the corporation shall be inserted) is legally organized and established as an existing corporation, with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed and the seal of [the] state of Washington hereunto affixed, this — day of —, in the year —. (In these blanks the day, month and year of execution of the certificate shall be inserted.)

This certificate shall be signed, sealed and recorded, and filed in the same manner, and shall have the same effect as the certificate provided in section 3877. [L. '95, p. 403, § 11.]

“This act” refers to §§ 3872—3883.

§ 3883. [3751.] Agreement, Amendment to—Certificate.

Whenever it is desired to amend in any particular within the scope of this act, the provisions of the articles of agreement of any corporation organized or qualified under this act, such amendment or amendments shall be effected by the filing with the secretary of state of a

certificate signed and sworn to by the president, secretary and a majority of the board of trustees, which certificate shall be authorized by a vote of at least two-thirds of the stock represented or members of the corporation present at a meeting called and held for that purpose, in the manner prescribed by the by-laws and the secretary of state shall, upon payment of a fee of five dollars, cause such certificate to be recorded, and shall issue a certificate in the following form:—

STATE OF WASHINGTON.

Be it known that, whereas, (here the name of the corporation shall be inserted), a corporation heretofore duly organized, has, in accordance with the provisions of the laws of this state in such case made and provided, amended its articles of agreement as follows: (here shall be inserted the nature of the amendment or amendments), as appears from a certificate of the proper officers of said corporation recorded in this office. Now, therefore, I (here the name of the secretary is to be inserted), secretary of the state of Washington, do hereby certify that such amendment (or amendments) ha— been duly adopted as, and now are, a part of the articles of agreement of said corporation.

Witness my official signature hereunto subscribed and the seal of the state of Washington hereunto affixed, this — day of — in the year —. (In these blanks the day, month and year of execution of this certificate shall be inserted.)

This certificate shall be signed, sealed and recorded, and filed in the same manner and shall have the same effect as the certificate provided for in section 3877. [L. '95, p. 404, § 12; L. '07, p. 128, § 2.]

“Act” in this section refers to §§ 3872–3883.

§ 3884. [3751–1.] Corporations Sole—Church and Religious Societies.

Any person, being the bishop, overseer or presiding elder of any church or religious denomination in this state, may, in conformity with the constitution, canons, rules, regulations or discipline of such church or denomination, become a corporation sole, in the manner prescribed in this act, as nearly as may be; and, thereupon, said bishop, overseer or presiding elder, as the case may be, together with his successors in office or position, by his official designation, shall be held and deemed to be a body corporate, with all the rights and powers prescribed in the case of corporations aggregate; and with all the privileges provided by law for religious corporations. [L. '15, p. 251, § 1.]

§ 3885. [3751–2.] Corporate Powers.

Every corporation sole shall, for the purpose of the trust, have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend in all courts and places, in all matters and proceedings whatever, and shall have authority to borrow money and give promissory notes therefor, and to secure the payment of the same by mortgage or other lien upon property, real and personal; to buy, sell, lease, mortgage and in every way deal in real and personal property in the same manner as a natural person may, and without the order of any court; to receive bequests

and devises for its own use or upon trusts, to the same extent as natural persons may; and to appoint attorneys in fact. [L. '15, p. 252, § 2.]

§ 3886. [3751-3.] Filing Articles—Property Held in Trust.

Articles of incorporation shall be filed in like manner as provided by law for corporations aggregate, and therein shall be set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, overseer or presiding elder, as the case may be, is required by the constitution, canons, rules, regulations or discipline of such church or denomination to be filled, which statement shall be verified by affidavit, and for proof of the appointment or election of such bishop, overseer or presiding elder, as the case may be, or any succeeding incumbent of such corporation, it shall be sufficient to file with the secretary of state and in the office of the county auditor of the county in which such bishop, overseer or presiding elder, as the case may be, resides, the original or a copy of his commission, or certificate, or letters of election or appointment, duly attested: Provided, all property held in such official capacity by such bishop, overseer or presiding elder, as the case may be, shall be in trust for the use, purpose, benefit and behoof of his religious denomination, society or church. [L. '15, p. 252, § 3.]

§ 3887. [3751-4.] Existing Corporations Sole.

Any corporation sole heretofore organized and existing under the laws of this state may elect to continue its existence under this title by filing a certificate to that effect, under its corporate seal and the hand of its incumbent, or by filing amended articles of incorporation, in the form, as near as may be, as provided for corporations aggregate, and from and after the filing of such certificate of amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities and provisions in this title expressed. [L. '15, p. 253, § 4.]

CHAPTER IV.

CORPORATIONS NOT FORMED FOR PROFIT.

§ 3888. [3752.] Purpose.

Corporations may be formed under the provisions of this chapter for any lawful purpose except the carrying on a business, trade, avocation or profession for profit. [L. '07, p. 255, § 1.]

§ 3889. [3753.] Membership—No Capital Stock.

The incorporators and members of a corporation formed under the provisions of this chapter may be individuals, copartnerships or corporations. It shall have no capital stock, and shares therein shall not be issued. The interest of each incorporator or member shall be equal to that of any other, and no incorporator or member can acquire any interest which will entitle him to any greater voice, vote, authority or interest in the corporation than any other member. [L. '07, p. 256, § 2.]

§ 3890. [3754.] Membership Assignable.

The corporation may issue membership certificates, which certificates shall be assignable under such provisions, rules and regulations as may be prescribed by the by-laws of the company. [L. '07, p. 256, § 3.]

§ 3891. [3755.] Termination of Membership.

A membership in a corporation formed hereunder may be terminated by voluntary withdrawal, by expulsion and by death. Losses of membership through any such causes and the incidents thereof shall be governed by the by-laws of the company. [L. '07, p. 256, § 4.]

§ 3892. [3756.] Organization—Articles.

Not less than five individuals, copartnerships, or corporations shall be required to form a corporation hereunder. Articles of incorporation shall be prepared, executed and acknowledged in triplicate; one copy shall be filed in the office of the secretary of state, another in the office of the county auditor of the county in which the principal place of business of the corporation is located, and the third retained in the possession of the corporation. Such articles shall state the name of the corporation, the purposes for which it is formed, the place where its principal place of business will be, the term for which it is to exist, not exceeding fifty years, the number of the trustees thereof, and the names of the trustees who shall manage the affairs of the corporation for such length of time, not less than two months, nor more than six months, as may be designated in such articles, until the trustees shall be elected by the members. The formation of the corporation shall be complete upon the filing of the articles as herein provided. [L. '07, p. 256, § 5.]

§ 3893. [3757.] By-laws — Adoption — Condition Precedent to Transaction of Business.

Before transacting any business or acquiring any property the members of the corporation must meet and adopt by-laws. The vote of a majority of all the members of the corporation shall be necessary to the adoption of such by-laws and when adopted the same must be written in a book to be kept by the corporation. The corporation may by its by-laws provide for the time, place and manner of calling and conducting its meetings, the number of trustees, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies on the board caused by death, resignation, removal or otherwise, the power and authority of the trustees, the compensation of the trustees or of any officer, the mode and manner of conducting business, the mode and manner of conducting elections, the qualifications for membership, on what conditions there may be a succession of membership, the manner in which membership shall cease, the mode and manner of expulsion of a member, the termination of a member's interest in the corporate property upon the cessation of his membership, and whether he shall be remunerated therefor, and if so in what manner, the amount of membership fee, and the dues, installments of labor which each member may be required to pay or perform, if any, the charges which may be made for services rendered or supplies fur-

nished the members of the corporation by it, the manner of collection or enforcement of membership fees, dues or charges, and the method of forfeiting the membership interest for nonpayment or nonperformance, the method, time and manner of permitting the withdrawal of a member if at all, and how his interest may be ascertained and payment made therefor, if the company decide that he should be reimbursed therefor, the formation of a surplus fund and the manner and proportions in which such surplus fund shall be distributed, either upon the order of the corporation or upon its dissolution, and generally, all such other matters as may be proper to carry out the purpose for which the corporation was formed. [L. '07, p. 257, § 6.]

§ 3894. [3758.] Powers of Corporation.

Corporations formed under this chapter shall have power of succession by their corporate name for fifty years, in such name may sue and be sued in any court, may make and use a common seal and alter the same at pleasure, may receive gifts and devises, may purchase, hold and convey real and personal property, as the purposes of the corporation may require, may appoint such subordinate agents or officers as the business may require, may demand assessments of members and sell or forfeit their interests in the corporation for default with respect to any lawful provision of the by-laws, may enter into any lawful contracts and incur obligations essential to the transaction of its affairs for the purpose for which it was formed, may borrow money and issue notes, bills or evidence of indebtedness, and may mortgage its property to secure the same as its by-laws may provide, and, generally, may do all things necessary or proper to carry out the purpose of its creation. [L. '07, p. 258, § 7.]

§ 3895. [3759.] Change of Purposes.

The purpose or purposes for which a corporation is created hereunder may be altered, modified, enlarged, or diminished by the vote of two-thirds of all the members at a special meeting called for such purpose, notice of which meeting shall be given in the manner provided by the by-laws for the giving of notice for the election of trustees. [L. '07, p. 258, § 8.]

§ 3896. [3760.] Amendment of By-laws.

The by-laws of the corporation shall prescribe the manner in which they may be amended. [L. '07, p. 258, § 9.]

§ 3897. [3761.] Dissolution.

Any corporation formed under this chapter may be dissolved and its affairs wound up voluntarily by the written request of two-thirds of the members. Such request must be addressed to the trustees and specify reasons why the winding up of the affairs of the corporation is deemed advisable, and name three persons, members of the corporation, to act in liquidation. Upon the filing of such request with the trustees, and a copy thereof in the office of the secretary of state, and of the county auditor of the county where the principal place of business of the corporation is located, the power of the trustee[s] shall cease and

the persons appointed shall proceed to wind up the corporation, realize upon its assets, pay its debts and divide the residue of the money among the members in the proportion to which each member is entitled under the by-laws. This shall be done within the time designated in such request or such further time as may be granted by writing signed by two-thirds of the members and filed in the office of the secretary of state and of the county auditor of the county where the principal place of business of the corporation is located. No receiver of such a corporation or of its property, or of any right therein, can be appointed by any court upon the application of any member save after judgment of dissolution in an action brought by the state to forfeit its franchise. [L. '07, p. 258, § 10.]

§ 3898. [3762.] Not to Engage in Business for Gain, etc.

Any corporation formed under the provisions of this chapter that shall engage in any business, trade, avocation or profession for gain or which shall enter into any agreement or combination in restraint of trade, or to fix or establish the price of any commodity, or to limit or regulate the production or distribution of any commodity, or which shall attempt to restrain trade, or fix or establish the price of any commodity, or limit or regulate the production or distribution of any commodity shall forfeit its right to exist as a corporation and judgment of dissolution may be entered in an action brought by the state to have such forfeiture declared. Nothing herein contained shall be construed to forbid such a corporation accumulating a surplus fund through membership fees and dues, or from charges made its members for services rendered or supplies furnished them by it, and the distribution of such fund among the members in the manner provided by the by-laws. [L. '07, p. 259, § 11.]

§ 3899. [3763.] Existing Corporations may Reorganize Under Chapter.

Any corporation heretofore formed under any law of this state, the purpose or purposes for the creation of which is such that it might have been formed and carry on business hereunder, may avail itself of the privileges and incur the liabilities prescribed by this chapter upon a majority vote of all the members to the effect that it desires to reorganize hereunder, the result of such vote to be evidenced by a certificate executed by the president and secretary under the seal of the corporation and filed in the office of the secretary of state and of the county auditor of the county where the principal place of business of the corporation is located. Upon the filing of such certificate it shall be endowed with all the privileges and affected by all the liabilities prescribed hereunder, but the time of its existence fixed by its articles shall not be enlarged by such action. [L. '07, p. 259, § 12.]

§ 3900. [3764.] Filing and License Fee.

All corporations formed under the provisions of this chapter shall pay to the secretary of state, for the use of the state, the same fee for filing its articles of incorporation and the same annual license fee, as is prescribed by law for other corporations having a capital stock. [L. '07, p. 260, § 13.]

CHAPTER V.

PATRONS OF HUSBANDRY.

§ 3901. [3765.] Manner of Incorporating a Grange.

Any grange of the Patrons of Husbandry, desiring hereafter to incorporate, may incorporate and become a body politic in this state by filing in the office of the secretary of state, and in the office of the county auditor of the county wherein such grange holds its meetings of business, a certificate or articles embodying,—

1. The name of such grange and the place of holding its meetings;
2. What elective officers the said grange will have, when such officers shall be elected; how and by whom the business of the grange shall be conducted and managed, and what officers shall join in the execution of any contract of such grange to give force and effect in accordance with the usages of the order of the Patrons of Husbandry. Such articles shall be subscribed by the master of such grange, attested by the secretary with the seal of the grange;

3. A copy of the by-laws of such grange shall also be filed in the said office of the secretary of state and the county auditor of the proper county;

4. The names of all such officers at the time of filing the application, and the time for which they may be respectively elected. When such articles shall be filed, such grange shall be a body politic and corporate, with all the incidents of a corporation, subject, nevertheless, to the laws and parts of laws now in force or hereafter to be passed regulating corporations. [L. '75, p. 97, § 1; 1 H. C., § 1643.]

§ 3902. [3766.] In What Pursuits Such Corporation may Engage.

Said grange may engage in any industrial pursuit, manufacturing, mining, milling, wharfing, docking, commercial, mechanical, mercantile, building, farming, equipping or running railroads, or generally engage in any species of trade or industry; loan money on security, purchase and sell on real estate; but when desiring to engage in either or any of the above pursuits or industries, said grange shall be subject to all the conditions, and liabilities imposed by the provisions of the general corporation laws, and in addition to the conditions to be performed as recited in the last preceding section, shall file additional articles with said secretary of state and the county auditor of the proper county, stating the object, business, or industry proposed to be pursued or engaged in; the amount of capital stock, the time of its existence, not to exceed fifty years; the number of shares of which the capital stock shall consist, and price per share, and the names of officers necessary to manage said business, and the places where said officers shall pursue the same. [L. '75, p. 97, § 2; 1 H. C., § 1644.]

§ 3903. [3766a.] General Rights and Liabilities.

As a business corporation, said grange, after having complied with the provisions of the last preceding section, shall be to all intents and purposes a domestic corporation, with all the rights, privileges, and immunities allowed, and all the liabilities imposed, by [the laws of the

state relating to corporations engaged in the same kinds of business]. [L. '75, p. 98, § 3; 1 H. C., § 1645.]

The words in brackets substituted for "chapter one," Laws 1873, p. 398, embracing the subject matter now found in § 3803 et seq.

CHAPTER VI.

CO-OPERATIVE ASSOCIATIONS.

§ 3904. [3766-1.] Co-operative Associations—Who may Organize — Purposes.

Any number of persons, not less than five, may associate themselves together as a co-operative association, society, company or exchange for the transaction of any lawful business on the co-operative plan. For the purposes of this act the words "association," "company," "exchange," "society" or "union" shall be construed the same. [L. '13, p. 50, § 1.]

See supra, § 2910, crop credit associations.

§ 3905. [3766-2.] Articles—Contents.

Every association formed under this act shall prepare articles of association in writing, which shall set forth:

1. The name of the association.
2. The purpose for which it was formed.
3. Its principal place of business.
4. The term for which it is to exist which shall not exceed fifty years.
5. The amount of capital stock, the number of shares and the par value of each share. [L. '13, p. 50, § 2.]

§ 3906. [3766-3.] Articles—Verification—Filing—When Legally Organized.

The original articles of associations organized under this act or a true copy thereof verified to be such by the affidavits of two of the signers thereof, shall be filed with the secretary of state. Whenever a certified copy of the same accompanied by a certificate of the secretary of state showing that the same has been filed in his office, is filed with the county auditor of the county in which is located the principal place of business of said association, the said association shall be deemed to be legally organized. [L. '13, p. 50, § 3.]

§ 3907. [3766-4.] Filing Fees.

For filing articles of association organized under this act there shall be paid to the secretary of state the sum of twenty-five dollars and for the filing of an amendment of such articles there shall be paid the sum of ten dollars. For recording such articles of association or an amendment thereto, the county auditor shall charge the sum of fifteen cents for each one hundred words thereof, and fifteen cents for filing and indexing the same. [L. '13, p. 51, § 4.]

§ 3908. [3766-5.] Trustees—Election—Duties—Election of Officers.

Every such association shall be managed by a board of not less than three trustees. The trustees shall be elected by and from the stock-

holders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office during the term for which they were elected and until their successors are elected and qualified; but a majority of the stockholders shall have the power at any regular or special meeting, legally called for that purpose to remove any trustee or officer for cause, and fill the vacancy. The officers of every such association shall be a president, one or more vice-presidents, a secretary and a treasurer who shall be elected annually by the trustees. Each of said officers must be a member of the association. All elections shall be by ballot. [L. '13, p. 51, § 5.]

§ 3909. [3766-6.] Amendments—How Adopted—Recording.

The articles of association may be amended by a majority vote of the stockholders at any regular stockholders' meeting or at any special stockholders' meeting called for that purpose, on twenty days' written notice being given to the stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: Provided, the amount of the capital stock shall not be diminished below the amount of the paid-up capital stock at the time such amendment is adopted. Within thirty days after the adoption of an amendment to its articles of association, the association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the county auditor of the county where its principal place of business is located. [L. '13, p. 51, § 6.]

§ 3910. [3766-7.] Business Authorized to be Conducted—Lawful Business Defined.

An association created under this act, being for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the co-operative plan. [L. '13, p. 52, § 7.]

§ 3911. [3766-8.] Stock—Issues—Limit—Vote.

No stockholder in any such association shall own more than one-fifth of the stock of the association, except as hereinafter provided. No stockholder at any meeting shall be entitled to more than one vote. [L. '13, p. 52, § 8.]

§ 3912. [3766-9.] Subscription of Stock in Other Associations.

At any regular meeting or any regularly called special meeting at which at least a majority of all the stockholders shall be present, or represented, an association organized under this act may by a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund or any part thereof in the capital stock of any other co-operative association. [L. '13, p. 52, § 9.]

§ 3913. [3766-10.] Purchasing Business of Other Associations — Payment—Stock Issued.

Whenever an association organized under this act shall purchase any stock of another association or the interest or any part thereof of any person or persons, firm or partnership engaged in any lawful business

as defined in section 3910, it may pay for the same in whole or in part by issuing to the selling association or person, firm or partnership, shares of its capital stock to an amount which at par value, would equal the fair market value of the stock or interest so purchased and in such case the transfer to the association of such stock or interest so purchased at such valuation shall be equivalent to payment in cash for the shares of stock so issued. [L. '13, p. 52, § 10.]

§ 3914. [3766-11.] Certificates of Stock—When Held in Trust—Issued.

In case the cash value of such stock or interest so purchased exceeds one-fifth of the par value of the purchasing association, the trustees of the purchasing association are authorized to hold the shares in excess of one-fifth of the par value of the purchasing association, in trust for the vendor and dispose of the same to such person or persons and within such time as may be mutually agreed upon by the parties in interest, and shall pay the proceeds thereof as currently received to the former owners thereof. Certificates of stock shall not be issued to any subscriber until fully paid for, but the by-laws of the association may allow subscribers to stock to vote as stockholders: Provided, that one-fifth of the stock subscribed for has been paid for by such subscriber. [L. '13, p. 53, § 11.]

§ 3915. [3766-12.] Stockholders may Vote by Mail.

At any regular, called, general or special meeting of the stockholders, a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing: Provided, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of same is forwarded with and attached to the vote so mailed by him. [L. '13, p. 53, § 12.]

§ 3916. [3766-13.] Earnings—Apportionment.

The trustees shall apportion the net earnings by first paying dividends on the paid-up capital stock at a rate not exceeding eight per cent per annum; then setting aside not less than ten per cent nor more than twenty-five per cent of the remainder annually of the net profits for a reserve fund and the remainder of said net profits by dividends proportioned upon the amount of business transacted with said association and proportioned upon the wages and salaries of employees: Provided, that nonshareholders shall only be entitled to one-half as much dividends from said net profits as shareholders: And provided further, that no dividend shall be paid out or declared on any business transacted with the association by any person, persons, firm or corporation engaged in the buying, selling, or handling of agricultural products for profit or to any sale to said association by any person or persons, firm or corporation engaged as a wholesaler or jobber in the distribution of manufactured products. Dividends remaining uncalled for six months after the same have been declared shall revert to the association. [L. '13, p. 53, § 13.]

§ 3917. [3766-14.] Distribution of Dividends.

The profits or net earnings of such association shall be distributed to those entitled thereto at such time and in such manner not inconsistent with this act as its by-laws shall prescribe, which shall be as often as once a year. [L. '13, p. 54, § 14.]

§ 3918. [3766-15.] Annual Reports—Contents—Filing.

Every association organized under the terms of this act shall, annually on or before the first day of March of each year, make, a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state and a general statement as to its business, showing the total amount of business transacted, the amount of capital stock subscribed for and paid in, the number of stockholders, the total expenses of operation, the amount of its indebtedness or liability and its profits and losses. [L. '13, p. 54, § 15.]

§ 3919. [3766-16.] Co-operative Associations Heretofore Organized—May Adopt Provisions of This Act.

All co-operative associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business shall have the benefit of all the provisions of this act and be bound thereby on filing with the secretary of state signed and sworn to by the president and secretary; manager or other officer managing said business, to the effect that said co-operative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions of this act. No association organized under this act shall be required to do or perform anything not specifically required herein in order to become an association or to continue its business as such. [L. '13, p. 54, § 16.]

§ 3920. [3766-17.] Use of Term "Co-operative" Limited to Associations Under This Act.

No corporation or association organized or doing business for profit in this state shall be entitled to use the term "co-operative" as a part of its corporate or other business name or title, unless it has complied with the provisions of this act; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder or any association legally organized hereunder. [L. '13, p. 55, § 17.]

§ 3921. [3766-18.] When to Do Business—Liability.

No co-operative association organized under the provisions of this act shall be permitted to do business until three-fourths of the capital stock shall have been subscribed for and one-fourth of the capital stock of said association shall have been paid in to said association. The liability of each stockholder shall be limited to the amount remaining unpaid on his subscription to the capital stock of said association. [L. '13, p. 55, § 18.]

§ 3922. [3766-19.] May Pass By-laws.

Any association formed under this act may pass by-laws to govern itself in the carrying out of the provisions of this act which are not inconsistent with the provisions of this act. [L. '13, p. 55, § 19.]

§ 3923. [3766-20.] Constitutionality.

If any section or part of a section of this act shall for any cause be held unconstitutional such fact shall not affect the remainder of this act. [L. '13, p. 55, § 20.]

Corpses. See "Physicians," § 10026.

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COUNTIES.

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BOUNDARIES OF COUNTIES.

For boundaries of the state of Washington, see Const., Art. XXIV, § 1.

Existing counties recognized as legal subdivisions: Const., Art. XI, § 1.

Washington Territory set off from Oregon, see Organic Act, § 1898.

Section 1952, Organic Act, continued in force the laws of Oregon in Washington Territory existing prior to March 2, 1853. These laws were repealed by the act of January 31, 1856: Laws W. T., 1856, p. 7.

The county boundaries existing at the time Washington Territory was severed from Oregon remained the boundaries thereof until altered by subsequent legislation: See Barton's Hand Book 1893-94, 144-152.

Counties formerly existing.—Boise (L. '63, p. 3); Ferguson (L. '63, p. 4); Idaho (L. '62, p. 3); Missoula (L. '61, p. 7); Nez Perces (L. '62, p. 4); Shoshone (L. '62, pp. 4, 13).

§ 3924. [3767.] Adams County.

Adams county shall be and consist of all the territory of Whitman county bounded as follows, to wit: Beginning at the northwest corner of township fourteen north, range twenty-eight east of the Willamette Meridian; running thence north to the fourth standard parallel; thence east to the Columbia River Guide Meridian; thence north to the fifth standard parallel; thence east on said parallel to the line between the ranges thirty-eight and thirty-nine; thence south on said line to where it intersects the Palouse River in township sixteen; thence down said river to where the line between townships fourteen and fifteen crosses said river; thence west on said line to place of beginning. [L. '83, p. 93, § 1; H. C., § 1.]

§ 3925. [3768.] Asotin County.

All that portion of Garfield county situated within the state of Washington, and included within the following limits, shall be constituted and known as the county of Asotin, viz.: Commencing at a point in the channel of Snake River on the township line between ranges forty-four and forty-five; thence running south to the northwest corner of section thirty, township eleven north, range forty-five east, of the Willamette Meridian; thence west six miles; south one mile; west two miles; south one mile; west one mile to the northwest corner of section three in township ten north, of range forty-three east, of the Willamette Meridian; thence south eighteen miles; thence west three miles; thence south to the Oregon line; thence east on said line to the mid-channel of Snake River; thence down the mid-channel of Snake River to the place of beginning. [L. '83, p. 96, § 1; 1 H. C., § 2.]

§ 3926. [3769.] Benton County.

All those portions of the counties of Yakima and Klickitat described as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia River with the township line between township thirteen, north range twenty-three east, and township thirteen, north range twenty-four east, Willamette Meridian; thence running south along the township lines, being the line between range twenty-three east and range twenty-four east to the line between Yakima county and Klickitat county; thence south along the township lines

along the line between ranges twenty-three east and twenty-four east, to the point of intersection with the middle of the main channel of the Columbia River, or to its intersection with the lines between the states of Washington and Oregon; thence northeasterly, northerly and northwesterly and westerly along the middle of the main channel of the Columbia River and up said stream, following the line between Klickitat county and the state of Oregon, and the county of Walla Walla and the line between Yakima county and Walla Walla county, Franklin county and Douglas county, to the places of beginning,—shall be and hereby is created and established as the county of Benton. [L. '05, p. 185, § 1.]

§ 3927. [3770.] Chehalis County.

Chehalis county shall be and consist of all that territory commencing at the northeast corner of Pacific county; thence west to the sea coast; thence northerly along said coast, including Gray's Harbor, to the mouth of Queet's Creek or River, thence east thirty-six miles to the northwest corner of Mason county; thence south to the northeast corner of township number eighteen north, range seven west; thence east fourteen miles to the southeast corner of section thirty-two, in township number nineteen north, range four west; thence south six miles to the southeast corner of section thirty-two in township number eighteen north, range four west; thence east two miles to the southeast corner of section thirty-four, same township; thence south to a point due east of the northeast corner of Pacific county; thence west to the place of beginning. [L. '54, p. 472; L. '60, p. 444; L. '64, p. 74; L. '67, p. 49; L. '69, p. 296; L. '73, p. 482; 1 H. C., § 3.]

See § 3938, *infra*, name changed to Grays Harbor county.

§ 3928. [3771.] Chelan County.

All those portions of the counties of Kittitas and Okanogan described as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia River with the fifth standard parallel north, thence running west along said fifth standard parallel north to the point where said fifth standard parallel north intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers, and the waters flowing southerly and westerly into the Yakima River, thence in a general northwesterly direction along the summit of said main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima River, following the course of the center of the summit of the watershed dividing the said respective waters, to the center of the summit of the Cascade Mountains; at the eastern boundary line of King county; thence north along the east boundary line of King, Snohomish and Skagit counties to the point upon the said east boundary of Skagit county, where said boundary is intersected by the watershed between the waters flowing northerly and easterly into the Methow River and the waters flowing southerly and westerly into Lake Chelan; thence in a general southeasterly direction along the summit of the

main divide between the waters flowing northerly and easterly into the Methow River and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters, to the point where the seventh standard parallel north intersects said center of the summit of said watershed; thence east along the said seventh standard parallel north to the point of intersection of the middle of the main channel of the Columbia River with said seventh standard parallel north; thence down the middle of the main channel of the Columbia River to the point of beginning, shall be and hereby is created and established as the county of Chelan. [L. '99, p. 148, § 1.]

§ 3929. [3772.] Clallam County.

Clallam county shall be and consist of all that territory commencing at the northwest corner of Jefferson county at a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; then following up the middle of said channel to a point directly east of the mouth of Eagle Creek; thence west to the mouth of Eagle Creek; thence one mile west from the mouth of said creek; thence south to the north boundary line of township twenty-seven north, range two west; thence west to the seacoast; thence following up the said coast to Cape Flattery and to the Strait of Juan de Fuca; thence easterly along the coast of said Strait of Juan de Fuca to the place of beginning. (Spelled "Clalam" and "Clalm" in early laws.) [L. '54, p. 472; L. '67, p. 45; L. '69, p. 292; L. '69, p. 292; 1 H. C., § 4.]

§ 3930. [3773.] Clarke County.

Clarke county shall be and consist of all that territory commencing at the Columbia River opposite the mouth of Lewis River; thence up Lewis River to the forks of said river; thence up the north fork of Lewis River to where said north fork of Lewis River intersects the township line between townships four and five east; thence due south to the Columbia River; thence with the main channel of said river to the place of beginning. [L. '54, p. 473; L. '55, pp. 42, 43; L. '67, p. 48; L. '69, p. 295; L. '71, p. 153; L. '73, p. 561; 1 H. C., § 5.]

§ 3931. [3774.] Columbia County.

Columbia county shall be and consist of all that territory commencing at a point in the middle of the channel of Snake River, where the range line between ranges thirty-six and thirty-seven east of the Willamette Meridian intersects said point; thence south on said range line to the northwest corner of township number nine north, range thirty-seven east; thence east on the north boundary line of township number nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east of the Willamette Meridian, to the northeast corner of township number six north, range thirty-seven east; thence along the north boundary line of township number six north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due

east on said dividing line to the range line between ranges forty-one and forty-two east; thence north on range line to the corner of sections thirteen, eighteen, nineteen and twenty-four, township ten north, ranges forty-one and forty-two east; thence west three miles; thence north three miles; thence west one mile; thence north one mile; thence west one mile; thence north three miles; thence west one mile; thence north to the southwest corner of township twelve north, range forty-one east; thence west on township line six miles; thence north on range line between ranges thirty-nine and forty to a point in the mid-channel of Snake River; thence down the mid-channel of said river to the place of beginning. [L. '75, p. 173; L. '79, p. 226; L. '81, p. 175; 1 H. C., § 6.]

§ 3932. [3775.] Cowlitz County.

Cowlitz county shall be and consist of all that territory commencing at the Columbia River opposite the mouth of Lewis River; thence up Lewis River to the forks of said river; thence up the north fork of Lewis River to where said north fork of Lewis River intersects the township line between townships four and five east; thence north to the line between townships ten and eleven north; thence west to the first section line east of the township line between townships four and five west; thence south on said line to the Columbia River, and up Columbia River to the place of beginning. [L. '54, p. 471; L. '55, p. 39; L. '67, p. 48; L. '69, p. 295; L. '71, p. 153; L. '73, p. 561; 1 H. C., § 7.]

§ 3933. [3776.] Douglas County.

All that portion of the state of Washington described as follows, wit: Beginning at the point where the Columbia Guide Meridian intersects the Columbia River on the northern boundary of Lincoln county, and thence running south on said Columbia Guide Meridian to the township line between townships number sixteen and seventeen; thence running west on said township line to the range line between ranges twenty-seven and twenty-eight; thence south on said range line to the section line between sections twenty-four and twenty-five in township fourteen north, range twenty-seven east; thence west on said section line to the mid-channel of the Columbia River; thence up said channel of said river to the place of beginning,—shall be known and designated as the county of Douglas. [L. '83, p. 95; 1 H. C., § 8.]

Grant county from this territory, see *infra*, § 3937.

§ 3934. [3777.] Ferry County.

All that portion of the state of Washington described as follows, to wit: Commencing at the point where the boundary line between Stevens and Okanogan counties intersect the Columbia River, thence up the mid-channel of the Columbia River to the mouth of Kettle River, thence up the mid-channel of Kettle River to the boundary line between the United States and British Columbia, thence westerly along the said boundary line to the intersection thereof with the said boundary line between Stevens and Okanogan counties, thence southerly along the said boundary line to the place of beginning, shall be and hereby is created and organized as the county of Ferry, and so named in honor

of the Honorable Elisha P. Ferry, the first governor of the state. [L. '99, p. 26, § 1.]

§ 3935. [3778.] Franklin County.

Franklin county shall be and consist of all that territory of Whitman county bounded as follows, to wit: Beginning at a point where the mid-channel of the Snake River intersects that of the Columbia River, and running thence up the Columbia River to a point where section line between sections twenty-one and twenty-eight, townships fourteen north, range twenty-seven east, Willamette Meridian, state of Washington, strikes the main body of the Columbia River, on the west side of the island; thence east on said section line to township line between ranges twenty-seven and twenty-eight east; thence north on said range line to north boundary of township fourteen; thence east on said north boundary of township fourteen to the Palouse River; thence down said river to the mid-channel of Snake River; thence down said Snake River to place of beginning. [L. '83, p. 87; 1 H. C., § 9.]

§ 3936. [3779.] Garfield County.

Garfield county shall be and consist of all that territory commencing at a point in the mid-channel of Snake River on township line between ranges thirty-nine and forty; thence on said line south to the southwest corner of township twelve, range forty; thence east on township line six miles; thence south to the southwest corner of section seven, township eleven north, of range forty-one east; thence east one mile; thence south three miles; thence east one mile; thence south one mile; thence east one mile; thence south three miles; thence east three miles; thence south on township line to the Oregon line; thence due east on said line six miles to the southwest corner of Asotin county; thence northerly following the westerly boundary of Asotin county to a point where the same intersects the mid-channel of Snake River; thence down the said mid-channel of Snake River to the point of beginning. [L. '81, p. 175; L. '83, p. 96; 1 H. C., § 10.]

§ 3937. [3780.] Grant County.

All of that portion of Douglas county, and state of Washington, described as follows, to wit: Beginning at the southeast corner of township seventeen north, range thirty east of the Willamette Meridian, thence running west on the township line between townships sixteen and seventeen to the range line between ranges twenty-seven and twenty-eight, thence south on said range line to the section line between sections twenty-four and twenty-five in township fourteen north, range twenty-seven east, thence west on said section line to the mid-channel of the Columbia River; thence up said channel of said river to a point, thence at right angles to the course of said channel to the meander corner of section thirteen of township twenty north, range twenty-two east Willamette Meridian, and section eighteen, township twenty north, range twenty-three east Willamette Meridian, thence north along the range line between ranges twenty-two and twenty-three to the northwest corner of section eighteen, township thirty-one north, range twenty-three east Wil-

lamette Meridian, thence east one mile to the southeast corner section seven, township twenty-one, range twenty-three east; north one mile to the northwest corner section eight, township twenty-one, range twenty-three east; east one mile to the southeast corner section five, township twenty-one, range twenty-three east; north one mile to the northeast corner section five, township twenty-one, range twenty-three east; east one mile to the northeast corner section four, township twenty-one, range twenty-three east; north one mile to the southeast corner section twenty-eight, township twenty-two, range twenty-three east; east one mile to the southeast corner section twenty-seven, township twenty-two, range twenty-three east; north two miles to the northeast corner section twenty-two, township twenty-two, range twenty-three east; east one mile to the southeast corner section fourteen, township twenty-two, range twenty-three east; north one mile to the southeast corner section eleven, township twenty-two, range twenty-three east; east one mile to the southeast corner section twelve, township twenty-two, range twenty-three east; north two miles to the northwest corner section six, township twenty-two, north range twenty-four east; east sixteen miles to the northeast corner section three, township twenty-two, north range twenty-six east; north six miles to the northeast corner section three, township twenty-three, north range twenty-six east; east one mile to the northeast corner section two, township twenty-three, north range twenty-six east; north one mile to the northeast corner section thirty-five, township twenty-four, north range twenty-six east; east one mile to the southeast corner section twenty-five, township twenty-four, north range twenty-six east; north one mile to the southeast corner section twenty-four, township twenty-four, north range twenty-six east; east one mile to the southeast corner section eighteen, township twenty-four, north range twenty-seven east; north one mile to the southeast corner section eighteen, township twenty-four, north range twenty-seven east; east one mile to the southeast corner section seventeen, township twenty-four, north range twenty-seven east; north one mile to the southeast corner section eight, township twenty-four, north range twenty-seven east; east one mile to the southeast corner section nine, township twenty-four, north range twenty-seven east; north one mile to the southeast corner section four, township twenty-four, north range twenty-seven east; east one mile to the southeast corner section three, township twenty-four, range twenty-seven east; north one mile to the northeast corner section three, township twenty-four, range twenty-seven east; east three miles to the southeast corner section thirty-one, township twenty-five, north range twenty-eight east; north one mile to the southeast corner of section thirty, township twenty-five, north range twenty-eight east; east one mile to the southeast corner of section twenty-nine, township twenty-five, north range twenty-eight east; north three miles to the southeast corner of section eight, township twenty-five, north range twenty-eight east; east one mile to the southeast corner of section nine, township twenty-five, north range twenty-eight east; north four miles to the southeast corner of section twenty-one, township twenty-six, north range twenty-eight east; east one mile to the southeast corner of section twenty-two, township twenty-six, north range twenty-eight east; north one mile to the southeast corner of section fif-

teen, township twenty-six, north range twenty-eight east; east one mile to the southeast corner of section fourteen, township twenty-six, north range twenty-eight east; north two miles to the southeast corner of section two, township twenty-six, north range twenty-eight east; east one mile to the southeast corner of section one, township twenty-six north range twenty-eight east; north two miles to the southeast corner of section twenty-five, township twenty-seven, north range twenty-eight east; east one mile to the southeast corner of section thirty, township twenty-seven, north range twenty-nine east; north six miles to the southeast corner of section thirty, township twenty-eight, north range twenty-nine east; east one mile to the southeast corner of section twenty, township twenty-eight, north range twenty-nine east; north one mile to the southeast corner of section twenty, township twenty-eight, north range twenty-nine east; east two miles to the southeast corner of section twenty-two, township twenty-eight, north range twenty-nine east; north one mile to the southeast corner of section fifteen, township twenty-eight, north range twenty-nine east; east one mile to the southeast corner of section fourteen, township twenty-eight, north range twenty-nine east; east one mile to the southeast corner of section twenty, township twenty-eight, north range twenty-nine east; east one mile to the southeast corner of section one, township twenty-eight, north range twenty-nine east; north one mile to the northeast corner of section one, township twenty-eight, north range twenty-nine east; thence east along township line between townships twenty-eight and twenty-nine to the mid-channel of the Columbia River; thence up said channel of said river to the point where the Columbia Guide Meridian intersects said channel; thence running south on said Columbia Guide Meridian to the place of beginning, which said described territory shall constitute the county of Grant. [L. '09, p. 19, § 1.]

Through an error, the description of these boundaries does not close, but the intent is evident.

Cited in 72 Wash. 325.

§ 3938. [3780-1.] Grays Harbor County.

That the name of Chehalis county be, and the same is, hereby changed to Grays Harbor county. [L. '15, p. 250, § 1.]

See § 3927, *supra*, boundaries of Chehalis county.

§ 3939. [3781.] Island County.

The boundaries of Island county shall include all of the islands known as Whidby, Camano, Smith's Deception and Ure's and shall extend into the adjacent channels to connect with the boundaries of adjoining counties as defined by statute. [L. '63, p. 28, relocating county seat; L. '67, p. 46; L. '68, p. 68; L. '69, p. 292; L. '77, p. 425; L. '91, p. 217; 1 H. C., § 11.]

§ 3940. [3782.] Jefferson County.

Jefferson county shall be and consist of all that territory commencing at the middle of the channel of Admiralty Inlet due north of Point Wilson; thence westerly along the Strait of Fuca to the north of

Protection Island, to a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point direct east of the mouth of Eagle Creek; thence west to the mouth of Eagle Creek; thence one mile west from the mouth of said creek; thence south to the summit of the Olympic range of mountains, it being the southeast corner of Clallam county, on the north boundary line of township twenty-seven north, range two west; thence west to the Pacific Ocean; thence southerly along the coast to the mouth of Queets; thence east to the township line dividing ranges six and seven west; thence north on said township line to the sixth standard parallel; thence east to the middle of the channel of Hood's Canal; thence northerly along said channel to the middle of the channel of Admiralty Inlet; thence northerly following the channel of said inlet to a point due north of Point Wilson and place of beginning. [L. '54, p. 470; L. '58, p. 52; L. '67, p. 45; L. '68, p. 80, creating Quillehuyte County; L. '69, p. 292; L. '77, p. 406; L. '69, p. 297, repealing law creating Quillehuyte County; 1 H. C., § 12.]

See boundaries of Mason county.

§ 3941. [3783.] King County.

King county shall be and consist of all the territory commencing where the fifth parallel line strikes the mainland near the head of Commencement Bay; thence east along said parallel line to the middle of the main channel of White River; thence up the middle of the main channel of White River to the forks of White River and Green Water; thence up the main channel of Green Water to the summit of the Cascade Mountains; thence northerly along said summit to the southeast corner of township number twenty-seven north, range eleven east, it being a point due east of the northeast corner of township twenty-six, range four east; thence west to Admiralty Inlet; thence southerly along the main channels of Admiralty Inlet, Colvo's Passage and Commencement Bay, to the fifth standard parallel and the place of beginning. [L. '54, p. 470; L. '67, p. 46; L. '69, p. 293; 1 H. C., § 13.]

The boundary between Pierce and King counties has been changed by annexation proceedings, under § 3972 et seq., *infra*.

§ 3942. [3784.] Kitsap County.

Kitsap county shall be and consist of all that territory commencing in the middle of Colvo's Passage at a point due east of the meander post between sections nine and sixteen, on west side of Colvo's Passage, in township number twenty-two north, range two east; thence west on the north boundary line of sections sixteen, seventeen and eighteen, to the head of Case's Inlet; thence north along the east boundary of Mason county through the center of townships twenty-two and twenty-three, range one west, to the north line of said townships number twenty-three; thence continue due west to the middle of the channel of Hood's Canal; thence along said channel to the middle of the main channel of Admiralty Inlet; thence following said channel up to the middle of Colvo's Passage; thence following the channel of said passage to the place of beginning. [L. '58, p. 51; L. '67, p. 46; L. '69, p. 293; L. '77, p. 406; 1 H. C., § 14.]

§ 3943 [3784½.] Kittitas County.

The following limits shall be known as the county of Kittitas, viz.: Commencing at a point where the main channel of the Columbia River crosses the township line between township fourteen and fifteen north, of range number twenty-three east, of the Willamette Meridian, and running thence west on the said township line to the range line between ranges eighteen and nineteen east; thence north on said range line six miles, or to the township line between the townships fifteen and sixteen north; thence west on the said township line to the range line between ranges seventeen and eighteen east; thence north to the township line between townships sixteen and seventeen north; thence west along said township line and a line prolonged due west to the Nachess River; and thence northerly along the main channel of the Nachess River to the summit of the Cascade Mountains, or to the eastern boundary of Pierce county; thence north along the eastern boundaries of Pierce and King counties to the point where the east boundary of King county intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima River; thence in a general southeasterly direction along the summit of said main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima River, following the course of the center of the summit of the watershed dividing the said respective waters, to the fifth standard parallel north; thence east along the fifth standard parallel north to the middle of the main channel of the Columbia River; thence down the main channel of the Columbia to the place of beginning. [L. '83, p. 90; L. '86, p. 168; 1 H. C., § 15; L. '99, p. 148, § 1.]

§ 3944. [3785.] Klickitat County.

Klickitat county shall be and consist of all that territory commencing at a point mid-channel of the Columbia River opposite the mouth of the White Salmon [River]; thence up the said channel of said White Salmon River as far north as the southern boundary of township four north of range ten east of Willamette Meridian; thence due west on said township line to range nine east of Willamette Meridian; thence north following said range line till it intersects the south boundary of Yakima county (projected); thence east along the north boundary of township number six north until said line intersects the range line between range twenty-three east and range twenty-four east; thence south along said range line to the Columbia River; thence down the Columbia River, mid-channel, to the place of beginning. (Spelled "Clickitat" in early laws.) [L. '60, p. 420; L. '61, p. 59; L. '67, p. 49; L. '68, p. 60; L. 69, p. 296; L. '73, p. 57; L. '81, p. 187; 1 H. C., § 17; L. '05, p. 185, § 1.]

§ 3945. [3786.] Lewis County.

The boundary lines of Lewis county shall be as follows, to wit: Beginning at the northwest corner of section eighteen, in township number fifteen north, range five west; thence south along the west boundary of

range five west to the southwest corner of township eleven north, range five west; thence east along south boundary of township eleven north to the summit of the Cascade Range; thence northerly along said summit to the head of Nisqually River; thence westerly down the channel of said river to a point two miles north of the line between townships fourteen and fifteen north; thence west to the northwest corner of section twenty-six, in township fifteen north, range four west; thence north two miles to the northwest corner of section fourteen, in township fifteen north, range four west; thence west to place of beginning. [L. '61, p. 33; L. '67, p. 48; L. '69, p. 295; L. '79, p. 213; L. '88, p. 73; 1 H. C., §§ 18, 19.]

§ 3946. [3787.] Lincoln County.

All that portion of Spokane county, state of Washington, described as follows: Beginning at the point in township number twenty-seven north, where the Colville Guide Meridian between ranges thirty-nine and forty east, Willamette Meridian, intersects the Spokane River, and running thence south along said meridian line to the township line between townships numbered twenty and twenty-one north; thence west along said township line to its intersection with the Columbia Guide Meridian between ranges numbered thirty and thirty-one east, Willamette Meridian; thence north along said meridian line to a point where the same intersects the mid-channel of the Columbia River; thence up said river in the middle of the channel thereof to the mouth of the Spokane River; thence up said Spokane River, in the middle of the channel thereof, to the place of beginning—shall be known and designated as the county of Lincoln. [L. '83, pp. 89, 95; 1 H. C., § 20.]

§ 3947. [3788.] Mason County.

Mason county shall be and consist of all that territory commencing in middle of the main channel of Puget Sound where it is intersected by the mid-channel of Case's Inlet; thence westerly along the mid-channel of Puget Sound, via Dana's Passage, into Totten's Inlet, and up said inlet to its intersection by section line between sections twenty-eight and twenty-nine, in township nineteen north, range three west, of the Willamette Meridian; thence south to the southwest corner of section thirty-three in said township nineteen north, three west, thence west along the township line dividing townships eighteen and nineteen, twenty miles. to the township line dividing ranges six and seven west, of the Willamette Meridian, which constitutes a part of the east boundary line of Chehalis county; thence north along said township line to the sixth standard parallel; thence east along said parallel line to the middle of the channel of Hood's Canal; thence southerly along said mid-channel to a point due west of the intersection of the shore line of said Hood's Canal by the township line between townships twenty-three and twenty-four; thence east along said township line to the line dividing sections three and four in said township twenty-three north, one west, of the Willamette Meridian; thence south along said section line to the head of Case's Inlet; thence south by the mid-channel of said inlet to the place of beginning. [L. '54, p. 470, defining Sawamish County; L. '54, p. 474; L. '60, p. 458; L. '61, pp. 30, 56; L. '63, p. 7; L. '64, p. 71, chang-

ing name to Mason County; L. '67, p. 45; L. '69, p. 293; L. '77, p. 406; 1 H. C., § 21.]

§ 3948. [3789.] Okanogan County.

All of that part of Stevens county beginning at the intersection of the forty-ninth parallel with the range line between ranges thirty-one and thirty-two east, and from thence running in a southerly direction on said range line to the intersection of the said range line with the Columbia River, and thence down said river to the seventh standard parallel north; thence west along the seventh standard parallel north to the watershed between the waters flowing northerly and easterly into the Methow River and the waters flowing southerly and westerly into Lake Chelan; thence in a general northwesterly direction along the summit of the main divide between the waters flowing northerly and easterly into the Methow River and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters to the point where the same intersects the east boundary of Skagit county and the summit of the Cascade Mountains; thence northerly with said summit to the forty-ninth parallel, and thence on the said parallel to the place of first beginning,—shall be and constitute the county of Okanogan. [L. '88, p. 70; 1 H. C., § 22; L. '99, p. 148, § 1.]

§ 3949. [3790.] Pacific County.

Pacific county shall be and consist of all that territory commencing at the mid-channel of the Columbia River at the point of intersection of the line between ranges eight and nine west; thence north along said line to the north boundary of township ten north; thence east along said boundary to the line between ranges five and six west; thence north along the west boundary of range five west to the northwest corner of section eighteen in township number fifteen north, range five west; then west to the seacoast; thence southerly, including Shoalwater Bay, to Cape Disappointment; thence up mid-channel of the Columbia River to the place of beginning. [L. '54, p. 471; L. '60, p. 429; L. '67, p. 49; L. '69, p. 296; L. '73, p. 538; L. '79, p. 213; 1 H. C., § 23.]

§ 3950. [3790-1.] Pend Oreille County.

Pend Oreille county shall be and consist of all that portion of Stevens county bounded and described as follows, to wit:

Beginning at the southeast corner of section 36 in township 30 north, range 42 east of the Willamette Meridian, which is a point on the boundary line between Stevens and Spokane counties; thence running north, along the east line of said township 30 north, range 42 east of the Willamette Meridian, to the northeast corner of section 1, in said township 30; thence west to the southwest corner of section 34 in township 31 north, range 42 east of Willamette Meridian; thence north, along the west line of sections 34, 27 and 22 of said township 31, north, range 42 E. W. M.; thence north on a line from said northwest corner of section 22 in said township 31 to a point on the north line of said township 31, midway between the northeast corner and the northwest corner of said township 31, which line will be the west line of sections 15, 10 and

3 of said township 31, when the same are surveyed; thence to the center point on the south line of township 32, north range 42 east of Willamette Meridian; thence north on the north and south center line of said township 32, which line will be the west line of sections 34, 27, 22, 15, 10, and 3 of said township 32 when the same shall be surveyed, to the north line of said township 32; thence to the center point on the south line of township 33 north, range 42 east of Willamette Meridian; thence north, on the north and south center line of township 33 north of range 42 east of Willamette Meridian, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township 33, when the same shall be surveyed, to the north line of said township 33; thence to the center point on the south line of township 34 north, range 42 east of Willamette Meridian; thence north on the north and south center line of said township 34, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township 34 when the same shall be surveyed, to the north line of said township; thence to the center point on the south line of township 35 north, range 42 east of Willamette Meridian; thence north, on the north and south center line of township 35 north, range 42 east of Willamette Meridian, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township 35 when the same shall be surveyed to the north line of said township 35; thence to the southwest corner of section 34 in township 36 north, range 42 east of Willamette Meridian; thence north, along the west line of sections 34, 27, 22, 15, 10 and 3 to the northwest corner of section 3 of said township 36; thence west along the south line of township 37 north, range 42, and township 37 north, range 41, east of the Willamette Meridian, to the center point on the south line of said township 37 north, range 41 east of the Willamette Meridian, which point will be the southwest corner of section 34 in said township 37 north, range 41 east of the Willamette Meridian, when the same shall be surveyed; thence north along the north and south center line of said township 37 north, range 41 east of the Willamette Meridian, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township when the same shall be surveyed, to the north line of said township 37; thence east, along the south line of township 38 north, range 41 east of the Willamette Meridian to the southeast corner of said township 38 north, range 41 east of the Willamette Meridian; thence to the southwest corner of section 31 in township 38 north, range 42 east of Willamette Meridian; thence north, along the west line of said township 38. to the northwest corner of said township 38; thence east along the north line of said township 38, to the center point on the south line of township 39, north range 42 east of Willamette Meridian, which point will be the southwest corner of section 34 of said township 39 when the same shall be surveyed; thence north along the north and south center line of said township 39, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township 39, when the same shall be surveyed, to the north line of said township 39; thence east along the south line of township 40, north range 42, east of Willamette Meridian to the southeast corner of said township 40; thence north, along the east line of said township 40, to the international boundary line; thence east along said international boundary line, to the intersection of the state

line between the states of Washington and Idaho with said international boundary line; thence south along said state line, to the southeast corner of section 31, township 30 north, range 46 east of Willamette Meridian, being a point on the boundary line between the counties of Stevens and Spokane in said state of Washington; thence west along said boundary line between said counties of Stevens and Spokane, to said southeast corner of section 36, township 30 north, range 42 east of Willamette Meridian, the place of beginning, is hereby detached from Stevens county and created into a new county, to be known and designated as Pend Oreille county, by which name it shall have corporate succession and possess corporate powers, and be subject to the corporate liabilities conferred by law upon counties of the state of Washington. [L. '11, p. 98, § 1.]

§ 3951. [3791.] Pierce County.

Pierce county shall be and consist of all that territory commencing at the mouth, mid-channel, of the Nisqually River; thence following the main channel of said river to its head; thence due east to the summit of the Cascade Mountains; thence northerly along said summit to the head of Green Water; thence westerly down said river to its confluence with White River; thence down the main channel of White River to the intersection of the fifth standard parallel; thence west along said line to the head of Commencement Bay; thence northerly along the main channel of said bay to the south entrance of Colvo's Passage; thence down the channel of said passage to the northeast corner of section sixteen, in township number twenty-two north, range two east; thence west to the northeast corner of section sixteen, in township number twenty-two north, range one west; thence southerly along the channels of Case's Inlet and Puget Sound, to the middle of the mouth of the Nisqually River and place of beginning. [L. '55, p. 43; L. '59, p. 59; L. '67, p. 47; L. '69, p. 294; 1 H. C., § 24.]

The boundary between Pierce and King counties has been changed by annexation proceedings, under § 3972 et seq., *infra*.

§ 3952. [3792.] San Juan County.

San Juan county shall be and consist of all that territory commencing in the Gulf of Georgia at the place where the boundary line between the United States and the British possessions deflects from the forty-ninth parallel of north latitude; thence following said boundary line through the Gulf of Georgia and Canal De Haro to the middle of the Strait of Fuca; thence easterly through Fuca Straits along the center of the main channel between Blunt's Island and San Juan and Lopez Islands to a point easterly from the west entrance of Deception Pass, until opposite the middle of the entrance to the Rosario Straits; thence northerly through the middle of Rosario Straits and through the Gulf of Georgia to the place of beginning. [L. '73, p. 461; L. '77, p. 425; 1 H. C., § 25.]

§ 3953. [3793.] Skagit County.

Skagit county shall be bounded as follows, viz.: Commencing at mid-channel of the Rosario Straits where the dividing line between townships

thirty and thirty-seven intersects the same; thence east on said township line to the summit of the Cascade Mountains; thence south along the summit of said mountain range to the eighth standard parallel; thence west along said parallel to the center of the channel or deepest channel of the nearest arm of Puget Sound and extending along said channel to the east entrance of Deception Pass; thence through said pass to the center of the channel of Rosario Straits; thence northerly along said channel to the place of beginning. [L. '83, p. 97; 1 H. C., § 26.]

§ 3954. [3794.] Skamania County.

Skamania county shall be and consist of all that territory commencing on the Columbia River at a point where range line number four east strikes said river; thence north to the north boundary of township number ten north; thence east to a point due north of the mouth of White Salmon; thence south to the township line dividing townships six and seven; thence west to the northwest corner of Klickitat county; thence south along the west boundary of said county to the Columbia River; thence along the mid-channel of said river to the place of beginning. [L. '54, p. 472; L. '67, p. 49; L. '69, p. 296; L. '79, p. 213; L. '81, p. 187; 1 H. C., § 27.]

§ 3955. [3795.] Snohomish County.

Snohomish county shall be and consist of all that territory commencing at the southwest corner of Skagit county; thence east (along the eighth standard parallel) to the summit of the Cascade Mountains; thence southerly along the summit of said Cascade Mountains to the northeast corner of King county, it being a point due east of the northeast corner of township number twenty-six north of range four east; thence due west along the north boundary of King county to Admiralty Inlet; thence northerly along the channel of said inlet to the entrance of Port Susan, including Gendey Island; thence up the main channel of Port Susan to the mouth of the Steilaguamish River; thence northwesterly through the channel of the slough at the head of Camano Island, known as Davis Slough; thence northerly to the place of beginning. [L. '61, p. 19; L. '62, p. 107; L. '67, p. 44; L. '69, p. 291; L. '77, p. 426; 1 H. C., § 28.]

§ 3956. [3796.] Spokane County.

Spokane county shall be and consist of all that territory commencing at the northeast corner of Lincoln county; thence up the mid-channel of the Spokane River to the Little Spokane River; thence north to the township line between townships twenty-nine and thirty; thence east to the boundary line between Washington and Idaho; thence south on said boundary line to the fifth standard parallel; thence west on said parallel to the Colville Guide Meridian; thence north on said meridian to the place of beginning. [L. '58, p. 51; L. '60, p. 436; L. '64, p. 70; L. '79, p. 203; 1 H. C., § 29.]

§ 3957. [3797.] Stevens County.

Stevens county shall be and consist of all that territory commencing at the point of intersection of the forty-ninth parallel of latitude

and the boundary line between Washington and Idaho; thence west with said parallel to the mid-channel of the Kettle River; thence down the mid-channel of the Kettle River to the Columbia River; thence down the mid-channel of said river to the Spokane River; thence up the mid-channel of the Spokane River to the Little Spokane River; thence north to the township line between townships twenty-nine and thirty; thence east to the boundary line between Washington and Idaho; thence north on said line to the forty-ninth parallel of latitude and place of beginning. [L. '63, p. 6; L. '64, p. 70; L. '67, p. 50; L. '69, p. 297; L. '79, p. 203; L. '88, p. 70; 1 H. C., § 30; L. '99, p. 26, § 1.]

See § 3950, Pend Oreille county, from this territory.

§ 3958. [3798.] Thurston County.

Thurston county shall be and consist of all that territory commencing at the southeast corner of section thirty-two in township number nineteen north, range four west; thence east on township line to the southeast corner of section thirty-two in township number nineteen north, range three west; thence north to the middle of the channel of Totten's Inlet; thence along said channel to the waters of Puget Sound, intersecting the line in channel of Puget Sound west of the southern portion of Squaxen Reservation; thence following said channel to the mouth of the Nisqually River; thence up mid-channel of said river to a point where it strikes the north boundary of Lewis county; thence due west to the northwest corner of section twenty-six in township number fifteen north, range four west; thence north to the southeast corner of section thirty-four in township number eighteen north, range four west; thence west on the township line to the southeast corner of section thirty-two; thence north on the section line to the southeast corner of section thirty-two in township number nineteen north, range four west, and place of beginning. [L. '60, p. 458; L. '63, p. 7; L. '67, p. 47; L. '69, p. 294; L. '73, p. 482; 1 H. C., § 31.]

§ 3959. [3799.] Wahkiakum County.

Wahkiakum county shall be and consist of all that territory commencing at the southeast corner of Pacific county, on the Columbia River; thence up mid-channel of said river to the southwest corner of Cowlitz county; thence north to the northwest corner of Cowlitz county; thence west on the northern boundary of township ten north to the line between ranges eight and nine west; thence south to the place of beginning. [L. '54, p. 474; L. '67, p. 48; L. '69, p. 295; L. '79, p. 213; 1 H. C., § 32.]

§ 3960. [3800.] Walla Walla County.

Walla Walla county shall be and consist of all that territory commencing at a point where the boundary line between Washington and Oregon intersects the Columbia River; thence up the main channel of the Columbia to the mouth of the Snake River; thence up the main channel of said river to where the range line between ranges thirty-six and thirty-seven intersects said point; thence south on said range line to the northwest corner of township number nine north, range thirty-

seven east; thence east on the north boundary line of township number nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east, of the Willamette Meridian, to the northeast corner of township number six north, range thirty-seven east; thence along the north boundary line of township number six north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due west on said dividing line to the place of beginning. [L. '54, p. 472; L. '58, p. 51; L. '67, p. 50; L. '68, p. 60; L. '69, p. 297; L. '75, p. 133; L. '79, p. 226; 1 H. C., § 33.]

§ 3961. [3801.] Whatcom County.

Whatcom county shall be and consist of all that territory commencing on the forty-ninth parallel at the point dividing the American and British possessions in the Gulf of Georgia; thence along said boundary line to where it deflects at the north entrance to the Canal De Haro; thence along the northeasterly boundary of San Juan county to the ninth standard parallel (or the northwest corner of Skagit county); thence due east along said parallel to the summit of the Cascade Mountains; thence northerly along the summit of said mountains to the forty-ninth parallel of north latitude; thence west along said parallel to the place of beginning. [L. '54, p. 475; L. '59, p. 60; L. '67, p. 44; L. '58, p. 53; L. '69, p. 291; L. '77, p. 426; 1 H. C., § 34.]

§ 3962. [3802.] Whitman County.

Whitman county shall be and consist of all that territory commencing at a point where the range line between ranges thirty-eight and thirty-nine east intersects the fifth standard parallel, being the northeast corner of Adams county; thence east on said parallel to the boundary line between Idaho and Washington; thence south on said boundary line to the mid-channel of Snake River; thence down the mid-channel of Snake River to its intersection with the mid-channel of the Palouse River; thence north along the mid-channel of the Palouse River to the point where the same intersects the range line between ranges thirty-eight and thirty-nine east; thence north along said range line to the place of beginning. [L. '71, p. 134; L. '75, p. 189; L. '83, pp. 87, 93; 1 H. C., § 35.]

§ 3963. [3803.] Yakima County.

Yakima county shall be and consist of all that territory commencing at the northwest corner of township number six north of range number twelve east; thence east along the north boundary of township number six north until said line intersects the range line between range twenty-three east and range twenty-four east; thence north along said range line to the Columbia River; thence north up the mid-channel of said river to the southeast corner of Kittitas county; thence along the southern boundary of Kittitas county to the summit of the Cascade Range; thence southerly to the southeast corner of Lewis county; thence west along the line of said county to the northeast corner of Skamania

county; thence (along the east line of Skamania county to the line between townships six and seven north; thence east along said line) to the place of beginning. [L. '67, p. 50; L. '68, p. 60; L. '69, p. 296; L. '73, p. 571; L. '86, p. 168; 1 H. C., § 36; L. '05, p. 185, § 1.]

CHAPTER II.

CHANGE OF BOUNDARIES.

§ 3964. [3804.] Suit to Establish Boundary Lines.

Whenever the boundary line between two or more adjoining counties in this state shall be in dispute, or shall have been lost by time, accident or any other cause, or shall have become obscure or uncertain, one or more of said counties, in its corporate name, may bring and maintain suit against such other adjoining county or counties, in equity, in the superior court of this state, and such court as a court of equity shall hear and determine all such suits, and by decree establish the location of such boundary line or lines. [L. '97, p. 204, § 1.]

See Const., Art. XI, § 3; Const., Art. II, § 28, subd. 18.

Where the statutory description of county boundaries is ambiguous and doubtful, it is admissible to show the contemporaneous construction placed thereon by the assumption and continuous exercise of jurisdiction over the territory by the officers of one county, in relation to roads, road districts, election precincts, school districts, and the candidacy

for county offices and the voting of inhabitants of the territory, and the return and assessment of its property for taxation; evidence of such long continued, undisputed control being sufficient to show that the territory was included in such county: *Puget Sound National Bank v. Fisher*, 52 Wash. 246, 100 Pac. 724, 17 Ann. Cas. 526.

§ 3965. [3805.] Before Whom Tried.

Said suit shall be tried before a judge of the superior court who is not a resident of a county, a party to such suit, or of a judicial district embracing any such county. [L. '97, p. 204, § 2.]

§ 3966. [3806.] Residents of Disputed Territory may Intervene.

A majority of the voters living in the territory embracing such disputed, lost, obscure or uncertain boundary line may, by petition, duly verified by one or more of them, intervene in said suit, and thereupon said court shall have jurisdiction and power, in locating and establishing said boundary line or lines, to strike or transfer from one county to another a strip or portion of such territory not exceeding two miles in width. [L. '97, p. 204, § 3.]

§ 3967. [3807.] "Territory" Defined.

The term "territory," as used in this chapter, shall be held and construed to mean and include that part or section of said counties lying along said line and within one mile on either side thereof. [L. '97, p. 204, § 4.]

§ 3968. [3808.] Boundaries, etc., Questions of Fact.

The boundaries of such territory, the number of voters living therein, and the sufficiency of such petition are questions of fact to be determined by said court. [L. '97, p. 204, § 5.]

§ 3969. [3809.] Court may Move Boundary Line, etc.

The court shall have power to move or establish such boundary line on any government section line or subdivisional line thereof, of the section in or through which said disputed, lost, obscure or uncertain boundary line may be located, or if such boundary line is in unsurveyed territory, then the court shall have power to move or establish such boundary line so it will conform to extensions of government section lines already surveyed in that vicinity. [L. '97, p. 204, § 6.]

§ 3970. [3810.] Practice.

The practice, proceedings, rules of evidence and appeals to the supreme court as in civil actions, is preserved under this chapter. [L. '97, p. 205, § 7.]

§ 3971. [3811.] Copies of Decree to be Furnished Certain Officials.

The clerk of the court in whose office a decree is entered under the provisions of this chapter, shall forthwith furnish certified copies thereof to the secretary of state, and to the auditors of the counties, which are parties to said suit; and said secretary of state, and said county auditors, shall file and record said copies of said decree in their respective offices. [L. '97, p. 205, § 8.]

§ 3972. [3812.] Petition and Notices of Election—Requisites of.

Where a port, harbor, inlet, bay, or mouth of river shall be embraced within two adjoining counties, and upon the shore of said harbor, bay, inlet, or mouth of river an incorporated city shall have been or may hereafter be located, and the harbor of the said city shall lie in such two counties, and it shall become necessary, in order to place the said harbor or port within the limits of one county, or to extend the corporate limits of such city, to embrace the full extent of said shore line of such harbor, port, or bay, and the waters of said harbor, together with a strip of the adjacent and contiguous upland territory not exceeding three miles in width (to be measured back from highwater mark) and six miles in length, and not being at a greater distance in any part of said strip from the courthouse in the county seat of the county to which said territory is proposed to be annexed, as said county seat and courthouse are now situated, than the distance of ten miles. In all such cases, when a majority of the qualified electors living upon any territory in any county of this state within which said harbor shall partly be embraced shall desire to have such territory stricken from the county of which it shall then be a part, and added to and made a part of the county contiguous thereto, they may present a petition describing with proper certainty the bounds and area of such territory, with the reasons for making such application, to the board of county commissioners of the county in which such territory shall be, who shall proceed to ascertain if such petition contains the requisite number of petitioners, who shall be bona fide residents of the territory sought to be stricken off and transferred to the contiguous county, and if satisfied that the petition is signed by a majority of the bona fide electors of such territory, and that there will remain in the county from which such territory is taken more than four

thousand inhabitants, the said board shall make an order that a special election shall be held within the limits of the territory described in the petition, upon a date to be named in the said order. Notices of such election shall contain a description of the territory proposed to be transferred, the names of the counties from and to which such transfer is intended to be made, and shall be posted and published as required for general elections. [L. '91, p. 330, § 1; 1 H. C., § 2467.]

See *infra*, § 3986 et seq., new county constructed out of old—debts and property.

This section was amended by L. '03, p. 228, § 1, which also repealed § 10, only, of the Law of 1891; but the act of 1903 was repealed by L. '05, p. 58, § 1. It seems clear that the intent of the Law of 1905 was to revive this section.

§ 3973. [3813.] Conduct of Election, etc.

The said election shall be conducted in all respects as general elections are conducted under the law governing general elections, so far as they may be applicable, except that there shall be triplicate returns made, one to each of the respective county auditors, another to the office of the secretary of state. The ballots used at such election shall contain the words "For transferring territory," or "Against transferring territory." The votes shall be canvassed, as by law required, within twenty days, and if three-fifths of the votes cast in said territory at such election are "For transferring territory," the territory described in such petition shall become a part of and be added to and made a part of the county contiguous thereto, and within thirty days after the canvass of the returns of the elections held under the provisions of this chapter the governor shall issue his proclamation of the change of said county lines. [L. '91, p. 331, § 2; 1 H. C. § 2468.]

§ 3974. [3814.] Proceedings not to be Disturbed by Change.

All assessments and collection of taxes, and all judicial or other official proceedings commenced prior to the said governor's proclamation transferring such territory of the contiguous county, shall be continued, prosecuted and completed in the same manner as if no such transfer had been made. [L. '91, p. 332, § 3; 1 H. C., § 2469.]

§ 3975. [3815.] Certain Officers to Continue.

All township, precinct, school, and road district officers within such transferred territory shall continue to hold their respective offices within the county to which they may be transferred until their respective terms of office expire, and until their successors are elected and qualified. [L. '91, p. 332, § 4; 1 H. C., § 2470.]

§ 3976. [3816.] Liability for Existing Debts.

Every county which shall thus be enlarged from territory taken from another county shall be liable for a just proportion of the existing debts of the county from which such territory shall have been stricken, which such proportion of indebtedness shall be paid by the county to which such territory shall have been transferred at such time and in such manner as may be agreed upon by the boards of county commissioners of both counties interested. Provided, that the county to which such territory may be transferred and attached shall not be liable for any portion of the debt of the county

from which such territory has been taken, incurred in the purchase of any county property, or the construction of any county building then in use or under construction, which shall fall within and be retained by the county from which such territory shall have been taken. [L. '91, p. 332, § 5; 1 H. C., § 2471.]

Time of apportionment of assets or liabilities on division of county territories by legislature. 18 *Ann. Cas.* 324.

Division of territory of county as affecting its assets and liabilities. 39 *L. B. A. (N. S.)* 285.

Liability of territory annexed to county to pay proportionate share of existing debts. 27 *L. B. A. (N. S.)* 1147.

Liability of original county for debts of county defectively organized from part of its territory. 6 *L. B. A. (N. S.)* 791.

§ 3977. [3817.] Appraisement of Property and Indebtedness.

The county auditors of the respective counties interested in the transfer of territory, as in this chapter provided, are hereby constituted a board of appraisers and adjusters, to appraise the property, both real and personal, owned by the county from which such territory shall have been taken, and to adjust the indebtedness of such county with the county to which such territory shall have been transferred, in proportion to the amount of taxable property within the territory taken from the one county and transferred to the other. [L. '91, p. 332, § 6; 1 H. C., § 2472.]

§ 3978. [3818.] Arbitration of Differences.

If the board of appraisers and adjusters provided for in this chapter shall not agree on any subject, value, or settlement as herein stated, they shall choose a third man from an adjoining county to settle their differences, and the decision thus arrived at shall be final. [L. '91, p. 333, § 7; 1 H. C., § 2473.]

§ 3979. [3819.] Expense of Proceedings.

The expense of proceedings and election provided for in this chapter shall be paid by the county to which the territory shall be attached, after such election. [L. '91, p. 333, § 8; 1 H. C., § 2474.]

§ 3980. [3820.] Transcript of Records, etc.

The county auditor of the county to which any territory may be transferred and attached under the provisions of this chapter is hereby authorized and empowered to take transcripts of all records, books, papers, etc., on file in the office of the county auditor of the county from which said territory has been transferred, which may be necessary to perfect the records of the county to which such territory may be attached, and for this purpose he shall have access to the records of the county from which such territory is stricken, free of cost. [L. '91, p. 333, § 9; 1 H. C., § 2475.]

§ 3981. [3821.] Construction—Limitations.

Nothing in this chapter shall be construed to authorize the annexing of territory of one county to a neighboring county where the territory proposed to be annexed, or any part thereof, is at a greater distance

than ten miles from the courthouse in the county seat of the county to which said territory is proposed to be annexed, as said courthouse is now located, nor to authorize the annexation of any territory at a greater distance than three miles from high-water mark of tide water, but such annexation shall be strictly confined within said limits. [L. '91, p. 333, § 10; 1 H. C., § 2476.]

This section was repealed by Laws of 1903, chapter 121, p. 229, § 2; but the latter act was repealed by Laws of 1905, chapter 34, p. 58, § 1.

CHAPTER III.

GENERAL RIGHTS, DUTIES AND POWERS.

§ 3982. [3822.] Powers of Counties as Bodies Corporate.

The several counties in this state shall have capacity as bodies corporate to sue and be sued in the manner prescribed by law; to purchase and hold lands within its own limits; to make such contracts, and to purchase and hold such personal property, as may be necessary to its corporate or administrative powers, and to do all other necessary acts in relation to all the property of the county. [L. '54, p. 329, § 1; Cd. '81, § 2653; 1 H. C., § 2437.]

See Art. XI, § 11, of the Const., police power to enforce sanitary regulations.

See Art. XI, § 9, of the Const., limitation for bidding the release or discharge of state taxes levied for state purposes.

See supra, §§ 950—954, actions by and against.

Cited in 7 Wash. 8; 8 Wash. 237; 27 Wash. 630; 37 Wash. 16; 38 Wash. 106; 90 Wash. 245, 246.

Political Status and Functions: See Remington's Digest, Counties, § 1; State ex rel. Summerfield v. Tyler, 14 Wash. 495, 45 Pac. 31, 53 Am. St. Rep. 878, 37 L. R. A. 207; Lincoln County v. Brook, 37 Wash. 14, 79 Pac. 477; State ex rel. Board of Commrs. of Pierce County v. Clausen, 95 Wash. 214, 163 Pac. 744.

Power to purchase a county poor farm is conferred by necessary implication by sections 3982 and 3984; the power to care for paupers being a corporate and administrative power: Singleton v. Hamilton, 90 Wash. 243, 155 Pac. 1057.

TORTS—Liability for: See Remington's Digest, Counties, §§ 56—60. **Nature and Grounds of Liability:** Hocxter v. Judson, 21 Wash. 646, 59 Pac. 498; Coliseum Investment Co. v. King County, 72 Wash. 687, 131 Pac. 245; Bergen v. Lewis County, 95 Wash. 499, 164 Pac. 73.

A county operating a ferry for hire under the authority of section 5477, infra, acts in its proprietary capacity, and is liable in damages for its acts and omissions as an individual engaged in a like enterprise: Hart v. King County, 104 Wash. 485, 177 Pac. 485.

§ 57. **Exercise of Governmental Powers in General:** Brown v. Pierce County, 28 Wash. 345, 68 Pac. 872.

§ 58. **Construction of Public Improvements:** Wendel v. Spokane County, 27 Wash. 121, 67 Pac. 576, 91 Am. St. Rep. 825; Linn v. Walla Walla County, 99 Wash. 224, 169 Pac. 323.

§ 59. **Acts of Officers or Agents:** State Savings Bank v. Davis, 22 Wash. 406, 61 Pac. 43; Arishin v. King County, 103 Wash. 176, 173 Pac. 1020.

See, also, Smith v. Seattle School Dist. No. 1, 112 Wash. 64, 191 Pac. 858.

§ 60. **Ratification:** Wendel v. Spokane County, 27 Wash. 121, 67 Pac. 576, 91 Am. St. Rep. 825.

ACTIONS: See Remington's Digest, Counties, §§ 93—103.

§ 93. **Capacity to Sue or be Sued, in General:** State ex rel. Rochford v. Superior Court, 4 Wash. 30, 29 Pac. 764; Lincoln County v. Fish, 38 Wash. 105, 80 Pac. 435.

See, also, State ex rel. King County v. Superior Court, 104 Wash. 268, 176 Pac. 352.

§ 94. **Rights of Action:** Soderberg v. King County, 15 Wash. 194, 45 Pac. 785, 55 Am. St. Rep. 878, 33 L. R. A. 670.

§ 96. **Defenses:** Dillon v. Spokane County, 3 W. T. 498, 17 Pac. 889; State ex rel. Dahlquist v. Van Wyck, 20 Wash. 39, 64 Pac. 768; Dirks v. Collin, 37 Wash. 620, 79 Pac. 1112.

§ 97. **Authority to Sue in Name of County:** Spokane County v. Bracht, 23 Wash. 102, 62 Pac. 446; State ex rel. Dean v. Lamping, 31 Wash. 652, 72 Pac. 476; Lincoln County v. Fish, 38 Wash. 105, 80 Pac. 435.

§ 98. **Appearance and Representation by Attorney:** Clarke County ex rel. v. County Commrs., 1 W. T. 250; State ex rel. Porter v. Headlee, 18 Wash. 220, 51 Pac. 369; State ex rel. Porter v. Headlee, 19 Wash. 477, 53 Pac. 948.

§ 99. **Garnishment:** State ex rel. Summerfield v. Tyler, 14 Wash. 495, 45 Pac. 31, 53 Am. St. Rep. 878, 37 L. R. A. 207.

§ 100. **Pleading:** Rathbun v. Thurston County, 8 Wash. 238, 35 Pac. 1102; State ex rel. Porter v. Headlee, 18 Wash. 220, 51 Pac. 369.

See, also, Hart v. King County, 104 Wash. 485, 177 Pac. 344.

§ 101. **Evidence:** Long v. Pierce County, 22 Wash. 330, 61 Pac. 142; Nickeus v. Lewis County, 23 Wash. 125, 62 Pac. 763.

§ 102. **Appeal and Error:** Ogden v. Chehalis County, 41 Wash. 45, 82 Pac. 1095.

§ 103. **Costs:** State ex rel. Dean v. Lamping, 31 Wash. 652, 72 Pac. 476.

§ 3983. [3823.] Corporate Name of County.

The name of a county, designated in the law creating it, is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. [Cd. '81, § 2654; 1 H. C., § 2438.]

See supra, §§ 950, 951, actions by and against.

See notes to last section.

Cited in 8 Wash. 237.

§ 3984. [3824.] Powers—How Exercised.

Its powers can only be exercised by the county commissioners, or by agents or officers acting under their authority or authority of law. [Cd. '81, § 2655; 1 H. C., § 2439.]

See infra, § 4204, powers of class "A" counties.

Cited in 22 Wash. 413; 90 Wash. 245.

§ 3985. [3825.] Conveyance of Land to Counties.

Every conveyance of lands, or transfer of other property, made in any manner for the use of such county, shall have the same force and effect as if made to said county in its proper and corporate name. [L. '54, p. 329, § 2; Cd. '81, § 2656; 1 H. C., § 2440.]

§ 3986. [3826.] Division of County, Effect of.

Whenever a new county shall be, or shall have been, organized over territory which shall have been included within the limits of any other county or counties, the new county shall be liable for a reasonable proportion of the debts of the county from which it was taken, and entitled to its proportion of the property of the county. [L. '54, p. 330, § 1; Cd. '81, § 2657; 1 H. C., § 2441.]

See supra, § 3964 et seq., changing county lines.

Cited in 72 Wash. 325, 328; 98 Wash. 360.

Alteration and Creation of New Counties—Restrictions and Proceedings: See Remington's Digest, Counties, §§ 2, 2-1;

Farquharson v. Yeargin, 24 Wash. 549, 64 Pac. 717; State ex rel. Chehalis County v. Superior Court, 47 Wash. 453, 92 Pac. 345; State ex rel. Lytle v. Superior Court, 54 Wash. 378, 103 Pac. 464.

§ 3987. [3827.] Apportionment of Indebtedness.

The auditor of the old county shall give the auditor of the new county reasonable notice to meet him on a certain day at the county seat

of the old county, or at some other convenient place, to settle upon and fix the amount which the new county shall pay. In doing so, they shall not charge either county with any share of debts arising from the erection of public buildings, or out of the construction of roads or bridges which shall be and remain, after the division, within the limits of the other county, and of the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portion of territory so forming a part of the said counties while so united, and also the relative advantages derived from the old county organization. [L. '54, p. 330, § 2; Cd. '81, § 2658; 1 H. C., § 2442.]

Cited in 72 Wash. 325, 328; 98 Wash. 360.

titles: See Remington's Digest, Counties, § 3; Douglas County v. Grant County, 72 Wash. 324, 130 Pac. 366.

Adjustment of Rights and Liabil-

§ 3988. [3828.] Disagreement Between Auditors—Third Person.

In case the two auditors cannot agree, they shall call a third person, not a citizen of either county, or in any other manner interested, whose decision shall be binding. In case they cannot agree upon such third person, they shall each name one and decide by lot which it shall be. [L. '54, p. 330, § 3; Cd. '81, § 2659; 1 H. C., § 2443.]

§ 3989. [3829.] Payment of Indebtedness.

The auditor of the county indebted upon such decision shall give to the auditor of the other county his order upon the treasurer for the amount to be paid out of the proper fund, as in other cases, and also make out a transfer of such property as shall be assigned to either county. [L. '54, p. 330, § 4; Cd. '81, § 2660; 1 H. C., § 2444.]

§ 3990. [3830.] Survey of Boundary—Costs of.

All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the surveyors of all the counties affected thereby, and approved by the board of county commissioners of such counties, or by a survey made by the surveyor general, on application by the board of county commissioners of any county affected thereby. The cost of making such surveys must be apportioned equally among the counties interested, and the board of county commissioners must audit the same, and the amounts must be paid out of the general county fund. [Cd. '81, § 2661; 1 H. C., § 2445.]

§ 3991. [3831.] Collection of Taxes Levied—Apportionment.

When a county is divided or the boundary is altered, all taxes levied before the division was made or boundaries changed, must be collected by the officers of the county in which the territory was situated before the division or change. And the auditor or auditors of the county or counties so divided or having boundaries changed, shall apportion the amount of the real property taxes so collected after division or change of boundary to the old county or counties and the new county or counties, in the ratio of the assessed value of such property situated in the territory of each county or counties respectively, and the old county that

may have been divided or whose boundaries may have been changed, shall retain all of the personal property taxes on the said tax-rolls, as compensation for cost of collection of the entire taxes: Provided, that in such accounting neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use or under construction, which shall fall within and be retained by the county: Provided further, that this shall not be construed to affect the rights of creditors: And provided further, that any such county property or buildings shall be the property of and owned by the county wherein the same is situated. In case the auditors of the interested counties are not able to agree upon the proportion to be awarded to each county, the same shall be determined by the judge of the superior court of the district in which all of the interested counties are situated, if they be in one district, and have one common judge, and if not, by the judges sitting en banc of the judicial district in which each and any of the said counties may be situated. Said auditors shall make said apportionment within sixty days after the creation of any new county or the changing of boundaries of any old county, and if they do not, within said time, agree upon said apportionment, thereafter either or any county affected may petition the judge or judges of any court given jurisdiction by this act, and upon ten days' notice to any other county affected, the same may be brought on for hearing and summarily disposed of by said judge or judges, after allowing each side an opportunity to be heard. [L. '09, p. 150, § 1. Cf. Cd. '81, § 2662; 1 H. C., § 2446.]

See *infra*, § 10205, may build jail and workhouse.

§ 3992. [3831-1.] Buildings for County and City—Joint Construction.

Where the county seat of any county in this state shall be within the corporate limits of any incorporated city such county and city may contract one with the other for the joint purchase, acquisition, leasing, ownership, control and disposition of land and other property suitable as a site for a county courthouse and city hall and for the joint construction, ownership, control and disposition of a building or buildings thereon for the use by such county and city as a county courthouse and city hall. Any such county or city now owning a site or any interest therein, or a site with buildings thereon, may, upon such terms as shall appear fair and just to the board of county commissioners of such county or to the city council or commission of such city, contract with reference to the joint ownership, acquisition, leasing, control, improvement and occupation of such property as herein provided. [L. '13, p. 272, § 1.]

§ 3993. [3831-2.] Contract—Terms.

All contracts made in pursuance hereof shall be for such period of time and upon such terms and conditions as shall be agreed upon. Such contract shall fully set forth the amount of money to be contributed by such county and city towards the acquisition of such site and the improvement thereof and for the manner in which such property shall be improved and the character of the building or buildings to be erected thereon. Such contract may provide for the amount of money to be

contributed annually by such county and city for the upkeep and maintenance of such property and the building or buildings thereon, or it may provide for the relative proportion of such expense which such county and city shall annually pay. Such contract shall specify the parts of such building or buildings which shall be set apart for the exclusive use and occupation of such county and city. [L. '13, p. 272, § 2.]

§ 3994. [3831-3.] Funds.

The money to be contributed by such county or city may be raised by a sale of the bonds of such county or city, or by general taxation as now or hereafter authorized by law. Any such county or city now possessing funds or having funds available for a county courthouse or city hall from the sale of bonds or otherwise, is herewith authorized to contract for the expenditure of such funds as herein provided. [L. '13, p. 273, § 3.]

§ 3995. [3831-4.] Approval of Contract.

Such contract shall be made only after a proper resolution of the board of county commissioners of such county and ordinance of such city duly passed specifically authorizing the same. Such contract when made shall be binding upon such county or city during the life of the same or until the same be modified or abrogated by mutual consent evidenced by a proper resolution and ordinance of such county and city. [L. '13, p. 273, § 4.]

§ 3996. [3831-5.] Joint Armory Sites.

Any city or county in the state of Washington is hereby authorized and empowered to expend money from its or their current expense funds in payment in whole or in part for an armory site whenever the legislature of the state of Washington shall appropriate money for or authorize the construction of an armory within such city or county for use of such organization or organizations of the National Guard of Washington, as may be stationed within such city or county. [L. '13, p. 273, § 1.]

§ 3997. [3831-6.] Warrants Declared Valid.

All warrants and obligations heretofore issued or incurred by any county in the state of Washington for the purchase of, or in payment for, any armory site upon which an armory building may have been constructed with the aid, in whole or in part, of appropriations of the legislature of the state of Washington, are hereby declared legal and valid. [L. '13, p. 275, § 1.]

CHAPTER IV.

REMOVAL OF COUNTY SEATS.

§ 3998. [3832.] Petition for.

Whenever the inhabitants of any county of this state desire to remove the county seat of the county from the place where it is fixed by law or otherwise, they shall present a petition to the board of county commissioners of their county praying such removal, and that an election be held to determine to what place such removal must be made: Provided, that

the petition for removal shall set forth the names of the towns or cities to which such county seat is proposed to be removed. [L. '90, p. 318, § 1; H. C., § 2458.]

See Const., Art. II, § 28, subd. 18, limitation on special legislation for changing county seats.

See Const., Art. XI, § 2, requiring a three-fifths vote at a general election, and prohibition against further submission until four years have intervened.

Cited in 8 Wash. 66, 483; 12 Wash. 423, 434; 81 Wash. 360.

COUNTY SEAT: See Remington's Digest, Counties, §§ 5—8. **Removal—Submission of Question to Popular Vote:** Rickey v. Williams, 8 Wash. 479, 36 Pac. 480.

§ 6. — **Canvass of Returns:** State ex rel. Swerdfiger v. Whitney, 12 Wash. 420, 41 Pac. 189; Heffner v. Board of County Commrs., 16 Wash. 273, 47 Pac. 430.

§ 7. — **Hearing, Decision and Review:** Heffner v. Board of County Commrs., 16 Wash. 273, 47 Pac. 430; Lawry v. Board of County Commrs., 12 Wash. 446, 41 Pac. 190; Mann v. Wright, 81 Wash. 358, 142 Pac. 697.

§ 8. — **Injunction to Restrain Removal:** Parmeter v. Bourne, 8 Wash. 45, 35 Pac. 586, 757; Rickey v. Williams, 8 Wash. 479, 36 Pac. 480; Krieschel v. County Commrs., 12 Wash. 428, 41 Pac. 186; Heffner v. County Commrs., 16 Wash. 273, 47 Pac. 430.

Right to withdraw names from petition for removal of county seat. 35 L. R. A. (N. S.) 1113.

Validity of contract intended or tending to influence location of county seat. 13 A. L. R. 734.

On what basis majority essential to adoption of proposition for change of county seat is to be computed. 22 L. R. A. (N. S.) 478.

§ 3999. [3833.] Question—How Submitted.

If the petition is signed by qualified electors of the county equal in number to at least one-third of all the votes cast in the county at the last preceding general election, the board must, at the next general election of county officers, submit the question of removal to the electors of the county. [L. '90, p. 318, § 2; 1 H. C., § 2459.]

See notes to § 3998.

Cited in 8 Wash. 66, 483; 81 Wash. 360.

§ 4000. [3834.] Election—Notice of—How Conducted.

Notice of such election, clearly stating the object, shall be given, and the election must be held and conducted, and the returns made, in all respects in the manner prescribed by law in regard to elections for county officers. [L. '90, p. 318, § 3; 1 H. C., § 2460.]

Cited in 8 Wash. 483; 81 Wash. 360.

§ 4001. [3835.] Manner of Voting.

In voting on the question, each elector must vote for or against the place named in the petition, plainly designating same on his ballot. [L. '90, p. 318, § 4; 1 H. C., § 2461.]

Cited in 8 Wash. 483; 81 Wash. 360.

§ 4002. [3836.] Notice of Result.

When the returns have been received and compared, and the results ascertained by the board, if three-fifths of the legal votes cast by those voting on the proposition are in favor of any particular place, the board must give notice of the result by posting notices thereof in all the election precincts in the county. [L. '90, p. 318, § 5; 1 H. C., § 2462.]

Cited in 8 Wash. 66; 16 Wash. 276; 81 Wash. 360.

Upon canvassing the returns of a county seat election, the county commissioners have power under this section

to go behind the returns and examine the ballots cast: *Heffner v. Board of County Commrs.*, 16 Wash. 273, 47 Pac. 430.

§ 4003. [3837.] Removal to Take Place, When.

In the notice provided for in the last section, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice the place chosen is the seat of the county; and it shall be the duty of the several county officers, whose offices are required by law to be kept at the county seat, to remove their respective offices, files, records, office fixtures, furniture, and all public property pertaining to their respective offices to said county seat. [L. '90, p. 318, § 6; 1 H. C., § 2463.]

See notes to § 3998.

Cited in 16 Wash. 276; 81 Wash. 360.

§ 4004. [3838.] Statement of Result to be Filed—Notice.

Whenever any election has been held as provided for in the preceding sections of this chapter, the statement made by the board of county commissioners showing the result thereof must be deposited in the office of the county clerk, and whenever the board gives the notice prescribed by the last preceding section, they must transmit a certified copy thereof to the secretary of state. [L. '90, p. 319, § 7; 1 H. C., § 2464.]

Cited in 81 Wash. 360.

§ 4005. [3839.] Failure of Election—Effect of.

When an election has been held and no one place receives three-fifths of all the votes cast at such election on such question, the former county seat shall remain the county seat, and no second election must be held within four years thereafter. [L. '90, p. 319, § 8; 1 H. C., § 2465.]

Cited in 81 Wash. 360.

§ 4006. [3840.] Successive Removals—Restriction upon.

When the county seat of a county has been removed by a popular vote of the people of the county, it may be again removed, from time to time, in the manner provided by this chapter: Provided, no two elections to effect such removal be held within four years. [L. '90, p. 319, § 9; 1 H. C., § 2466.]

See notes to § 399.

Cited in 5 Wash. 493; 81 Wash. 360.

CHAPTER V.

SALE OR DISPOSAL OF COUNTY PROPERTY.

§ 4007. [3841.] Commissioners may Sell and Convey, How.

Whenever it shall appear to the board of county commissioners of any county in this state that it is for the best interests of such county and the people thereof that any part or parcel, or portion of such part or parcel, of the property, whether real, personal, or mixed, belonging to said county should be sold, it shall be the duty of such board, and they are hereby authorized and empowered, to sell and convey such property, under the limitations and restrictions and in the manner hereinafter provided. [L. '91, p. 145, § 1; 1 H. C., § 3059.]

See *infra*, § 4015, sale of granted lands to city.

See *infra*, § 4016 et seq., sale of escheated property.

See *infra*, § 4019, leases of county property.

See *infra*, § 11310, resale of lands acquired by county at tax sale.

See *infra*, § 11312, mining claims.

Cited in 33 Wash. 575.

§ 4008. [3842.] Notice of Sale—Hearing.

The board of county commissioners so desiring to sell shall first give notice of their intention to make such sale, by publication at least once a week for the term of four weeks in three different newspapers of such county, if there are three published in such county, and also place a notice in a conspicuous place in the courthouse for the same length of time. Such notice so published shall particularly designate and describe the property or portion thereof which it is proposed to sell, and shall contain full notice that the board of county commissioners will meet on a certain day and hour of such day at their usual place of meeting to hear and determine the advisability of making such sale: Provided, that such meeting shall be held at a time not more than one week after the expiration of the time hereinbefore designated for the publication of the notice of such meeting. The board shall at such meeting hear evidence and take testimony, should any be offered, as to the propriety and advisability of making such proposed sale, and any taxpayer in the county, either in person or by counsel, shall have the right to be heard for or against such proposition: Provided, that the board may limit the number to be heard to not less than three on either side, for or against the proposed sale. [L. '91, p. 145, § 2; 1 H. C., § 3060.]

This section must be strictly complied with, and when the body of the notice designates the wrong block the sale is invalid, although the caption of the notice correctly states the block, since the caption is no part of the notice, and it is impossible to say that no one was misled by the error: *State ex rel. Willars v. McConnaughey*, 33 Wash. 571, 74 Pac. 678.

In such a case the sale cannot be rendered valid by any act of the officers at the time of making the sale, or by an agreement with the purchaser that the notice was erroneous and that a different tract was intended and sold: *State ex rel. Willars v. McConnaughey*, 33 Wash. 571, 74 Pac. 678.

§ 4009. [3843.] Finding of Board, and Record Thereof.

The board shall within three days after such meeting make their findings as to the propriety and advisability of making such sale and

their determination thereon, which said finding and determination shall be spread upon their minutes and be made matter of record. [L. '91, p. 146, § 3; 1 H. C., § 3061.]

§ 4010. [3844.] Effect of Determination—Notice of Sale.

If the findings and determination of the board shall be against such sale, all proceedings in that regard shall then and there terminate without further action or order; but if the board shall find and determine in favor of such sale, they shall then enter an order on their minutes directing the auditor of the county to give notice that such sale will be made, and the auditor shall give such notice in the manner prescribed in section 4008, of this chapter: Provided, that such sale shall not be made in less than thirty nor more than forty-five days from the date of the first publication of notice thereof; and such notice shall designate the hour and day when such sale shall take place. And the sale shall be made by the sheriff by public auction and at the door of the courthouse of the county, to the highest and best bidder. Such sale may be postponed by the board of commissioners, but in no case for longer than thirty days. [L. '91, p. 146, § 4; 1 H. C., § 3062.]

§ 4011. [3845.] Terms of Sale.

If the property to be sold be personal or mixed, or both, the sale thereof shall be for cash, in case such property be real, then the sale thereof shall be on such terms as the board may designate: Provided, that any and all deferred payments shall be secured by such good and sufficient means as may to the board seem necessary; but no conveyance of the property so sold shall be made until full payment be made therefor: Provided, that in any case where any building, bridge, or other structure belonging to any county in this state shall have been torn down or destroyed, either by accident or by order of the board of county commissioners of such county, said board of county commissioners shall by order entered on their journal, determine the advisability of selling all or any part of the material which was formerly a part of the building, bridge or other structure so destroyed or torn down, or other personal property of any kind whatever, not exceeding two hundred dollars (\$200) in value, and if it be determined that such sale is advisable the board may make such sale, either with or without public notice, and in such manner as the board may determine will be most beneficial to the county. The proceeds of such sale shall be paid by the purchaser to the county treasurer who shall issue his receipt therefor to the purchaser, and which receipt shall be evidence of the title of the purchaser. [L. '15, p. 22, § 1. Cf. L. '91, p. 146, § 5; 1 H. C., § 3063.]

§ 4012. [3845½.] Validating Sales of Materials.

That any sale of property made in accordance with the terms of the proviso contained in the preceding section between the date of the approval by the governor of this act and the time when this act goes into effect, which is made in all respects in accordance with the terms of this act, shall be, and the same is, hereby approved and confirmed and this section shall be printed in any revision of the code of the state of Washington. [L. '15, p. 23, § 2.]

§ 4013. [3846.] Receipt of Proceeds—Conveyance.

The county treasurer shall attend at such sale and receive all proceeds of the same, and on full and entire payment he shall make, execute, and deliver to the purchaser of the property so sold a deed for the same, which deed shall fully set out all the proceedings had in relation to the said sale of the property therein described, and shall be attested by the county auditor, and when so executed and delivered it shall vest all the title which the county had in the property so sold in the grantee. [L. '91, p. 147, § 6; 1 H. C., § 3064.]

§ 4014. [3847.] Application of Various Provisions.

The provisions of this chapter shall be held to apply to all property now owned by any county in this state and to all property hereafter acquired by any county. [L. '91, p. 147, § 7; 1 H. C., § 3065.]

§ 4015. Granted Lands—Conveyance to City.

Whenever any county shall hold title to lands, for county purposes, acquired by grant, patent or other conveyance from the United States executed under and pursuant to an act of congress, and the board of county commissioners of such county shall by resolution find and determine that any portion of said lands is not required for county purposes and that it would be for the best interest of the county to have such portion of said lands devoted to use by a municipality lying within said county and including said lands for municipal purposes, the board of county commissioners of said county shall have power, by and with the consent of the congress of the United States, to, by a proper instrument of conveyance executed by the board of county commissioners on behalf of the county, convey such lands to such municipality for municipal purposes, either with or without consideration, and shall not be required to advertise or offer said lands for sale or lease in the manner provided by law for the sale or lease of county property. [L. '17, p. 232, § 1.]

§ 4016. [3848.] Sale of Escheated Property.

The county commissioners of the several counties of this state be, and they are hereby authorized and empowered to sell and convey at public sale, for cash or on credit, in such manner as they may deem advantageous, any real estate or other property, which may have escheated to the county by operation of law. [L. '83, p. '57, § 1.]

This and the two following sections appear to be impliedly repealed by §§ 1358, 1362, *supra*, at least in so far as it relates to real estate, which now escheats to the state, under § 1356.

See *supra*, § 1364, subd. 8, and § 1341.

See *infra*, § 7802, state board of land commissioners to accept and control lands escheated to state.

See *infra*, § 7827, agent to handle escheated lands.

See *infra*, § 8430 et seq., disposition of lost or unclaimed property.

See *infra*, §§ 8435, 8436, disposition of unclaimed moneys.

§ 4017. [3849.] Time, When to be Made.

No such sale shall be made before the expiration of five years after the property has vested in the county. [L. '83, p. 57, § 2.]

See notes to last section.

§ 4018. [3850.] Conveyance, How Made.

In case of a sale, a conveyance shall be executed to the purchaser, by the chairman of the board of county commissioners, and the county auditor, attested by his seal of office. Such conveyance shall refer to the order of the board directing such sale and shall be deemed to convey all the estate, right, title and interest of the county in and to the property sold. [L. '83, p. 57, § 3.]

§ 4019. [3851.] Leases of County Property.

The board of county commissioners of any county in this state, wherever it shall appear that it is for the best interests of such county and the people thereof, that any part, parcel or portion of the real property and its appurtenances to said county belonging, should be leased for a year or term of years, are hereby authorized and empowered to lease such property under the limitations and restrictions and in the manner hereinafter provided. [L. '01, p. 183, § 1.]

See *infra*, § 11312, lease of mining claim acquired at tax sale.

This section has no application to a contract by the county for the lease of its ferry: *State ex rel. Jackson v. King County*, 29 Wash. 359, 69 Pac. 1106.

§ 4020. [3852.] Application in Writing—Deposit—Forfeiture.

Any person or persons desiring to lease any of such lands shall make application in writing to the board of county commissioners of such county; each application shall be accompanied with a deposit of not less than ten dollars or such other sum as the county commissioners may require, not to exceed twenty-five dollars; such deposit shall be in the form of a certified check or certificate of deposit on some bank in said county, or may be paid in cash. In case the lands so applied for shall be leased at the time they are offered, then such deposit shall be returned to such applicant by the board of county commissioners, but if the party making such application shall fail or refuse to comply with the terms of his application and to execute such lease, then such deposit shall be forfeited to the county, and the board of county commissioners shall pay the said deposit over to the county treasurer, who shall place the same to the credit of the current expense fund of the county. L. '01, p. 183, § 2.]

§ 4021. [3853.] Notice of Intention to Lease—Contents.

When, in the judgment of the board of county commissioners, it is found desirable to lease the land applied for, they shall first give notice of their intention to make such lease by publishing a notice in a newspaper of general circulation within the county where such property is situated, for at least once a week for the term of three weeks, and shall also post a notice of such intention in a conspicuous place in the courthouse in said county for the same length of time; such notice so pub-

lished and posted shall designate and describe the property which is proposed to be leased, together with the improvements thereon and appurtenances thereto, and shall contain a notice that the board of county commissioners will meet at the county courthouse on a day and at an hour, in such notice designated, for the purpose of leasing said property which day and hour for such leasing shall be at a time not more than a week after the expiration of the time required by this act for the publication of the notice of such meeting. [L. '01, p. 183, § 3.]

See *infra*, § 11342, lease of mining claims.

§ 4022. [3854.] Lease—Term.

At the day and hour designated in such notice or at any subsequent time to which such meeting may be adjourned by said board of county commissioners, but not more than thirty days after the day and hour designated for the meeting in said published notice, the board of county commissioners may, at their discretion, lease the property in such notice described for a term of years and upon such terms and conditions as to the said board of county commissioners shall seem just and right in the premises; but for no longer term in any one instance than ten (10) years, and no renewal of a lease once executed and delivered shall be had, except by a releasing and reletting of said property according to the terms and conditions of this act: Provided, that where a county owns property within the corporate limits of any city or town suitable for municipal purposes, or for commercial buildings, or owns property suitable for manufacturing or industrial purposes, the board of county commissioners may lease same for said purposes for any period not to exceed thirty-five years. Where property is leased for municipal purposes or for commercial buildings or manufacturing or industrial purposes the lessee therein shall prior to the execution of such lease file with said board of county commissioners general plans and specifications of the building or buildings to be erected thereon for such purposes. All leases when executed shall provide that the same shall be canceled by failure of the lessee to construct such building or buildings or other improvements for such purposes within two years from date of such lease, and in case of failure so to do the lease and all improvements thereon, including the rentals paid, shall thereby be forfeited to the county. No change or modification of said plans shall be made unless same be first approved by the board of county commissioners. If at any time during the life of said lease the lessee shall fail to use the same for the purposes leased, without first obtaining permission in writing from the board of county commissioners so to do, said lease shall be forfeited. Any lease made for a longer period than ten (10) years shall contain provisions requiring the lessee to permit the rentals for every five-year period thereafter, or part thereof, at the commencement of such period, to be readjusted and fixed by the board of county commissioners. In the event that the lessee and said board of county commissioners cannot agree upon the rentals for said five-year period, the lessee shall submit to have said disputed rentals for said subsequent period adjusted by arbitration. The lessee shall pick one arbitrator and the board of county commissioners one, and the two so chosen shall select a third. No board of arbitrators shall reduce the rentals below

the sum fixed or agreed upon for the last preceding period. All buildings, factories or other improvements made upon property leased under this proviso shall belong to and become property of such county, unless otherwise stipulated, at the expiration of the lease. No lease so made shall be assigned without such assignment being first authorized by resolution of said board of county commissioners and the consent in writing of at least two (2) members of said board indorsed on such leases and all leases when drawn shall contain this provision. [L. '13, p. 552, § 1. Cf. L. '01, p. 184, § 4; L. '03, p. 70, § 1.]

"Act" in this section, refers to §§ 4019—4025.

§ 4023. [3855.] Objections must be in Writing—Publication.

Any person may appear at such meeting of the county commissioners, designated in said notice, or any adjourned meeting thereof, and make objection to the leasing of such property, which objection shall be stated in writing, and in passing upon such objection the board of county commissioners shall, in writing, briefly give their reasons for accepting or rejecting the same, and such objections, and the reasons for accepting or refusing the same shall, by said board of county commissioners, be published in the next subsequent weekly issue of the newspaper in which said notice of hearing was published. [L. '01, p. 184, § 5.]

§ 4024. [3856.] Applicable to all Property—Highest Bidder.

The provisions of this act shall be held to apply to all property now owned by any county in this state and to all property hereafter acquired by any county in this state, and any lease executed under this act, shall be considered as a vested and binding contract between the county owning such property and the lessee in said lease named, and no lease shall be made except to the highest responsible bidder for the rental of such county property at the time of hearing set forth in the notice of intention to lease. [L. '01, p. 185, § 6.]

"Act" in this section, refers to §§ 4019—4025.

§ 4025. [3857.] Lease to be in Duplicate—Contents.

Upon the decision of the board of county commissioners to lease the lands applied for, a lease shall be executed in duplicate to the lessee by the chairman of the board of county commissioners and the county auditor attested by his seal of office which lease shall also be signed by the lessee; such lease shall refer to the order of the board directing such lease, with a description of the lands conveyed, the periods of payment, and the amounts to be paid for each period. [L. '01, p. 185, § 7.]

§ 4026. [3858.] County Dedication of Lands for Streets and Alleys.

That the boards of county commissioners of the several counties of this state be and they are hereby authorized and empowered to dedicate to public use land for public streets and alleys in any incorporated city or town within their respective counties through lands belonging to the several counties of this state. [L. '03, p. 136, § 1.]

§ 4027. [3859.] Recording Copy of Order.

That whenever the board of county commissioners of any county in this state shall deem it for the best interests of the public that any land belonging to the said county in any incorporated city or town thereof should be dedicated to the public use for streets or alleys, they shall make and enter an order upon their records, designating the land so dedicated, and shall cause a certified copy of such order and dedication so entered upon their records to be recorded in the auditor's office of the county in which the land is situated, and from and after the entry of such order of dedication and the recording thereof as herein provided, such lands shall be thereby dedicated to the public use. [L. '03, p. 136, § 2.]

CHAPTER VI.

COUNTY OFFICERS, TERMS OF OFFICE, COURTROOMS, ETC.

§ 4028. [3860.] Tenure of Office.

The official term of all district, county, and precinct officers shall be for the term of two years, or until their successors are duly elected and qualified; and their term of office shall begin the first [second] Monday in January next, following the day of election, and continue two years, or until their successors are duly elected and qualified. [L. '67, p. 7, § 4; L. '71, p. 35, § 3; L. '77, p. 330, § 2; Cd. '81, § 3153; L. '86, p. 101, § 2; 1 H. C., § 324.]

See Const., Art. XXVII, §§ 1, 14.

See next section, a later enactment.

See *infra*, § 4038 et seq., terms of county commissioners.

Cited in 92 Wash. 377.

These provisions do not violate Article VI, § 8, of the Constitution, as such section must be construed in connection with Article XI, § 5: *State ex rel. Hays v. Twichell*, 9 Wash. 530, 38 Pac. 134.

Under Article VI, § 8, of the Constitution, and under § 14 of the schedule of that instrument, the term of office for county officers is for two years commencing on the second Monday of January

next succeeding their election, and the act of February 24, 1886, being the above section, has been abrogated by such constitutional provision: *McMurray v. Hollis*, 5 Wash. 458, 32 Pac. 293.

The limitations of Article XI, § 5, of the Constitution are confined only to county officers as distinguished from mere clerks and deputies: *Nelson v. Troy*, 11 Wash. 435, 39 Pac. 974.

§ 4029. Term of Office.

The term of office of all county and precinct officers elected on and after the Tuesday next following the first Monday in November, 1922, shall be four years and until their successors are elected and qualified and except the county superintendent of schools shall begin on the second Monday in January following the election: Provided, that this act shall not apply to county commissioners. [L. '19, p. 520, § 1.]

Constitution, Article VI, section 8, provides that elections for county officers shall be held "biennially." Article XI, section 5, provides that the legislature shall "fix their term of office."

§ 4030. Elections—Filling Vacancies.

The election of such county and precinct officers shall be held on the Tuesday next following the first Monday in November, 1922; and every four years thereafter on the Tuesday next following the first

Monday in November, and all such elective county and precinct officers shall after the taking effect of this act be elected at the time herein specified: Provided, that if a vacancy occur during the first biennium after any such election, an election to fill such vacancy for the unexpired term shall be held at the next succeeding general election. [L. '19, p. 520, § 2.]

See notes to last section.

§ 4031. [3861.] Officer must Complete Business to End of Term.

It shall be the duty of all officers in this act named to complete the business of their respective offices, to the time of the expiration of their respective terms, and in case any officer, at the close of his term, shall leave to his successor official labor to be performed which it was his duty to perform, he shall be liable to his successor for the full value of such services. [L. '90, p. 315, § 43; 1 H. C., § 325.]

See *infra*, § 4175.

See *infra*, § 10569, validating sheriff's deeds.

§ 4032. [3862.] Offices for County Officials.

The boards of county commissioners of the several counties of the state shall provide a suitable furnished office for each of the county officers in their respective courthouses. [Cf. L. '54, p. 422, § 15; L. '69, p. 306, § 15; Cd. '81, § 2677; 1 H. C., § 282; L. '93, p. 185, § 1.]

§ 4033. [3863.*] Closed Saturday Afternoon—Summer Months.

All elective and appointive officers of the counties of the first class, and all elective and appointive officers in the cities of the first class are permitted to close any branch or branches of their respective offices at twelve o'clock noon, on Saturday of each week, during the months of June, July, August, and September; and during the period from October first to May 31st, are permitted to release the major portion of the force of their respective offices on Saturday of each week at twelve o'clock noon, retaining a sufficient force to transact the public business that may offer on Saturday afternoon. [L. '17, p. 108, § 1. Cf. L. '09, p. 638, § 1.]

See *infra*, § 8969, Saturday half-holidays.

§ 4034. [3864.] County to Furnish Courthouse and Incidental Expenses.

The county in which the court is held shall furnish the courthouse, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance, and other incidental expenses of the courthouse and court. [L. '63, p. 425, § 11; L. '69, p. 421, § 10; Cd. '81, § 2111; 1 H. C., § 3055a.]

§ 4035. [3865.] To Provide Suitable Place for Holding Court.

Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county. [L. '54, p. 423, § 23; Cd. '81, § 2688; 1 H. C., § 285.]

CHAPTER VII.
COUNTY COMMISSIONERS.

§ 4036. [3867.] Election—Quorum.

There shall be established in each organized county in this state a board of county commissioners, to consist of three qualified electors, to be elected by the qualified electors at the general election in eighteen hundred and eighty-two and biennially thereafter [as hereinafter provided], and two of said board of commissioners shall constitute a quorum to do business. [Cf. L. '54, p. 420, § 1; Cd. '81, § 2663; 1 H. C., § 265.]

See Const., Art. XI, § 5, creation of.

See infra, § 4201 et seq., compensation of county officers. The words "biennially thereafter" should read "and thereafter as hereinafter provided" to conform to the following sections.

Cited in 77 Wash. 503.

COUNTY BOARD: See Remington's Digest, Counties, §§ 9—11.

§ 9. Nature and Constitution in General: Ferry v. King County, 2 Wash. 337, 26 Pac. 537; State ex rel. Sheehan v. Headlee, 17 Wash. 637, 50 Pac. 493; State ex rel. Porter v. Headlee, 19 Wash. 477,

53 Pac. 948; Thomas v. Whatcom County, 82 Wash. 113, 143 Pac. 881.

§ 10. Appointment: Farquharson v. Yeargin, 24 Wash. 549, 64 Pac. 717.

§ 11. Eligibility and Qualification: State v. Bokien, 14 Wash. 403, 44 Pac. 889; O'Connell v. Baker, 35 Wash. 376, 77 Pac. 678.

§ 4037. [3868.] Division into Commissioners' Districts.

The board of county commissioners of each county in this state, heretofore divided and numbered as provided by law into three districts in such manner so as to leave one or more fractional voting precincts in any of said districts, shall, at their first session after this act goes into effect, or within three months thereafter, redistrict all of such commissioners districts in the manner provided herein. Such districts shall comprise as nearly as possible one-third of the population of the county: Provided, however, that the territory comprised in any voting precincts of such districts shall remain compact, and shall not be divided by the lines of said districts. The lines of the districts provided for by this section shall not be changed oftener than once in four years and only when a full board of commissioners is present. Counties hereafter organized shall be divided into districts in the manner provided herein, and shall be designated and known as districts numbered 1, 2 and 3. [L. '90, p. 317, §§ 1, 2; 1 H. C., § 266; L. '93, p. 63, § 2.]

§ 4038. [3869.] Terms of Office.

The county commissioners to be elected at the next general election after the taking effect of this act, in each of the organized counties of this state, shall be elected for the following terms of office, to wit: The commissioner elected from district number 1 shall serve four years, and the commissioners elected from districts numbers 2 and 3 shall serve two years each. [L. '91, p. 116, §§ 1, 2; 1 H. C., § 267.]

"This act" embraces the above and the next five succeeding sections.

See supra, § 4029, term of office after 1923.

Cited in 9 Wash. 531; 68 Wash. 18; 81 Wash. 19.

Term of Office, Vacancies, and Holding Over. See Remington's Digest, Counties,

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§ 12; State ex rel Hays v. Twichell, 9 Wash. 530, 38 Pac. 134; State ex rel. Ross v. Headlee, 22 Wash. 126, 66 Pac. 126; State ex rel. Pendergast v. Fulton,

37 Wash. 271, 79 Pac. 779; State ex rel. Gowan v. Superior Court, 81 Wash. 18, 142 Pac. 452; State ex rel. Gilbert v. Dimmick, 89 Wash. 182, 154 Pac. 163; State ex rel. Fair v. Hamilton, 92 Wash. 347, 159 Pac. 379.
Removal: See Remington's Digest, Counties, § 13; State ex rel. Whitney v. Friars, 10 Wash. 348, 39 Pac. 104.

§ 4039. [3870.] In Districts Numbered 2 and 3.

At the next general election thereafter there shall be a commissioner elected from the districts number 2 to serve four years, and a commissioner elected from districts number 3 to serve two years. [L. '91, p. 116, § 3; 1 H. C., § 269.]

Cited in 9 Wash. 531.

§ 4040. [3871.] In Districts Numbered 3 and 1.

At the next general election thereafter there shall be a commissioner elected from the districts number 3 to serve four years, and a commissioner elected from districts number 1 to serve two years. [L. '91, p. 117, § 4; 1 H. C., § 270.]

Cited in 9 Wash. 531.

§ 4041. [3872.] Rule of Succession.

The terms of office of county commissioners thereafter elected shall be in accordance with the above provisions, the commissioner elected to serve the long term to be elected successively from the three districts in each county in their numerical order, commencing with district number 1. [L. '91, p. 117, § 5; 1 H. C., § 271.]

Cited in 81 Wash. 19.

§ 4042. [3873.] Elected by Electors of Entire County.

One county commissioner shall be elected from among the qualified electors of each of said districts by the qualified electors of the county, and the person receiving the highest number of votes for the office of commissioner for the district in which he resides shall be declared duly elected from that district. [L. '91, p. 117, § 6; 1 H. C., § 272; L. '93, p. 62, § 1; L. '95, p. 267, § 1.]

§ 4043. [3874.] Nominations by Districts.

The qualified electors of each county commissioner district, and they only, shall nominate from among their own number, candidates for the office of county commissioner of such commissioner district to be voted for at the following general biennial election. Such candidates shall be nominated in the same manner as candidates for other county and district offices are nominated, except as above provided. [L. '09, p. 845, § 1.]

§ 4044. [3875.] Term of Appointee.

Whenever it shall become necessary to elect or appoint a commissioner to fill any vacancy occasioned by death, resignation, or otherwise, the person so elected or appointed shall hold his office for the unexpired term for which his predecessor was elected, and until his successor is

elected and qualified. [Cf. L. '54, p. 420, § 2; Cd. '81, § 2665; 1 H. C., § 275.]

See Const., Art. XI, § 6, as to filling vacancies.

Section 327, Ballinger's Code, providing that the judge of the superior court should act along with the remaining county commissioners in filling a vacancy in the board of county commissioners, violates Article XI, § 6 of the Constitution: State ex rel. Pendergast v. Fulton, 37 Wash. 271, 79 Pac. 779.

§ 4045. [3876.] Oath.

Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath or affirmation before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county in which he resides, and deposit the same with the clerk of the board of county commissioners of his county, to be by him filed in his office. [L. '54, p. 420, § 4; Cd. '81, § 2666; 1 H. C., § 276.]

§ 4046. [3877.*] Bond of Commissioners.

Each county commissioner in this state, before he enters upon the duties of his office, shall give a bond to the county, with at least two sureties thereon, in the amount hereinafter specified; which bond and the sureties thereon shall be approved by the clerk of the superior court of the proper county. The said bond, when so approved, shall be filed and recorded by said clerk in his office. Said bond shall be payable to the county, and the same shall be conditioned that such commissioner shall well and faithfully discharge the duties of his office, and not approve, audit or order paid any illegal, unwarranted or unjust claim against the county for personal services: Provided, that the county commissioners heretofore elected, and who shall have already entered upon the duties of their office, shall have ninety days from and after the day this act goes into effect in which to make and file their bonds. The amount for which said bond shall be given is as follows:

In class A counties, twenty-five thousand dollars (\$25,000);

In counties of the first class, twenty-five thousand dollars (\$25,000);

In counties of the second class, twenty-two thousand five hundred dollars (\$22,500);

In counties of the third class, twenty thousand dollars (\$20,000);

In counties of the fourth class, fifteen thousand dollars (\$15,000);

In counties of the fifth class, ten thousand dollars (\$10,000);

In counties of the sixth class, seven thousand five hundred dollars (\$7,500);

In counties of the seventh and eighth classes, five thousand dollars (\$5,000);

In counties of any other lower class, two thousand dollars (\$2,000). [L. '21, p. 488, § 1. Cf. L. '93, p. 177, § 7.]

§ 4047. [3878.] Quarterly Sessions.

The board of county commissioners in the several counties in this state shall hold regular sessions at the seat of justice of their respective counties, commencing on the first Mondays of January, April, July and October, at each of which they may transact any business which may be

required or permitted by law, and may adjourn from time to time as they may deem expedient or desirable in order to properly transact the business of such county. [Cf. L. '54, p. 420, § 5; Cd. '81, § 2667; 1 H. C., § 277; L. '93, p. 252, § 1.]

See *infra*, § 4099, duty to count money in treasury quarterly.

The next section was enacted one day prior to the above section.

§ 4048. [3879.] Limitation of Time of Sessions.

The board of county commissioners in the several counties in this state may hold regular sessions at the county seat of their respective counties commencing on the first Mondays of February, May, August and November, at each of which they may transact any business which may be required by law, but counties so desiring may omit the February and August terms: Provided always, that the number of days (on) which the county commissioners may hold regular sessions in counties of the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth classes shall not exceed thirty days in the aggregate in any one year: And provided always, that the number of days (on which the county commissioners may hold regular sessions in counties of the twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth classes shall not exceed twenty-five days in the aggregate in any one year: And provided always, that the number of days which the county commissioners may hold regular sessions in counties of the twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth and twenty-ninth classes shall not exceed twenty days in the aggregate in any one year. [L. '93, p. 175, § 1.]

The force of this section is doubtful. The title of the act is "An act relative to the qualifications and compensation of county commissioners." "May" sessions have since been recognized: See § 4081, *infra*. But see *infra*, §§ 4091, 4099, 4120, 4123.

§ 4049. [3880.] Special Sessions.

The said board of county commissioners are hereby authorized to hold extra sessions when the business of the county may require the same, which extra sessions may be by adjourned terms from any regular term, the order therefor being entered on record in the minutes of such regular term of which it is a continuation, or by ten days' notice from two of the commissioners to the third, or by the written consent of the three commissioners filed with the county auditor: Provided, that no extra session shall exceed three days and that due notice be given of the time of holding the term and the business to be transacted. [Cf. L. '54, p. 420, § 7; L. '69, p. 304, § 7; Cd. '81, § 2669; 1 H. C., § 279.]

This section is not in harmony with the next section.

§ 4050. [3881.] Extra Sessions.

The county commissioners in any and all of the classes of counties from the fourteenth to the twenty-ninth class, both inclusive, mentioned in section 4048, may hold extra sessions when the business of the county requires it, but shall receive no pay or compensation therefor, unless ordered as hereinafter provided by the superior court holding terms in the county where such extra sessions are held: Provided, that the provisions of this section shall not be construed as affecting the present law

regarding the meeting of the board of commissioners for the purpose of equalizing the taxes of the various counties in this state. [L. '93, p. 175, § 2.]

See last section and notes. "Section" interpolated for "act."

§ 4051. [3882.] Chairman of Board—Powers of.

The county commissioners aforesaid, at their first session after the biennial election, shall elect one of their number to preside at the meetings of the board, and he shall sign all documents requiring the signature of the board, and the signature of such person as chairman of the board of county commissioners shall be as legal and binding as if the whole board had affixed their names: Provided, that in case such chairman shall be absent at any meeting of the board, all documents requiring the signature of the board shall be signed by both members present. [Cf. L. '54, p. 421, § 14; Cd. '81, § 2676; 1 H. C., § 273.]

§ 4052. [3883.] Clerk of Board.

The auditor of the county shall be the clerk of the board of county commissioners, and attend their meetings and keep a record of their proceedings. [Cf. L. '54, 420, § 6; Cd. '81, § 2668; 1 H. C., § 278.]

Cited in 28 Wash. 83.

§ 4053. [3884-1.*] Compensation for Extra Services — Allowance by Court.

Whenever a member of the board of county commissioners of any county shall have a claim for compensation for per diem and expenses for attendance upon any special or extra session of the board of county commissioners of which he is a member or a claim for compensation for extra services or expenses incurred as such commissioner, including services performed as road commissioner, such claim shall be verified by him and after being approved by a majority of the board of county commissioners of such county shall be filed with the clerk of the superior court and be approved by the superior judge of such county or any superior judge holding court in such county. If the judge so approve it or any part thereof the same shall be certified by the clerk under the seal of his office and be returned to the county auditor who shall draw a warrant therefor: Provided, the superior judge may make such investigation as he shall deem necessary to determine the correctness of such claim and may, after such investigation, approve or reject any part of such claim: Provided further, the superior court shall not be required oftener than once in each month to pass upon any such claims and the court may fix a time in each month by general order filed with the clerk of the board of county commissioners on or before which such claims must be filed with the clerk of the superior court. [L. '21, p. 296, § 1; L. '11, p. 337, § 1.]

Compensation: See Remington's Digest, Counties, § 14; Hartson v. Dale, 9 Wash. 379, 37 Pac. 475; State ex rel. Heaton v. Beman, 15 Wash. 24, 45 Pac. 652.

Per diem compensation of county boards and other officers. 1 A. L. B. 287, 293.

§ 4055. [3889.] Postponement of Action, When.

When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, the matter under consideration shall be postponed to the next subsequent meeting. [L. '54, p. 421, § 9; L. '69, p. 304, § 9; Cd. '81, § 2671; 1 H. C., § 280.]

§ 4056. [3890.] General Powers and Duties.

The several boards of county commissioners are authorized and required,—

1. To provide for the erection and repairing of courthouses, jails and other necessary public buildings for the use of the county;

2. To lay out, discontinue or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law, except within the limits of incorporated cities and towns, whereby the terms of the acts of incorporation, jurisdiction over the roads in the limits of said incorporations is vested in the corporate authorities thereof;

3. To license and fix the rates of ferriage; to grant grocery and other licenses authorized by law to be by them granted;

4. To fix the amount of county taxes to be assessed according to the provisions of law, and cause the same to be collected as prescribed by law;

5. To allow all accounts legally chargeable against such county not otherwise provided for, and to audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county or appropriated to its benefit;

6. To have the care of the county property and the management of the county funds and business, and in the name of the county to prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law. [Cf. L. '54, p. 421, § 11; L. '67, p. 51, § 11; L. '69, p. 305, § 11; Cd. '81, § 2673; 1 H. C., § 281.]

See, generally, Dikes and Drains, Highways, and other specific heads.

Cited in 1 Wash. 536; 2 Wash. 32, 126; 17 Wash. 639; 19 Wash. 574; 21 Wash. 649, 650; 22 Wash. 413; 25 Wash. 205; 27 Wash. 630; 36 Wash. 652; 38 Wash. 106, 107, 108; 39 Wash. 694; 40 Wash. 504, 547; 45 Wash. 592; 46 Wash. 272; 47 Wash. 358, 359; 50 Wash. 357; 54 Wash. 590; 57 Wash. 622; 64 Wash. 235; 68 Wash. 183; 76 Wash. 581; 100 Wash. 26, 27; 108 Wash. 426; 113 Wash. 338.

Powers and Functions in General: See Remington's Digest, Counties, § 15; Martin v. Whitman County, 1 Wash. 533, 20 Pac. 599; Lincoln County v. Fish, 38 Wash. 105, 80 Pac. 435; State ex rel. Ross v. Headlee, 22 Wash. 126, 66 Pac. 126; Smith v. Lamping, 27 Wash. 624, 68 Pac. 195; State ex rel. Spring Water Co. v. Monroe, 40 Wash. 545, 82 Pac. 888; Franklin County v. Carstens, 68 Wash. 176, 122 Pac. 999; Kelly v. Hamilton, 76 Wash. 576, 136 Pac. 1148; Bier v. Clements, 98 Wash. 310, 167 Pac. 903; Northwestern Improvement Co. v. McNeil, 100 Wash. 22, 170 Pac. 338.

The county commissioners have no power to grant a franchise or permit to a water company for the purpose of laying water-pipes under or along a public highway, since the power cannot be implied from this section: State ex rel. Spring Water Co. v. Monroe, 40 Wash. 545, 82 Pac. 888.

Authority to Prosecute Suits: See Reed v. Gormley, 47 Wash. 355, 91 Pac. 1093.

Under subdivision 6, the commissioners have power to direct the dismissal of an appeal from a judgment against the county, taken by the prosecuting attorney: Prentice v. Franklin County, 54 Wash. 587, 103 Pac. 831.

Under this section, subdivision 6, the treasurer was not a necessary party to an action against a county: Hoexter v. Judson, 21 Wash. 646, 59 Pac. 498.

CONTRACTS: See Remington's Digest, Counties, §§ 40—50.

§ 40. Capacity to Contract in General: State ex rel. Jackson v. King County,

29 Wash. 359, 69 Pac. 1106; Osborne, Tremper & Co. v. King County, 76 Wash. 277, 136 Pac. 138.

§ 41. **Powers of County Board:** Martin v. Whitman County, 1 Wash. 533, 20 Pac. 599; Martin v. Whitman County, 1 Wash. 254, 24 Pac. 444; Barnett v. Ashmore, 5 Wash. 163, 31 Pac. 466; Smith v. Lamping, 27 Wash. 624, 68 Pac. 195; Green v. Okanogan County, 60 Wash. 309, 111 Pac. 226.

Power to Erect a Detention Home: Hughes v. McVay, 113 Wash. 333, 194 Pac. 565.

§ 42. **Powers of Particular Officers:** Barnard & Co. v. Wahkiakum County, 7 Wash. 210, 34 Pac. 920.

§ 43. **Proposals or Bids in General:** Baum v. Sweeny, 5 Wash. 712, 32 Pac. 778; Giffin v. King County, 50 Wash. 327, 97 Pac. 230.

§ 44. — **Acceptance:** Olympian Tribune Pub. Co. v. Byrne, 28 Wash. 79, 68 Pac. 335.

§ 45. **Formal Requisites:** Robertson v. King County, 20 Wash. 259, 55 Pac. 52; Long v. Pierce County, 22 Wash. 330, 61 Pac. 142.

§ 47. **Unauthorized or Illegal Contracts:** Snohomish County Abstract Co. v. Anderson, 9 Wash. 349, 37 Pac. 471; Soderberg v. King County, 15 Wash. 194, 45 Pac. 785, 55 Am. St. Rep. 878, 33 L. R. A. 670; Spinning v. Pierce County, 20 Wash. 126, 54 Pac. 1006; Chehalis County v. Hutcheson, 21 Wash. 82, 57 Pac. 341, 75 Am. St. Rep. 818; Green v. Okanogan County, 60 Wash. 309, 111 Pac. 226; Osborne, Tremper & Co. v. King County, 76 Wash. 277, 136 Pac. 138; State ex rel. Upper v. Hanna, 87 Wash. 29, 151 Pac. 83, 1087; Pacific County v. Willapa Harbor Publishing Co., 88 Wash. 562, 153 Pac. 360.

§ 47-1. — **Implied Contracts:** Green v. Okanogan County, 60 Wash. 309, 111 Pac. 226.

§ 48. **Assignment:** State ex rel. Dahlquist v. Van Wyck, 20 Wash. 39, 64 Pac. 768.

§ 49. **Rescission:** State ex rel. De Rackin v. Allen, 8 Wash. 168, 35 Pac. 609; Webb v. Spokane County, 9 Wash. 103, 37 Pac. 282; State ex rel. Dahlquist v. Van Wyck, 20 Wash. 39, 64 Pac. 768.

§ 50. **Rights and Remedies of Contractor and Sureties:** Morris & Whitehead v.

Williams, 23 Wash. 459, 63 Pac. 236; King County v. Guardian Casualty & Guar. Co., 103 Wash. 509, 175 Pac. 166.

COUNTY EXPENSES AND CHARGES, AND STATUTORY LIABILITIES: See Remington's Digest, Counties, §§ 51—54.

§ 51. **Expenses of County Government in General:** Rauch v. Chapman, 16 Wash. 568, 48 Pac. 253, 58 Am. St. Rep. 52, 36 L. R. A. 407; Duryee v. Friars, 18 Wash. 55, 50 Pac. 583.

§ 52. **Expenses Connected With Administration of Justice—In General:** Barnett v. Ashmore, 5 Wash. 163, 31 Pac. 466.

§ 53. — **Civil Proceedings:** State ex rel. Rochford v. Superior Court, 4 Wash. 30, 29 Pac. 764.

§ 54. — **Criminal Prosecutions:** Stowe v. State, 2 Wash. 124, 25 Pac. 1085; Presby v. Klickitat County, 5 Wash. 329, 31 Pac. 876; Mather v. King County, 39 Wash. 693, 82 Pac. 121; Williamson v. Snohomish County, 64 Wash. 233, 116 Pac. 675.

Liability of county boards to private individuals. 95 Am. St. Rep. 80.

Power of board of county commissioners to make contract extending beyond term of office of members. 12 Ann. Cas. 988; 29 L. R. A. (N. S.) 652; L. R. A. 1915E, 581.

Power of county board to sell real estate. Ann. Cas. 1913E, 528.

Power of county to offer rewards. 3 Ann. Cas. 157; 21 Ann. Cas. 62.

Power of county to employ expert accountant to examine public accounts and records. Ann. Cas. 1913B, 1087; Ann. Cas. 1916B, 1035; Ann. Cas. 1917D, 442.

Authority of county to employ tax ferret. 4 Ann. Cas. 140; 11 Ann. Cas. 487; 11 A. L. R. 913.

Liability of county on implied contract. 27 L. R. A. (N. S.) 1117; 39 L. R. A. (N. S.) 72; 46 L. R. A. (N. S.) 921.

Right of county to use public funds to secure the retention, or location, of a state institution within its limits. L. R. A. 1917E, 845.

Right of state to authorize or direct diversion of county funds to purpose other than that for which collected. L. R. A. 1915B, 306.

§ 4057. [3890¹/₂.] Funds from Forest Reserves—Expenditure for Schools and Roads.

County commissioners of the respective counties to which the money [received from the federal government from forest reserves] is distrib-

uted are hereby authorized and directed to expend said money for the benefit of the public schools and public roads thereof, and not otherwise. [L. '07, p. 406, § 2.]

Duty of state treasurer to distribute such money to the counties within the forest reserves: See *infra*, § 11021.

§ 4057-1. Flood Prevention—Regulation of Waterways.

The state of Washington in the exercise of its sovereign and police power hereby authorizes any county alone or when acting jointly with any other county under any law to regulate and control the flow of waters, both navigable and non-navigable, within such county or counties, for the purpose of preventing floods which may threaten or cause damage, public or private. [L. '21, p. 101, § 1.]

§ 4057-2. Removal of Obstructions.

Whenever the board of county commissioners of any such county or counties shall deem it essential to the public interest for such flood prevention purposes, such board or boards may remove drifts, jams, logs, debris, gravel, earth, stone or bars forming obstructions to the stream, or other material from the beds, channels and banks of such watercourses in any manner deemed expedient, including the deposit thereof on bars not forming obstructions to the stream, or on subsidiary or high water channels of such watercourses. [L. '21, p. 101, § 2.]

§ 4057-3. Removal of Trees from Banks.

Whenever any forest tree or trees shall be situated upon the bank of any such watercourse or so close thereto as to be in danger of falling thereinto, the owner or occupant of any such premises shall be notified to remove the same forthwith. Such notice shall be based upon resolution or order of the board of county commissioners of such county or counties and may be given by mail to the last known address of such owner or occupant. If such tree or trees shall not be removed within ten (10) days after the date of such notice, such county or counties may thereupon fell the same for the purpose of preventing such danger. [L. '21, p. 101, § 3.]

§ 4058. [3891.] Commissioners not to be Concerned in Contracts.

No county commissioner shall, directly or indirectly, be concerned in any contract wherein the county is a party, under the penalty of two hundred dollars, to be recovered by an action at law for the use of the county, and such commissioner shall forfeit any compensation he must receive on such contract. [Cf. L. '54, p. 423, § 21; Cd. '81, § 2686; 1 H. C., § 286; L. '95, p. 190, § 1.]

§ 4059. [3892.] Power to Fill Vacancies.

In all cases of vacancy occurring in any of the county offices in this state, either by death, resignation or otherwise, it shall be the duty of the county commissioners of the county in which such vacancy occurs, at the first session thereafter, or as soon thereafter as practicable, to appoint a suitable elector of the proper county to fill such vacancy; such

officer to remain in or hold the office to which he may have been appointed until the first general election after his appointment. [L. '67, p. 57, § 28; Cd. '81, § 2689; 1 H. C., § 287.]

See next section.

See Const., Art. XI, § 6, power to fill vacancies.

Cited in 37 Wash. 273.

§ 4060. [3893.] Vacancy in Precinct Offices.

Whenever a vacancy occurs in any county or precinct office, except when otherwise provided by law, it shall be filled by appointment by the board of county commissioners at the first regular or special session of their board after that vacancy occurs: Provided, that if the commissioners be not apprised of the vacancy at their first session after the vacancy occurs, it may be filled at any subsequent session of their board. [Cd. '81, § 3065.]

See Const., Art. XI, § 6.

This section seems to govern precinct officers. See last section for county offices.

Section 308 et seq., 1 Hill's Code, providing that a vacancy in the office of justice of the peace shall be filled by an election, is superseded by Article XI, § 6, of the Constitution, providing that vacancies in precinct offices shall be filled by the county commissioners: State ex rel. Moody v. Cronin, 5 Wash. 398, 31 Pac. 864.

§ 4061. [3894.] May Compound Debt Due County, When.

The county commissioners of their respective counties shall have power to compound and release in whole or in part any debt due to their county, when in their opinion the interest of their county will not be prejudiced thereby, except in cases where they or either of them are personally interested. [Cf. L. '54, p. 422, § 20; Cd. '81, § 2681; 1 H. C., § 289.]

See Const., Art. XI, § 9, no commutation authorized for state taxes.

Cited in 1 Wash. 537; 3 Wash. 498; 22 Wash. 698.

§ 4062. [3895.] May Order Prisoners to Work.

The county commissioners in their respective counties may order all persons who shall be confined in the county jails of their respective counties, convicted of any crime or misdemeanor, to work on the roads of their respective counties, under the direction of the sheriff; but such convicts shall not be put to labor at a greater distance from the jail or place of confinement than five miles: Provided, that if any such convict shall refuse to perform such labor he shall be kept in close confinement on bread and water. The sheriff having the custody of such convicted persons may, to secure them from escape, attach a ball and chain to said convicts. [L. '67, p. 56, § 24; Cd. '81, § 2685; 1 H. C., § 290.]

This section is in part superseded by the next two sections. See, also, § 2279, supra. See supra, §§ 1933, 2209, fines how worked out.

See infra, § 6761, highways constructed by.

See infra, § 10190, prisoners compelled to work when and how.

See infra, § 10207, county and city prisoners may be worked.

§ 4063. [3896.] Same.

The board of county commissioners of any county, may in their discretion, order the sheriff to cause all persons under sentence of imprisonment in the county jail, except females and persons incapable of performing manual labor, to be put to work and perform labor on the public roads and highways within such counties. [L. '07, p. 55, § 1.]

As to repeal of this section, see § 2304, the force of which is doubtful. See note to preceding section.

See § 2279, *supra*.

Cited in 60 Wash. 629.

§ 4064. [3897.] Supervision of Work of Convicts.

All work done by prisoners as herein provided shall be under the direction of the county commissioners: Provided, that when the work is done on any of the roads or highways leading to and within the corporate limits of any incorporated city or town it shall be done according to the directions of the proper authorities of such city or town. [L. '07, p. 55, § 2.]

As to repeal of this section, see § 2304, the force of which is doubtful. See note to § 4062. Query, whether this repeal revives section 4062, *supra*.

§ 4065. [3898.] Transcribing Mutilated Records.

It shall be the duty of the county commissioners of any county in this state, when any of the county records of their county become so mutilated that the handling of the same becomes dangerous to the public safety of said records, and in the judgment of said county commissioners it may become necessary to order the transcribing of said records at a sum not exceeding eight cents per folio of one hundred words, in books to be provided for that purpose by said county. [L. '93, p. 23, § 1.]

§ 4066. [3899.] Auditor to Certify.

The books containing the records so transcribed shall be certified by the county auditor under whose direction said transcribing was done, as being a true copy of the original book in the same number and class. [L. '93, p. 24, § 2.]

§ 4067. [3900.] Original Records Preserved.

All the original record books shall after the transcribing thereof be filed away in the auditor's office and only be used in case of contest on the correctness of the transcribed records. [L. '93, p. 24, § 3.]

§ 4068. [3901.] Legalizing Former Transcripts.

All the records heretofore transcribed by order of any board of county commissioners in this state shall be and are hereby declared the legal records of said county the same as if transcribed under the provisions of sections 4065—4067. [L. '93, p. 24, § 4.]

§ 4069. [3902.] Seal of Commissioners—Evidence.

The county commissioners of each county shall have and use a seal for the purpose of sealing their proceedings, and copies of the same,

when signed and sealed by the said county commissioners and attested by their clerk, shall be admitted as evidence of such proceedings in the trial of any cause in any court in this state; and until such seal shall be provided, the private seal of the chairman of such board of county commissioners shall be adopted as a seal. [Cf. L. '54, p. 421, § 10; Cd. '81, § 2672; 1 H. C., § 294.]

See *infra*, § 4103, seal of the county commissioners' court.

§ 4070. [3903.] Examination of Accounts, etc.

At the July session, the board of county commissioners shall examine and compare the accounts and statements of the county auditor and county treasurer, aside from the regular settlement with such treasurer, and shall enter upon their record a summarized statement of the receipts and expenditures of the preceding year. At the January, April, July and October sessions, the board of county commissioners, together with the auditor, shall count the funds in the county treasury, and ascertain whether it contains the proper amount of funds. [Cf. L. '54, p. 422, § 16; Cd. '81, § 2678; 1 H. C., § 295; L. '93, p. 253, § 2.]

§ 4071. [3904.] Power to Administer Oaths.

The county commissioners are authorized and empowered to administer all oaths or affirmations necessary in discharging the duties of their office, and have the same power as justices of the peace to commit for contempt any witness refusing to testify before them. [Cf. L. '54, p. 423, § 22; L. '69, p. 308, § 26; Cd. '81, § 2687; 1 H. C., § 296.]

§ 4072. [3905.] Record of Proceedings.

The board of county commissioners shall cause to be recorded, in a book to be kept for that purpose, all their proceedings and determinations touching all matters properly cognizable before them; and all books, accounts, vouchers, papers, and (accounts) touching the business or property of the county shall be carefully kept by the clerk, and open to the inspection of every person. [L. '54, p. 421, § 13; Cd. '81, § 2675; 1 H. C., § 297.]

Cited in 22 Wash. 346; 23 Wash. 130; 28 Wash. 83.

Proceedings: See Remington's Digest, Counties, §§ 18—21.

§ 18. **Minutes and Records:** Robertson v. King County, 20 Wash. 259, 55 Pac. 52; Nickeus v. Lewis County, 23 Wash. 125, 62 Pac. 763; Burrows v. Kinsley, 27 Wash. 694, 68 Pac. 332; Phillips v. Welts, 40 Wash. 501, 82 Pac. 737; Thomas v. Whatcom County, 82 Wash. 113, 143 Pac. 881.

§ 19. — **Amendment or Alteration:** Olympian-Tribune Pub. Co. v. Byrne, 28 Wash. 79, 68 Pac. 335.

§ 20. **Reconsideration and Rescission of Action:** State ex rel. Porter v. Headlee, 19 Wash. 477, 53 Pac. 948; State ex rel. Ross v. Headlee, 22 Wash. 126, 66 Pac. 126.

§ 21. **Operation and Effect of Decisions:** Dillon v. Whatcom County, 12 Wash. 391, 41 Pac. 174; Thomas v. Whatcom County, 82 Wash. 113, 143 Pac. 881.

§ 4073. [3906.] Reduction of County Expenses.

It shall be the duty of every board of county commissioners to reduce the expenditures of their respective counties to the lowest practicable sum consistent with law. [L. '93, p. 427, § 1.]

§ 4074. [3907.] Limitations on.

No deputies or assistance of any kind shall be allowed to any officer or person receiving compensation from a county unless the same is necessary. No higher compensation shall be allowed for any deputy of, or assistance for, such officer or person than is necessary. No other expenditure for or connected with such officer or person, or his office or employment, or the performance of his official duties, or any of them, than shall be necessary. In case the payment of any fee or fees is required for the performance of any duty of such officer or person, the total amount allowed and expended by any board of county commissioners for, on account of, or connected with such person or officer, his office or employment, and the performance of the duties thereof, including the salary allowed by law to such officer or person, shall not exceed the amount of the legal fees collected on account of such office or employment and the performance of the duties thereof: Provided, however, that the provisions of this section shall not apply to the office of county attorney: Provided further, that the fees properly chargeable to counties shall be included in the total of the earnings of such officers. [L. '93, p. 427, § 2.]

See note to § 7571, *infra*.

§ 4075. [3908.] Employment of Special Attorneys.

It shall be unlawful for any board of county commissioners in any county in this state to employ, contract with or pay any special attorney or counsel to perform any duty which the attorney general or any prosecuting attorney is authorized or required by law to perform, unless the contract of employment of said special attorney or counsel shall have been first reduced to writing and approved by the superior judge of said county or a majority of the judges thereof, in writing indorsed thereon: Provided, this section shall not prohibit the appointment of deputy prosecuting attorneys in the manner provided by law. [L. '05, p. 50, § 1.]

Power to employ attorneys, see *supra*, § 4056, and *infra*, § 4130, and note.

Cited in 108 Wash. 300.

§ 4076. [3909.] Appeals—When and How Taken.

Any person may appeal from any decision or order of the board of county commissioners to the superior court of the proper county. Such appeal shall be taken within twenty days after such decision or order, and the party appealing shall within said time serve notice on the county commissioners that the appeal is taken, which notice shall be in writing and shall be delivered to at least one of the county commissioners personally, or left with the clerk of the board, the party appealing shall, within ten days after the service of the notice of appeal give a bond to the county with one or more sureties, to be approved by the clerk of the board, conditioned for the payment of all costs which shall be adjudged against him on such appeal in the superior court. The practice regulating appeals from and writs of certiorari to justice's courts shall, so far as the same may be applicable, govern in matters of appeal from the decision or order of the board of county commissioners.

Nothing herein contained shall be so construed as to prevent a party having a claim against any county in this state from enforcing the collection thereof by civil action in any court of competent jurisdiction, after the same may have been presented and disallowed in whole or in part by the board of county commissioners of the proper county: Provided, that such action be brought within three months after such claim has been acted upon by such board. [Cf. L. '54, p. 423, § 24; L. '79, pp. 143, 144; Cd. '81, § 2695; 1 H. C., § 298; L. '93, p. 291, § 1.]

See *supra*, § 164, limitations.

See *supra*, § 1001 et seq., certiorari or writ of review.

See *supra*, § 1013, mandamus.

See *supra*, § 1910 et seq., appeals from justices' courts.

See *supra*, § 3982, counties may sue and be sued.

See *infra*, § 4086, auditing of claims.

Cited in 4 Wash. 101; 5 Wash. 713; 8 Wash. 237; 11 Wash. 578; 12 Wash. 446; 14 Wash. 270; 19 Wash. 574; 21 Wash. 649; 23 Wash. 128; 25 Wash. 204; 43 Wash. 139; 54 Wash. 353; 67 Wash. 314; 72 Wash. 253; 88 Wash. 566; 90 Wash. 252; 105 Wash. 96; 106 Wash. 518, 520; 108 Wash. 302, 418; 111 Wash. 388.

Appeals from Decisions: See Remington's Digest, Counties, § 22; Northern Pac. R. Co. v. Whalen, 3 W. T. 452, 17 Pac. 890; Baum v. Sweeny, 5 Wash. 712, 32 Pac. 778; State ex rel. De Rackin v. Allen, 8 Wash. 168, 35 Pac. 609; Morath v. Gorham, 11 Wash. 577, 40 Pac. 129; Olympia Waterworks v. Thurston County, 14 Wash. 268, 44 Pac. 267; Knapp v. King County, 15 Wash. 541, 46 Pac. 1047; Olympia Waterworks v. Gelbach, 16 Wash. 482, 48 Pac. 251; Baker v. King County, 17 Wash. 622, 50 Pac. 481; Noyes v. King County, 18 Wash. 417, 51 Pac. 1052; Lewis v. Bishop, 19 Wash. 312, 53 Pac. 165; Templeton v. Pierce County, 25 Wash. 377, 65 Pac. 553; State ex rel. Latimer v. Henry, 28 Wash. 38, 68 Pac. 368; Wilsey v. Cornwall, 40 Wash. 250, 82 Pac. 303; Sweeney v. County Commissioners, 43 Wash. 138, 86 Pac. 200.

This section does not give the right of appeal from an order of township supervisors legalizing a county road, notwithstanding township supervisors are given concurrent jurisdiction with county commissioners over the subject, no appeal being given by the township act, sections 11360—11484. *infra*; Duncan Township v. Stavr, 106 Wash. 514, 180 Pac. 476.

This section is limited to cases requiring the exercise of purely judicial power; and hence has no application to, and no appeal lies from, an order fixing the salary of a court commissioner: State ex rel. Yeargin v. Maschke, 90 Wash. 249, 155 Pac. 1064.

This section does not prevent the recovery in an action by the county for money paid under an illegal order, without the taking of any appeal: Pacific County v. Willapa Harbor Publishing Co., 88 Wash. 562, 153 Pac. 360.

A taxpayer not a party to the proceeding cannot appeal from the order of county commissioners allowing a claim against the county, as this section applies only to parties to the proceeding: Morath v. Gorham, 11 Wash. 577, 40 Pac. 129.

An order of the board of county commissioners awarding a lease of county property is not reviewable by writ of certiorari, since there is an adequate remedy by appeal under this section: Sweeney v. County Commissioners, 43 Wash. 138, 86 Pac. 200.

Where the commissioners refused to act within a reasonable time, the claim will be considered rejected as of the time the claimant elected to sue, and the county could not take advantage of its own wrong and claim an earlier rejection barring the right of action; and it will be conclusively presumed, after the commissioners have failed to act within a reasonable time, that they rejected the claim, and claimant may sue at law without resorting to mandamus to force the commissioners to act; and seven months is more than a reasonable time: Bullock v. Yakima Valley Transportation Co., 108 Wash. 413, 184 Pac. 641, 187 Pac. 410.

Under the express provision of this section, the remedy by appeal from the county commissioners' rejection of a claim, does not prevent a party from enforcing his claim by direct action in the courts: State ex rel. Clapp v. Urquhart, 108 Wash. 299, 183 Pac. 121.

§ 4077. Claims Against Counties—Presentation—Verification.

That all claims for damages against any county must be presented before the county commissioners of such county and filed with the clerk thereof within sixty days after the time when such claim for damages accrued. All such claims for damages must locate and describe the defect which caused the injury, describe the injury, and contain the amount of damages claimed, together with a statement of the actual residence of such claimant at the time of presenting and filing such claim and for a period of six months immediately prior to the time such claim for damages accrued, and be sworn to by the claimant. No action shall be maintained for any claim for damages until the same has been presented to the board of county commissioners and sixty days have elapsed after such presentation: Provided, that if the claimant shall be incapacitated from verifying and filing his claim for damages within the time prescribed, or if the claimant be a minor, or in case the claim is for damages to real or personal property, and if the owner of such property is a nonresident of such county or is absent therefrom during the time within which a claim for damages to said property is required to be filed, then the claim may be verified and presented on behalf of said claimant by any relative or attorney or agent representing the injured person, or in case of damages to property, representing the owner thereof, and no action for damages now pending or hereafter brought shall be defeated by the failure of the person to verify or file the claim in person if action be brought within three years after the taking effect of this act where a claim has heretofore been verified and filed within the time and in compliance with the terms of this act if said claim has been rejected. [L. '19, p. 414, § 1.]

See *infra*, § 4086, audit and allowance of claims.

Cited in 111 Wash. 388; 112 Wash. 660.

The last part of the proviso to this section does not make the act retroactive, but applies to claimants who shall be incapacitated, and not to causes that accrued prior to its passage: *Horner v. Pierce County*, 111 Wash. 386, 191 Pac. 396.

This action does not bar claims sustained prior to taking effect of the act, if presented within sixty days thereafter: *Hanford v. King County*, 112 Wash. 659, 192 Pac. 1013.

CLAIMS AGAINST COUNTY: See *Remington's Digest, Counties*, §§ 88—95. **Nature of Claims Required to be Presented:** *State ex rel. Banks v. Board of Commrs.*, 18 Wash. 160, 51 Pac. 368; *State ex rel. Porter v. Headlee*, 19 Wash. 477, 53 Pac. 948; *Hoexter v. Judson*, 21 Wash. 646, 59 Pac. 498; *State ex rel. Egbert v. Blumberg*, 46 Wash. 270, 89 Pac. 708; *Frasier v. Cowlitz County*, 67 Wash. 312, 121 Pac. 459; *State ex rel. Beach v. Olsen*, 91 Wash. 56, 157 Pac. 34.

See, also, *Bullock v. Yakima Valley Transportation Co.*, 108 Wash. 413, 184 Pac. 641, 187 Pac. 410; *Horner v. Pierce*

County, 111 Wash. 386, 191 Pac. 396; *Hanford v. King County*, 112 Wash. 659, 192 Pac. 1013.

§ 89. — **Interest:** *State ex rel. Maltbie v. Will*, 54 Wash. 453, 103 Pac. 479, 104 Pac. 797.

§ 90. **Audit and Allowance or Disallowance:** *Martin v. Whitman County*, 1 Wash. 533, 20 Pac. 599; *Nickeus v. Lewis County*, 23 Wash. 125, 62 Pac. 763; *Maynard v. Jefferson County*, 54 Wash. 351, 103 Pac. 418; *State ex rel. Beach v. Olsen*, 91 Wash. 56, 157 Pac. 34.

See, also, *Bullock v. Yakima Valley Transportation Co.*, 108 Wash. 413, 184 Pac. 641, 187 Pac. 410.

Under this section, and section 4136, it is the duty of the county auditor to draw warrants in payment of costs in misdemeanor cases, which have been approved by the prosecuting attorney and certified by the judge trying the case, without having such cost bills presented to the county commissioners for examination and allowance: *State ex rel. Crawford v. Evenson*, 18 Wash. 609, 52 Pac. 230.

Under this section, a claim for salary as justice of the peace must be pre-

sented to the board of county commissioners for their examination and allowance and upon their refusal to allow same, mandamus will not lie to compel payment, since there is a remedy by appeal from the action of the board of commissioners: *State v. Snohomish County*, 18 Wash. 160, 51 Pac. 368.

§ 91. **Review of Decision:** *State ex rel. Banks v. Snohomish County*, 18 Wash. 160, 51 Pac. 368.

See, also, *State ex rel. Clapp v. Urquhart*, 108 Wash. 299, 183 Pac. 121.

§ 92. **Effect of Allowance or Disallowance:** *State ex rel. Sheehan v. Headlee*, 17 Wash. 637, 50 Pac. 493; *State ex rel. Porter v. Headlee*, 19 Wash. 477, 53 Pac. 948; *Chehalis County v. Hutcheson*, 21 Wash. 82, 57 Pac. 341, 75 Am. St. Rep. 818; *American Bridge Co. v. Wheeler*, 35 Wash. 40, 76 Pac. 534.

§ 95. **Conditions Precedent to Action:** *Collins v. King County*, 1 W. T. 416; *Eureka Sandstone Co. v. Pierce County*, 8 Wash. 236, 35 Pac. 1081; *Hoexter v. Judson*, 21 Wash. 646, 59 Pac. 498; *Nickeus v. Lewis County*, 23 Wash. 125,

62 Pac. 763; *Rose v. Pierce County*, 25 Wash. 119, 64 Pac. 913; *Kiser v. Douglas County*, 70 Wash. 242, 126 Pac. 622, Ann. Cas. 1914B, 721, 41 L. R. A. (N. S.) 1066.

Effect of allowance or rejection of claims against county. 55 Am. St. Rep. 203.

Estoppel of county to contest illegal claims or expenditures. 137 Am. St. Rep. 354.

Liability of county for interest on its obligations in absence of statute or express contract. 17 L. R. A. (N. S.) 552.

Part payment as satisfaction of claim against county. Ann. Cas. 1914D, 824; 42 L. R. A. (N. S.) 118.

Creditor's bill as reaching claim against county. Ann. Cas. 1914B, 957.

Liability of county to garnishment. 3 Ann. Cas. 180.

Presentation of claims before county board as a condition precedent to suit. 39 L. R. A. 77.

CHAPTER VIII.

COUNTY BLANKS AND PRINTING.

§ 4078. [3910.] State Auditor to Compile Uniform Blanks.

The state auditor, with the aid and advice of the attorney general, shall compile the forms for all public blanks used in the counties of this state in conformity with the general statutes thereof. The various blanks for each county shall be uniform throughout the state. [L. '97, p. 47, § 1.]

§ 4079. [3911.] Material Provided by the State.

The material used in said blank forms and the printing and binding thereof shall be provided for by the state printing board in the same manner and under the same rules and regulations as other public printing is now provided for under the general statutes of this state. [L. '97, p. 48, § 2.]

"The state printing board" is obsolete.

§ 4080. [3912.*] Contracting for Public Printing.

In all counties where two or more weekly, semi-weekly or daily newspapers are published, it shall be the duty of the county commissioners, at their April meeting each year, to let the advertising and official publication of all notices to the publisher thereof who is the best and lowest responsible bidder: Provided, that in all cases the county commissioners shall consider the question of circulation in awarding the county printing contract, with a view to giving said printing the widest publicity; and no newspaper shall be eligible as a competitor, nor shall a contract be let to any newspaper, unless the same shall have been

established, published and circulated in the county for at least six months, and has a general and bona fide circulation throughout the county in which it is published: Provided, further, that in counties where there is no newspaper published, the commissioners of such county shall cause the printing of said county to be done in some newspaper in the state, of general circulation in the county, having no resident newspaper, and the newspaper to which such contract is let, shall be designated as the official newspaper of the county: Provided further, that the county commissioners shall require a bond in double the amount involved in the contract, for the correct and faithful performance of all such contracts and the work to be done thereunder: Provided, further, that the term of the successful bidder shall not commence until the first day of July succeeding the letting of such contract. [L. '17, p. 419, § 1. Cf. L. '73, p. 478, § 1; Cd. '81, § 2692; L. '86, p. 108, § 1; 1 H. C., § 2936.]

See *supra*, § 253-1, legal newspaper.

See §§ 4047, 4048, *supra*, quarterly sessions of the board.

See *infra*, § 11295, publication of delinquent tax list.

Cited in 5 Wash. 713, 714; 8 Wash. 168, 171; 14 Wash. 344.

§ 4081. [3913.*] County Auditor to Advertise for County Printing.

It shall be the duty of the county auditor, at least five weeks before, and not more than eight weeks before the meeting of the county commissioners in April of each year, to advertise for proposals for the public printing, for the term of one year, beginning on the first day of July following, which advertisement shall be inserted for four consecutive weeks in the official newspaper of the county, or if there be no official newspaper, then in some other newspaper published in the county, or in a county, adjacent to said county, and having a general circulation in said county: Provided, that the county commissioners shall not be compelled in any event to accept any bid for a greater price than one dollar per square, of two hundred and fifty ems, nonpareil, for the first insertion, straight matter, and fifty cents per square for each subsequent insertion: Provided further, that the county auditor, when calling for bids, shall state how the matter shall be set, what kind of type, and whether solid or leaded. [L. '17, p. 420, § 2; L. '07, p. 565, § 1. Cf. L. '73, p. 478, § 2; Cd. '81, § 2693; L. '86, p. 108, § 2; 1 H. C., § 2937.]

Cited in 5 Wash. 714; 28 Wash. 80.

Newspapers: See Remington's Digest, Newsp., §§ 1—3; Puget Sound Pub. Co. v. Times Printing Co., 33 Wash. 551, 74 Pac. 802; North Yakima v. Scudder, 41 Wash. 15, 82 Pac. 1022; Brown's Estate v. West Seattle, 43 Wash. 26, 85 Pac. 854; Warner v. Miner, 41 Wash. 98, 82 Pac. 1033; Fairhaven Pub. Co. v. Bellingham, 51 Wash. 108, 98 Pac. 97, 16 Ann. Cas. 420; Times Printing Co. v. Starr Pub. Co., 51 Wash. 667, 99 Pac. 1040, 16 Ann. Cas. 414; State ex rel. Lewis v. Hodge, 90 Wash. 487, 156 Pac. 404.

The provision requiring notice for bids to be published for a certain time prior to the May session is merely

directory: Baum v. Sweeny, 5 Wash. 712, 32 Pac. 778.

The order of the board of county commissioners in accepting the bid for county printing under this section does not constitute a contract nor conclude the board from rescinding its order and making another award: State ex rel. De Rackin v. Allen, 8 Wash. 168, 35 Pac. 609.

Mandamus will not lie to compel the county commissioners to make an award for county printing, as there is an adequate remedy by appeal from their orders in such cases: State ex rel. De Rackin v. Allen, *supra*, citing Baum v. Sweeny, 5 Wash. 712, 32 Pac. 778.

In an action on a contract for county printing, the plaintiff should be non-

suited, when the evidence shows that he had sold the paper in which he had contracted to do the county printing to another, and that the county commissioners had refused to furnish him with any more notices for publication: *Rathbun v. Thurston County*, 8 Wash. 238, 35 Pac. 1102; compare *Norton v. Roslyn*, 10 Wash. 44, 38 Pac. 878.

This section specially confers authority upon the county treasurer to select

the newspaper in which to publish the delinquent tax list of the county, and such section necessarily, to that extent, repeals the provisions of 1 Hill's Code, section 2936, authorizing the county commissioners to contract for the official publication of all notices: *State ex rel. Whatcom County v. Purdy*, 14 Wash. 343, 44 Pac. 857; *De Rackin v. Lincoln County*, 19 Wash. 360, 52 Pac. 351.

§ 4082. [3914.] Legal Notices—Duties of Officers as to.

It shall be the duty of all county officers, where the printing is contracted for in accordance with the provisions of this chapter, to cause all legal notices and delinquent tax lists to be advertised in the paper designated by the county commissioners. [L. '73, p. 478, § 3; Cd. '81, § 2694; 1 H. C., § 2938.]

Cited in 14 Wash. 344.

CHAPTER IX. COUNTY AUDITORS.

§ 4083. [3915.] Election.

There shall be elected at each general election in each county in this state one county auditor, who shall have the qualification of an elector, and who shall continue in office for the term of two years, and until his successor is elected and qualified; said county auditor shall be ex-officio clerk of the board of county commissioners, and recorder of deeds and other instruments in writing, which by law are to be recorded in and for the county for which he may be elected. The election of said officer shall be conducted and the returns made in the manner and form prescribed by the law regulating elections. [L. '54, p. 424, §§ 1—3; Cd. '81, § 2707; 1 H. C., § 179.]

The proviso in the above section is omitted as repealed by implication by § 5342, *infra*.

See *supra*, § 4029, term of office after 1923.

See *infra*, § 4201 et seq., salaries classified.

See *infra*, § 10606, recording of instruments.

See *infra*, § 10630, registrar of land titles.

Cited in 15 Wash. 640.

§ 4084. [3916.] Oath and Bond.

Every auditor, within fifteen days after receiving his certificate of election, and before he shall enter upon the discharge of the duties of his office, shall take and subscribe an oath before an officer authorized to administer the same, faithfully and impartially to perform the duties of his office, as prescribed by law, to the best of his abilities; which oath shall be indorsed on the back of his certificate of election, recorded in a book kept for that purpose in his office, and filed in the office of the clerk of the superior court of the county for which he may be elected. He shall also give a bond to his county, with good and sufficient sureties, in the penal sum of not less than three thousand dollars, the amount to be fixed and the sureties to be approved by the county commissioners of

his county, conditioned that he will faithfully and impartially fulfill the duties of his office. [Cf. L. '54, p. 424, § 4; Cd. '81, § 2708; 1 H. C. § 180.]

See *infra*, § 9934, approval and filing of bond.

Cited in 4 Wash. 235, 237.

Failure to qualify within fifteen days after notice of election, as required by

this section, does not work a forfeiture of office: *State ex rel. Lysons v. Ruff*, 4 Wash. 234, 29 Pac. 999, 16 L. R. A. 140.

§ 4085. [3917.] Duties as Clerk of Board of County Commissioners.

The county auditor, as clerk of the board of county commissioners, must,—

1. Record all the proceedings of the board;
2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present;
4. Sign all orders made and warrants issued by order of the board for the payment of money;
5. Record the reports of the county treasurer of the receipts and disbursements of the county;
6. Preserve and file all accounts acted upon by the board;
7. Preserve and file all petitions and applications for franchises, and record the action of the board thereon;
8. Record all orders levying taxes; and
9. Perform all other duties required, by law or any rule or order of the board. [Cd. '81, § 2709; 1 H. C., § 181.]

See *infra*, § 11219, clerk of board of equalization.

Cited in 1 Wash. 509; 15 Wash. 436, 640; 59 Wash. 12.

Duties of Auditor: See Remington's Digest, Counties, §§ 33—36. **In General:** *State ex rel. Sheehan v. Headlee*, 17 Wash. 637, 50 Pac. 493; *American Bridge Co. v. Wheeler*, 35 Wash. 40, 76 Pac. 534; *State ex rel. Ross v. Headlee*, 22 Wash. 126, 66 Pac. 126; *Dirks v. Collin*, 37 Wash. 629, 79 Pac. 1112.

§ 34. Accounting for Public Funds:

Dillon v. Spokane County, 3 W. T. 498, 17 Pac. 889; *Ferry v. King County*, 2 Wash. 337, 26 Pac. 537.

§ 35. **Liabilities on Official Bonds—In General:** *Ferry v. King County*, 2 Wash. 337, 26 Pac. 537; *Skagit County v. American Bonding Co.*, 59 Wash. 8, 109 Pac. 199.

§ 36. — **Extent of Liability:** *Snohomish County v. Ruff*, 15 Wash. 637, 47 Pac. 35, 441.

§ 4086. [3918.] Claims Against County—Duties in Auditing.

He shall audit all claims, demands and accounts against the county which by law are chargeable to said county, except such cost or fee bills as are by law to be examined or approved by some other judicial tribunal or officer. Such claims as it is his duty to audit shall be presented to the board of county commissioners for their examination and allowance. For claims allowed by the county commissioners, as also for cost bills and other lawful claims duly approved by the competent tribunal designated by law for their allowance, he shall draw a warrant on the county treasurer, made payable to the claimant or his order, bearing date from the time of and regularly numbered in the order of their issue, and he shall carefully keep proper warrant books, and when a warrant is issued

the stub shall be carefully retained, upon which shall be recorded the number, date, name of payee, amount, nature of claims or services briefly stated and by whom allowed. He shall also retain all original bills and indorse thereupon claimant's name, nature of claim, the action had and if warrant be issued, dating and numbering said voucher or claim the same as the warrant. Nothing herein contained shall prevent claimants at the time of issuing said warrants, from having the same broken, or issued in smaller warrants by the said auditor, using two or more warrants in lieu of one. In all such cases, however, when broken warrants are issued, the auditor issuing the same is required to preserve as many stub entries as he issues broken warrants, noting upon such stub the claim for which issued, the same as in other cases, together with a note of the number of broken warrants which aggregate the amount of the entire claim allowed: Provided, no single warrant shall be issued for a greater amount than five hundred dollars: Provided, further, that the above restrictions shall not apply to warrants issued when there is cash on hand in the county treasury to pay the same on presentation. All claims of the county auditor against the county for services shall be audited and allowed by the board of county commissioners as other claims are audited and allowed. Said warrants shall in all respects be audited, approved, issued, numbered, registered and paid the same as any other county warrant. The words "county warrant," as herein designated, shall be synonymous with "county order" or "county scrip." In this as well as in all other laws of this state, such terms are convertible, and shall be considered to mean one and the same thing. [Cf. L. '54, p. 425, § 5; L. '69, p. 310, § 5; Cd. '81, § 2710; 1 H. C., § 182; L. '93, p. 280, § 1.]

See supra, § 4077, and notes, presentation, filing and bar of claims.

See notes to last section.

Cited in 2 Wash. 433; 17 Wash. 641; 18 44; 46 Wash. 272, 273; 70 Wash. 244; 88 Wash. 160, 610; 21 Wash. 649; 35 Wash. Wash. 667, 668; 91 Wash. 57.

§ 4087. [3919.] Restrictions on Issuance of Warrants.

No county auditor or clerk of the board of county commissioners shall issue any county warrant within less than ten days from and after the date of the allowance of such warrant. [L. '93, p. 76, § 2.]

Cited in 9 Wash. 601; 14 Wash. 382; 20 Wash. 47; 30 Wash. 631.

§ 4088. [3920.] Shall Settle Accounts.

The auditor must examine and settle the accounts of all persons indebted to the county, or holding moneys payable into the county treasury, and must certify the amount to the treasurer, and upon the presentation and filing of the treasurer's receipt therefor, give to such person a discharge, and charge the treasurer with the amount received by him. [Cd. '81, § 2711; 1 H. C., § 183.]

§ 4089. [3921.] Account Current to be Kept With County Treasurer.

He shall keep an accurate account current with the treasurer of the county and shall charge him with all moneys received as shown by his receipts issued, and shall credit him with all disbursements on account of

moneys paid out according to the record of the settlements of said treasurer with the board of county commissioners. [Cf. L. '54, p. 425, § 6; Cd. '81, § 2712; 1 H. C., § 184; L. '93, p. 281, § 2.]

§ 4090. [3922.] To Render Statement to State Auditor.

Immediately after the completion of the annual settlement of the treasurer with the board of county commissioners of each county, the county auditor shall make out and transmit to the state auditor a full and complete verified statement of the state fund account with the county for the past fiscal year. Said statement shall show—

1. The total amount of tax levy for the current year as returned on the original assessment-roll;
2. The amount of the supplemental taxes levied by the treasurer;
3. The amount collected from delinquent tax-rolls of previous years, since last report;
4. The amount of errors, double assessments and rebates allowed on settlement of treasurer with the board of county commissioners;
5. The amount paid to state treasurer since the last annual settlement, and all such other credits as the county may be entitled to receive in abatement of state taxes;
6. The balance of delinquent tax account for the current year.

Said statement shall be verified by the certificate and official seal of the county auditor. The state auditor, upon receipt of such verified statement, shall proceed from the data furnished to balance up the county's account with the state for the current year, and credit the delinquent tax accounts of previous years, respectively, as shown to have been collected. [Cd. '81, § 2571; 1 H. C., § 185; L. '93, p. 281, § 3.]

§ 4091. [3923.] To Publish Exhibit of County Finances.

He shall, immediately after the July settlement between the county treasurer and the county commissioners, make out a full and complete exhibit of the finances of the county. Such exhibit shall be made out immediately after the July term of said board of county commissioners, and the county auditor shall cause the same to be published in some newspaper, if any is printed within the county; if not, he shall post the same in a conspicuous place in his office. [Cf. L. '67, p. 130, § 1; Cd. '81, § 2713; 1 H. C., § 186; L. '93, p. 282, § 4.]

§ 4092. [3924.] What Exhibit must Show.

Such exhibit shall show—

1. The amount of taxes assessed in the county the preceding year for state, county, road, bridge, school and other purposes;
2. The amount of taxes collected on such assessment;
3. The amount of money received from other sources;
4. The amount received into the treasury;
5. The amount still due and not collected;
6. The number of orders issued, the several purposes for which they were issued, the amount for each purpose, and the total amount;
7. The total amount of orders redeemed;
8. The amount of outstanding orders;

9. The present condition of the treasury;
10. Remarks. [Cf. L. '67, p. 131, § 2; Cd. '81, § 2714; 1 H. C., § 187; L. '93, p. 282, § 5.]

§ 4093. [3925.] May Appoint Deputies.

The county auditors of the several counties may appoint deputy auditors, who shall be appointed in writing, and shall, before entering upon the discharge of the duties of their office, take and subscribe an oath faithfully to perform the duties of their office, which oath shall be indorsed on the appointment and recorded in the office of the county auditor. The county auditor shall be responsible for the acts of their deputies, and revoke their appointments at pleasure. [L. '54, p. 425, § 7; Cd. '81, § 2716.]

See notes to § 4074, *supra*, compensation of.

Cited in 101 Wash. 263.

The act of the deputy in certifying a record is the act of the auditor, for

which he is responsible: *State ex rel. Havercamp v. Superior Court*, 101 Wash. 260, 172 Pac. 254.

§ 4094. [3926.] Authorized to Administer Oaths.

Auditors and their deputies are authorized to administer oaths necessary in the performance of their duties and in all other cases where oaths are required by law to be administered and to take acknowledgments of deeds and other instruments in writing: Provided, that any deputy of any county auditor, in administering such oath or taking such acknowledgment, shall certify to the same in his own name as deputy, and not in the name of his principal, and shall attach thereto the seal of the office in which he is deputy: Provided, that all oaths administered or acknowledgments taken by any deputy of any county auditor certifying to the same in the name of his principal by himself as such deputy, prior to the taking effect of this act, be and the same are hereby legalized and made valid and binding. [Cf. L. '54, p. 425, § 8; Cd. '81, § 2717; 1 H. C., § 188; L. '93, p. 282, § 6.]

Cited in 8 Wash. 472.

§ 4094-1. To Record Soldiers and Sailors' Discharges.

It shall be the duty of county auditors to record without charge, in a book kept for that purpose, the certificate of discharge of any honorably discharged soldier, sailor or marine who served with the United States forces in the war with Germany and her allies. [L. '19, p. 201, § 1.]

§ 4095. [3927.] To Register Warrants.

It shall be the duty of the county auditor, not earlier than ten days after the adjournment of the board of county commissioners, at any regular, adjourned or special term of said board, and not earlier than ten days after the receipt of any superior court cost bill, to make out a register of all warrants legally authorized and directed to be issued by such board of county commissioners or such cost bill and to make out under his hand and seal of office a certified copy of such register of warrants, and to forthwith deliver the same to the treasurer of the

county, who shall record the same in a book to be kept by him for that purpose, and file and carefully preserve the original in his office for future reference. The register of warrants hereby authorized to be made by the county auditor shall be part of the records of such county and shall have all the force and effect of the same. [Cd. '81, § 2718; 1 H. C., § 189; L. '93, p. 283, § 7.]

§ 4096. [3927-1.] Issuance of Warrants Against Certain Districts.

All warrants for the payment of claims against diking, ditch, drainage and irrigation districts and school districts of the second and third class shall be drawn and issued by the county auditor of the county wherein such district is located, upon vouchers properly approved by the respective commissioners, trustees or directors of such district. [L. '15, p. 248, § 1.]

§ 4097. [3928.] Cancellation of Unclaimed Warrants.

In each of the counties of the state of Washington where warrants have been drawn and remained uncalled for for a period of six years from the date of their issue, the county commissioners of any county in which such warrants remain shall cancel the same, whereupon it shall be the duty of the auditor and treasurer of any such county to cancel all record of such warrants, so as to leave the funds upon which said warrants were originally drawn intact, as if such warrants had not been so drawn. [L. '09, p. 630, § 1. Cf. L. '86, p. 161; 1 H. C., § 2447.]

See *infra*, § 8416 et seq., disposition of unclaimed and lost property.

§ 4098. [3929.] To Examine Books of Treasurer.

The auditor must, between the first and tenth of each month, examine the books of the treasurer and see that the same have been correctly kept. [Cd. '81, § 2719; 1 H. C., § 190.]

§ 4099. [3930.] To Count Money in Treasury Quarterly.

The board of county commissioners and county auditor must, at the January, April, July and October settlements with the county treasurer, count the money in the county treasury, and make and verify in duplicate statements, showing—

1. The amount of money that ought to be in the treasury;
2. The amount and kind of money actually therein. [Cd. '81, § 2720; 1 H. C., § 191; L. '93, p. 283, § 8.]

See *infra*, § 4113, inspection of treasurer's accounts.

See *infra*, § 4123, county treasurer's statement.

§ 4100. [3931.] Restriction upon Auditor, etc.

The person holding the office of county auditor or deputy, or performing its duties, shall not practice as an attorney nor represent any person making any claim against the county, or seeking to procure any legislative or other action by said county board. And the county auditor, during his term of office, and any deputy by him appointed, is hereby disqualified from performing the duties of any other county officer or acting as deputy for any other county officer. Nor shall any other county

officer or his deputy act as auditor or deputy, or perform any of the duties of said office. [Cd. '81, § 2722; 1 H. C., § 193.]

Cited in 113 Wash. 653.

§ 4101. [3932.] Temporary Appointment Made, When.

In case the auditor is unable to attend to the duties of his office during any session of the board of county commissioners, and having no deputy by him appointed in attendance, the said board may temporarily appoint a suitable person not herein disqualified to perform the auditor's duties. [L. '69, p. 313, § 15; Cd. '81, § 2723; 1 H. C., § 194.]

§ 4102. [3933.] Proceedings of Board to be Published.

It shall be the duty of the county auditor of each county, within fifteen days after the adjournment of each regular term, to publish a summary of the proceedings of the board of county commissioners at such term, in any newspaper published in the county, or having a general circulation therein; or the auditor may post copies of such proceedings in three of the most public places in the county. [L. '69, p. 313, § 17; Cd. '81, § 2724; 1 H. C., § 195.]

Cited in 100 Wash. 27.

§ 4103. [3934.] Seal of County Commissioners—Use and Effect of.

The seal of the county commissioners' court for each county, used by the county auditor as clerk to attest the proceedings of the board of county commissioners, shall be and remain in the custody of the county auditor as clerk of the said board, and said auditor is hereby authorized to use such seal in attestation of all his official acts, whether as clerk of said court, as auditor, or recorder of deeds; and all certificates, exemplifications of records, or other acts by him performed as county auditor, certified under the seal of said county commissioners' court, heretofore made or hereafter to be made pursuant to this section, in this state, shall be as valid and legally binding as though attested by a seal of office of the said county auditor. [Cd. '81, § 2724; 1 H. C., § 196.]

See supra, note to § 4069.

§ 4104. [3935.] Duties of Retiring Auditor.

Each auditor, on retiring from office, shall deliver to his successor the seal of office and all the books, records and other instruments of writing belonging to said office, and shall take his receipt therefor; and in case of the death of the auditor, his legal representatives shall deliver over the seal, books, records and papers as aforesaid. [L. '69, p. 314, § 22; Cd. '81, § 2725; 1 H. C., § 197.]

§ 4105. [3936.] Fees.

County auditors shall collect the following fees for their official services:

For filing each instrument, when filed for recording, ten cents.

For filing each instrument other than for recording (except chattel mortgages and conditional sale contracts), twenty-five cents.

For filing each chattel mortgage and conditional sale contract and entering same as required by law, fifty cents.

For indexing each instrument, except chattel mortgages and conditional sale contracts, for the first two names, five cents.

For each additional name, five cents.

For a marginal release of mortgage or lien, twenty-five cents.

For release of chattel mortgage or conditional sale contract, twenty-five cents.

Making certified copy of instrument besides certificate and seal, per folio, ten cents.

For comparing instrument prepared by another, besides certificate and seal, per folio, five cents.

For certificate and seal, fifty cents.

For recording each instrument, per folio, fifteen cents.

For administering an oath or taking an affidavit with or without seal, fifty cents.

For issuing miscellaneous licenses and entering of record, one dollar.

For issuing marriage license, including fee of one dollar for county clerk, three dollars.

For recording plats, twenty-five cents for each lot, except for cemetery plats, ten cents for each lot, and one dollar for each acknowledgment, dedication or description, with a minimum fee of one dollar for each plat.

For searching records, per hour, one dollar.

For filing, recording and indexing cattle brands and marks, for each mark and brand described, one dollar.

For filing, recording and indexing brands of loggers, for each brand described, one dollar.

For filing and recording statement and oath in regard to sires, under section 3056, supra, the same fees per folio, as are paid for other instruments.

For each certificate issued under the provisions of section 3057, supra, in regard to sires, fifty cents.

For sealing weights and measures, for each weight and measure sealed, ten cents. [L. '07, p. 88, § 1. See p. 92.]

Fees of salaried officers to be paid to county or state, see § 4217, *infra*.

Fees to be paid in advance, see § 10610, *infra*.

See supra, §§ 3781, 3787, filing chattel mortgages and satisfactions.

See supra, § 3769, filing cemetery plats.

See *infra*, § 8451, issuing marriage license.

CHAPTER X.

COUNTY TREASURERS.

§ 4106. [3937.] Election.

At the first election in each county, and every two years thereafter, there shall be elected a county treasurer, who shall have the qualifications of a voter, and shall continue in office for the term of two years, and until his successor is elected and qualified. [Cf. L. '54, p. 426, § 1; until his successor is elected and qualified. [Cf. L. '54, p. 426, § 1;

See Const., Art. XI, § 7, eligible for but two terms in succession.

See supra, § 4029, term of office after 1923.

See *infra*, § 4201 et seq., salaries of county treasurers classified.

Cited in 53 Wash. 546.

§ 4107. [3938.] Oath and Bond.

The county treasurer, before he enters on the duties of his office, shall take an oath faithfully to discharge the duties of his office as prescribed by law; he shall also, before he shall enter upon the duties of his office, give a bond to the county, with at least two sureties, residing in the county, in a penal sum of not less than double the amount of funds liable to come into the hands of the said treasurer during his term of office, the amount to be fixed and the bond to be approved by the county commissioners of the proper county, conditioned that all moneys received by him for the use of the county shall be paid as the commissioners shall from time to time direct, except where special provision is made by law for the payment of such moneys, by order of any court, or otherwise, and for the faithful discharge of his duties. [L. '54, p. 426, § 2; Cd. '81, § 2739; 1 H. C., § 211.]

See *infra*, § 4867, ex-officio treasurer of school districts.

See *infra*, § 5562, duty as to county depositaries.

See *infra*, § 9934, approval and filing of bonds.

See *infra*, § 11252, duty to receive and collect taxes generally.

See *infra*, § 11321, ex-officio tax collector in cities of first class.

See *infra*, § 11330, ex-officio tax collector in cities of third and fourth classes.

Cited in 14 Wash. 120.

Under this section, and section 9950, no vacancy occurs authorizing an appointment by the county commissioners, upon the refusal of an officer elect to qualify, since he was not an "incumbent"; and

the term of his predecessor continues until a successor, "elected" by the same electoral body which elected the incumbent, has qualified: *State ex rel. Vanderveer v. Gormley*, 53 Wash. 543, 102 Pac. 435.

§ 4108. [3939.] Deputies.

County treasurers may appoint one or more deputies, and may take from them bond, with sureties; they shall have power to remove their deputies at pleasure, and every county treasurer and his sureties shall be liable for all official acts of his deputies. [L. '54, p. 427, § 4; Cd. '81, § 2741.]

Cited in 57 Wash. 656.

Under this section a deputy has power to execute a tax deed required by stat-

ute to be executed by the county treasurer: *Huber v. Brown*, 57 Wash. 654, 107 Pac. 850.

§ 4109. [3940.] To Receive and Disburse Moneys.

He shall receive all moneys due and accruing to the county and disburse the same on the proper orders issued and attested by the county auditor. Upon receipt of all moneys other than taxes he shall issue his receipt therefore [therefor] in duplicate, one of which receipts he shall deliver immediately to the person or persons making such payment, and the duplicate of such receipt must be immediately filed by such treasurer in the office of the county auditor. [Cf. L. '54, p. 427, § 3; Cd. '81, § 2740; 1 H. C., § 212; L. '93, p. 250, § 1.]

Cited in 45 Wash. 456.

§ 4110. [3941.] To Keep Office at County Seat—May Administer Oaths.

The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for transaction of business during business hours; and he and his deputy are authorized to administer all

oaths necessary in the discharge of the duties of his office. [L. '54, p. 27, § 5; Cd. '81, § 2742; 1 H. C., § 213.]

§ 4111. [3942.] Accounts, How Kept.

He shall so arrange and keep his books, that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account. [L. '54, p. 427, § 6; Cd. '81, § 2743; 1 H. C., § 214.]

§ 4112. [3943.] Moneys, How Kept.

The county treasurer must keep all moneys belonging to this state, or to any county of this state, in his own possession until disbursed according to law. He must not place the same in the possession of any person to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but it shall be lawful for a county treasurer to deposit in his own name, as county treasurer, any such moneys in any national, state or private bank or banks doing a general banking business in his county: Provided, that before any such deposit is made the bank in which it is proposed to make the same shall first give to such county treasurer a bond, with sureties to be approved by him, in such amount and with such conditions as he may require. Action may be brought on such bond either by such treasurer or by the county of which he is treasurer. But nothing done under the provisions of this section shall alter or affect the liability of any county treasurer or of the sureties on his official bond. [L. '95, p. 132, § 1.]

See *infra*, §§ 5562—5567, county depositories.

Duties and Liabilities—Treasurer: See Remington's Digest, Counties, § 31; State ex rel. Thayer v. Mish, 13 Wash. 302, 43 Pac. 40; Fairchild v. Hedges, 14 Wash. 117, 44 Pac. 125, 31 L. R. A. 851; Kittitas County v. Travers, 16 Wash. 528, 48 Pac. 340; Hoexter v. Judson, 21 Wash. 646, 59 Pac. 498; Rose v. Pierce County, 25 Wash. 119, 64 Pac. 913.

See, also, State ex rel. Port of Seattle v. Gaines, 109 Wash. 196, 186 Pac. 257.

Liability of county treasurer for interest received on public funds. *Ann. Cas.* 1918E, 105; *L. R. A.* 1918B, 811.

Leave of court as prerequisite to action on bond of county treasurer. *2 A. L. R.* 571.

§ 4113. [3944.] To Keep Books, etc., Open for Inspection.

The books, accounts and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and the grand jury. [Cf. L. '54, p. 427, § 7; Cd. '81, § 2744; 1 H. C., § 215; L. '95, p. 133, § 4.]

See *supra*, § 4099, to count money quarterly, commissioners and auditor.

Cited in 36 Wash. 640.

A general demand by a private citizen for an inspection of "any and all books of public records" desired by him, cannot be made the basis for a writ of man-

date to the county treasurer, especially where the treasurer is willing to furnish specific information called for, free of charge: State ex rel. Cook v. Reed, 36 Wash. 638, 79 Pac. 306.

§ 4114. [3945.] Payment of Warrants—Interest.

He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face

of such order the date of redemption, and his signature. If there be no funds to pay such order when presented, he shall indorse thereon, "Not paid for want of funds," and the date of such indorsement, over his signature, which shall entitle such order thenceforth to draw legal interest: Provided, that such interest shall cease from the date of notice, by publication in some newspaper printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case; and if there be no such newspaper, then by posting such notice at three public places in such county. [L. '54, p. 427, § 8; Cd. '81, § 2745; 1 H. C., § 216.]

Cited in 8 Wash. 497.

Warrants and Certificates of Indebtedness—Power to Issue: See Remington's Digest, Counties, § 73; Duryee v. Friars, 18 Wash. 55, 50 Pac. 583; Rauch v. Chapman, 16 Wash. 568, 48 Pac. 253, 58 Am. St. Rep. 52, 36 L. R. A. 407; Farquharson v. Yeargin, 24 Wash. 549, 64 Pac. 717.

Issuance, Requisites and Validity: See Remington's Digest, Counties, § 74; Roberts v. Prescott, 15 Wash. 462, 46 Pac. 642; State ex rel. Porter v. Headlee, 18 Wash. 220, 51 Pac. 369; State ex rel. Dahlquist v. Van Wyck, 20 Wash. 39, 64 Pac. 768; Chehalis County v. Hutcheson, 21 Wash. 82, 57 Pac. 341, 75 Am. St. Rep. 818; Richards v. Klickitat County, 13 Wash. 509, 43 Pac. 647; American Bridge Co. v. Wheeler, 35 Wash. 40, 76 Pac. 534.

— **Payment:** See Remington's Digest, Counties, § 75; State ex rel. Barton v.

Hopkins, 14 Wash. 59, 44 Pac. 134, 550; Munson v. Mudgett, 15 Wash. 321, 46 Pac. 256.

— **Interest:** See Remington's Digest, Counties, § 76; Union Savings Bank & T. Co. v. Gelbach, 8 Wash. 497, 36 Pac. 467, 24 L. R. A. 359; Williams v. Shoudy, 12 Wash. 362, 41 Pac. 169.

— **Remedies:** See Remington's Digest, Counties, § 78; Williams v. Shoudy, 12 Wash. 362, 41 Pac. 169; State ex rel. Ledger Pub. Co. v. Gloyd, 14 Wash. 5, 44 Pac. 103; State ex rel. Sheehan v. Headlee, 17 Wash. 637, 50 Pac. 493; American Bridge Co. v. Wheeler, 35 Wash. 40, 76 Pac. 534.

Interest on county warrants. 3 Ann. Cas. 459.

When limitations begin to run against action on county warrant. 10 L. R. A. (N. S.) 478.

§ 4115. [3946.] Order of Redemption.

All warrants drawn on the funds of the county shall be redeemed by the treasurer in the order of their issuance. [Cf. L. '54, p. 428, § 10. Cd. '81, § 2747; L. '86, p. 162, § 1; 1 H. C., § 217; L. '93, p. 250, § 2.]

Cited in 15 Wash. 323.

§ 4116. [3947.] Order of Payment of All Municipal Warrants—Interest.

All county, school, city and town warrants shall be paid according to their number, date and issue, and shall draw interest from and after their presentation to the proper treasurer: Provided, that no compound interest shall be paid directly or indirectly on any of said warrants. [L. '93, p. 76, § 1.]

Cited in 68 Wash. 556.

Under this section, the holder of warrants suing to compel the city to provide funds for their payment cannot acquire any preference over other prior warrants of the same class, although the holders thereof had not made any efforts to obtain like relief: State ex rel. Polson v. Hardeastle, 68 Wash. 548, 124 Pac. 110.

Warrants are payable in the order of

their issuance: Northwestern Lum. Co. v. Aberdeen, 22 Wash. 404, 60 Pac. 1115; Quaker City Nat. Bank v. Tacoma, 27 Wash. 259, 67 Pac. 710; New York Security & T. Co. v. Tacoma, 30 Wash. 661, 71 Pac. 194; Hemen v. Ballard, 40 Wash. 81, 82 Pac. 277; La France Fire Engine Co. v. Davis, 9 Wash. 600, 38 Pac. 154; Bardsley v. Sternberg, 18 Wash. 612, 52 Pac. 251, 524.

§ 4117. [3948.] Shall Note Interest Paid on Warrants.

When the county treasurer shall redeem any order on which interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal. [L. '54, p. 427, § 9; Cd. '81, § 2746; 1 H. C., § 218.]

§ 4118. [3949.] Calls to be Made, When.

Whenever the treasurer of any county, city, town or other municipality shall have in his hands, as such treasurer, the sum of five hundred dollars belonging to any fund upon which warrants are outstanding, it shall be his duty to make a call for such warrants to that amount in the order of their issue, and he shall cause such call to be published in some newspaper printed and published in the county, city, town or other municipality, as the case may be, in the first issue of such newspaper after such sum shall have been accumulated, and if there be no such newspaper, then such call shall be posted in three conspicuous places in such county, city, town or other municipality, and such call shall describe by number the warrants so called, and specify the funds upon which the same were drawn: Provided, that the commissioners of any county, or the council or other governing body of any city, town or other municipality may prescribe a less sum than five hundred dollars, upon the accumulation of which such call shall be made as to any particular fund: And provided further, that if the warrant longest outstanding on any fund shall exceed the sum of five hundred dollars, or shall exceed the sum fixed by the county commissioners or other governing board, then no call need be made for warrants on such fund until the amount due on such warrants shall have accumulated: And provided further, that no more than two calls shall be made by any treasurer in any one month: And provided further, that it shall be the duty of any such treasurer to pay on demand, in the order of their issue, any warrants when there shall be in the treasury sufficient funds applicable to such payment. [L. '95, p. 379, § 1.]

See *infra*, § 6692, call for county road special warrants.

Cited in 15 Wash. 192.

This act does not apply to warrants drawn against a special fund, which

fund cannot be devoted to any other purpose: *Potter v. Black*, 15 Wash. 186, 45 Pac. 787.

§ 4119. [3950.] Penalty for Failure to Call.

Any such treasurer who shall knowingly fail to call for or pay any warrant in accordance with the provisions of the last section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars, and such conviction shall be sufficient cause for removal from office. [L. '95, p. 380, § 2.]

§ 4120. [3951.] General Statement to County Commissioners at July Session.

The treasurer of each county must, at the regular July session of the board of county commissioners, make a verified statement to said

board showing the whole amount of his collections during the preceding year (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury, the funds among which the same was distributed, together with the amount of each fund, the total amount of warrants certified to him by the county auditor, and the total amount of warrants paid by him during the same time, and the total amount of warrants remaining unpaid on the thirtieth day of June immediately preceding, and the funds on which the same are drawn, and generally make a full and specific showing of the financial condition of the county. [Cf. L. '54, p. 428, § 11; Cd. '81, § 2748; 1 H. C., § 219; L. '83, p. 45, § 1; L. '93, p. 251, § 3.]

See *infra*, § 11266, annual report.

§ 4121. [3952.] Settlement, etc., of Retiring Treasurer.

The county treasurer shall make complete settlement with the board of county commissioners, as required by law, and shall, at the expiration of his term of office, deliver to his successor all public money, books and papers in his possession. [L. '54, p. 428, § 13; Cd. '81, § 2750; 1 H. C., § 220.]

§ 4122. [3953.] Death of Treasurer.

In case of the death of any county treasurer his legal representatives must deliver up all official moneys, books, accounts, papers, and documents which come into their possession. No percentage must be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representatives of such predecessors. [L. '95, p. 132, § 3.]

§ 4123. [3954.] Settlement at Quarterly Sessions of Commissioners.

Each county treasurer shall attend with his books and vouchers before the board of county commissioners at the regular quarterly sessions of said board in January, April, July and October of each year and settle his accounts before said board:—

1. For all money received by him, filing a certified statement, showing under separate headings amounts received from each and every source;

2. For all moneys disbursed by him since the date of the last preceding settlement, and in such settlement the board must allow the treasurer the following credits: (1) The amount of principal and interest paid on account of redemption of warrants issued upon the several funds of the county; (2) The amount paid the state treasurer since the last preceding or quarterly settlement, as per vouchers; (3) The amount paid on account of redemption of orders issued by the several school districts of the county; (4) All claims for credits or disbursements not above specified. He shall at such settlement also present, together with such vouchers and claims for credits, a certified list of such vouchers and claims arranged numerically under the separate headings of the funds from which such vouchers have been paid or on which such claims have accrued, or are made, which list must be checked, compared and made to correspond with the treasurer's books and vouchers by the board

of county commissioners and the auditor at the time of such settlement. On completion of such comparison, such list, when found to be correct, shall be certified to by the chairman of said board and attested by the auditor, and shall, together with the vouchers and claims presented, be filed in the office of said auditor, and such county treasurer be given credit therefor on the record of proceedings of said board, said record to show the amount credited on account of each fund, and whether for principal or interest. The auditor shall thereupon deliver to the county treasurer a transcript of such order and shall forthwith proceed to credit such officer with the sums therein specified. [Cf. 1 H. C., § 221; L. '93, p. 251, § 4.]

See supra, § 4099, duties of commissioners and auditor at quarterly sessions.

§ 4124. [3955.] Suspension of Treasurer by Commissioners, When.

Whenever an action based upon official misconduct is commenced against any county treasurer the county commissioners may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy. [Cf. L. '54, p. 428, § 12; Cd. '81, § 2749; 1 H. C., § 222; L. '95, p. 132, § 2.]

§ 4125. [3956.] Official Seals.

The county treasurer in each of the organized counties of the state of Washington shall be by his county provided with a seal of office for the authentication of all tax deeds, papers, writing and documents required by law to be certified or authenticated by him. Such seal shall bear the device of crosskeys and the words: Official Seal Treasurer — County, Washington; and an imprint of such seal, together with the certificate of the county treasurer that such seal has been regularly adopted, shall be filed in the office of the county auditor of such county. [L. '03, p. 13, § 1.]

§ 4126. [3957.] Validity of Former Instruments.

In all cases in which the county treasurer of any county in the state of Washington shall have executed a tax deed or deeds prior to the taking effect of this act, either to his county or to any private person or persons or corporation whomsoever, said deed or deeds shall not be deemed invalid by reason of the county treasurer who executed the same not having affixed a seal of office to the same, or having affixed a seal not an official seal; nor shall said deed or deeds be deemed invalid by reason of the fact that at the date of the execution of said deed or deeds there was in the state of Washington no statute providing for an official seal for the office of county treasurer. [L. '03, p. 14, § 2.]

CHAPTER XI.

PROSECUTING ATTORNEYS.

§ 4127. [3958.] County Attorney as Prosecuting Attorney.

That all officers elected as county attorneys at the last general election be, and they are hereby declared to be, prosecuting attorneys for the counties for which they were respectively elected, and shall be

known and designated as such, and perform all the duties prescribed by law as the duties of the prosecuting attorneys. [L. '91, p. 6, § 1; 1 H. C., § 223.]

See Const., Art. XI, § 5.

See supra, § 113 et seq., powers and duties in relation to proceedings in court.

See supra, § 4029, term of office after 1923.

See supra, § 4059, power of commissioners to fill vacancies.

See infra, § 4201 et seq., salaries of, classified.

See infra, § 10982, attorney general to aid, when.

Nature of Office, Appointment and Tenure: See Remington's Digest, Dist. & Pros. Attys., §§ 1, 2; Spokane County v. Allen, 9 Wash. 229, 37 Pac. 428, 43 Am. St. Rep. 830; Smalley v. Snell, 6 Wash. 161, 32 Pac. 1062; State ex rel. McMartin v. Whitney, 9 Wash. 377, 37 Pac. 473.

§ 4128. [3959.] Eligibility to Office of.

No person shall be eligible to the office of prosecuting attorney in any county of this state, unless he be a qualified elector thereof, and shall have been admitted as an attorney and counselor of the courts of this state. [L. '91, p. 95, § 4; 2 H. C., § 86.]

§ 4129. [3960.] Oath and Bond.

Each prosecuting attorney elected under this chapter shall, before entering upon the discharge of the duties of his office, take and subscribe an oath faithfully to discharge the duties of said office, and shall enter into a bond to the state of Washington, in the sum of five thousand dollars, conditioned that he will faithfully discharge the duties of his office. [Cf. L. '54, p. 417, § 3; L. '58, p. 12, § 3; L. '60, p. 334, § 3; L. '63, p. 408, § 3; L. '77, p. 246, § 5; Cd. '81, § 2163; L. '83, p. 73, § 9; L. '86, p. 61, § 4; 1 H. C., § 224.]

See infra, § 9934, approval and filing of bond.

§ 4130. [3961.] Duties Generally.

Each prosecuting attorney shall be the legal adviser of the board of county commissioners for the county for which he was elected; he shall also prosecute all criminal and civil actions in which the state or his county may be a party, defend all suits brought against the state or his county, and prosecute all forfeited recognizances, bonds, and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county: Provided, the commissioners of any county may employ other attorneys, when they may deem it for the interest of their county. [Cf. L. '58, p. 12, § 4; L. '60, p. 235, § 3; L. '77, p. 246, § 6; Cd. '81, § 2171; L. '83, p. 73, § 10; L. '86, p. 61, § 5; 1 H. C., § 225.]

See supra, § 116, duties of.

See supra, § 4076, restriction on employment of attorneys by county commissioners.

Cited in 21 Wash. 62; 47 Wash. 358, 359; 68 Wash. 680.

Powers and Proceedings in General: See Remington's Digest, Dist. & Pros. Attys., § 5; State ex rel. Rochford v. Superior Court, 4 Wash. 30, 29 Pac. 764; State v. Hansen, 10 Wash. 235, 38 Pac. 1023; State v. Heaton, 21 Wash. 59, 56 Pac. 843; State ex rel. Porter v. Headlee,

18 Wash. 220, 51 Pac. 369; State ex rel. Crawford v. Evenson, 18 Wash. 609, 52 Pac. 230; Spokane County v. Bracht, 23 Wash. 102, 62 Pac. 446.

Assistants and Substitutes: See Remington's Digest, Dist. & Pros. Attys., § 3; State v. Heaton, 21 Wash. 59, 56 Pac. 843; Swanson v. Hoyle, 32 Wash. 169, 72 Pac. 1011.

Under this section, county commissioners may employ other counsel to obtain an escheat: *Reed v. Gormley*, 47 Wash. 355, 91 Pac. 1093.

Remington's Digest, Dist. & Pros. Attys., §§ 4, 7; *Spokane County v. Allen*, 9 Wash. 229, 37 Pac. 428, 43 Am. St. Rep. 830.

Compensation, Fees and Liabilities: See

§ 4131. [3962.] To Advise Board of Commissioners.

Each prosecuting attorney, when required by the board of county commissioners or by the president of such board, shall give to such board of county commissioners, in writing if so required, his legal opinion touching any subject which such board may be called or required to act upon relating to the management of county affairs. [L. '77, p. 247, § 8; Cd. '81, § 2163; L. '83, p. 73, § 12; L. '86, p. 61, § 7; 1 H. C., § 226.]

§ 4132. [3963.] To Advise County Officers.

The prosecuting attorney in each county is hereby required to give legal advice, when required, to all county and precinct officers, and directors and superintendents of common schools, in all matters relating to their official business; and when so required, he shall draw up, in writing, all contracts, obligations, and like instruments of an official nature, for the use of said officers. [L. '77, p. 247, § 9; Cd. '81, § 2169; L. '83, p. 74, § 13; L. '86, p. 61, § 8; 1 H. C., § 227.]

Cited in 45 Wash. 502.

Under this section, the prosecuting attorney is not required to prosecute or defend litigation for a school district, as

his duties are only such as are prescribed by statute: *Bates v. School District No. 10*, 45 Wash. 498, 88 Pac. 944.

§ 4133. [3964.] Further Duties.

It shall be the duty of the prosecuting attorney to visit, once in each year, the offices of the county auditor of his county, and he shall then examine the official bonds of all county and precinct officers on file in such offices, and it is made his duty to report to the board of county commissioners of his county any defect in the bonds of any public officer in such county. He shall also, once in each year, examine the public records and books of the auditor, assessor, treasurer, superintendent of common schools, and sheriff of his county, and report to the board of county commissioners any failure, refusal, omission, or neglect of such officers to keep such records and books as required by law. [L. '77, p. 247, § 10; Cd. '81, § 2170; L. '83, p. 74, § 14; L. '86, p. 61, § 9; 1 H. C., § 228.]

§ 4134. [3965.] Prosecuting Attorney's Report.

Each prosecuting attorney shall, on the thirty-first day of December in each year, make to the governor of the state a report setting forth the amount and the nature of business transacted by him in that year, with such other statements and suggestions as he may deem useful. [L. '86, p. 62, § 13; 1 H. C., § 230.]

§ 4135. [3966.] Disability of Prosecuting Attorney.

When any prosecuting attorney fails, from sickness or other cause, to attend a session of the superior court of the county for which he

was elected or is unable to perform his duties at such session, the court or judge may appoint some qualified person to discharge the duties of such session, and the person so appointed shall receive a compensation to be fixed by the court, to be deducted out of the stated salary of such prosecuting attorney, not exceeding, however, one-fourth of the quarterly salary of such prosecuting attorney: Provided, that in counties wherein there is no person qualified for the position of prosecuting attorney, or wherein no qualified person will consent to perform the duties of that office, the judge of the superior court of that county shall appoint some suitable person, a duly admitted and practicing attorney at law and resident of the state of Washington, to perform the duties of prosecuting attorney for such county, and he shall receive such reasonable compensation for his services as shall be fixed and ordered by the court, the same to be paid by the county for which such services are performed. [Cf. L. '58, p. 13, § 6; L. '60, p. 335, § 5; L. '77, p. 248, § 15; Cd. '81, § 2166; L. '83, p. 74, § 19; L. '86, p. 62, § 14; 1 H. C., § 231; L. '93, p. 83, § 1.]

Cited in 21 Wash. 62.

§ 4136. [3967.] Duties in Criminal Proceedings.

The prosecuting attorney, when not in attendance upon the superior court, shall institute and prosecute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of a felony, when he has information that any such offense has been committed, and shall for that purpose attend when required by them. The prosecuting attorney shall also attend and appear before and give advice to the grand jury when cases are presented to them for their consideration, and shall draw all indictments when required by the grand jury. It shall be the duty of the prosecuting attorneys elected under this chapter to carefully tax all cost bills in criminal cases arising in their respective counties, and they shall take care that no useless witness fees are taxed as part of such costs, and that the officers authorized to execute process tax no other or greater fees than the fees allowed by law: Provided, that if they are not present at the trial of any criminal case, before any justice of the peace, and the cost bill in such case is lodged with the county commissioners for such payment, the said prosecuting attorney shall have the right to receive and retax the same, and it is made his duty so to do, if the board of county commissioners deem the bill exorbitant or improperly taxed. [Cf. L. '79, p. 96, § 18; Cd. '81, § 2146; L. '86, p. 63, § 18; 1 H. C., § 233.]

See notes to §§ 509, 4230.

See supra, § 139-17, to assist in disbarment proceedings.

See supra, § 1035, relator in actions of quo warranto.

See supra, § 1045, to file information to forfeit property to state.

See supra, § 1047, to annul letters patent, etc.

See supra, § 2032, duty to attend on grand jury.

See supra, § 2053, duty as to informations in criminal cases.

See supra, § 2234, to sue on forfeited recognizances.

See supra, § 2241, duties in relation to fugitives from justice.

See infra, §§ 6971, 6974, trial of criminal insane.

See infra, § 10039, duty to prosecute violations of dentistry act.

Prosecution of violations of laws, see, also, §§ 3149, 5079, 5412, 5800, 5860, 6039, 6089, 6143, 6151, 6887, 7649, 10039, 10051, 10142, 10527, 11088.

Cited in 7 Wash. 449; 13 Wash. 487; 18 Wash. 610; 21 Wash. 61.

Private Counsel to Assist: See Remington's Digest, Crim. Law, § 207; State v. Elswood, 15 Wash. 453, 46 Pac. 727; State v. Hoshor, 26 Wash. 643, 67 Pac. 386; Stern v. State Board of Dental Examiners, 50 Wash. 100, 96 Pac. 693; State v. Miller, 80 Wash. 75, 141 Pac. 293, 1139.

Rights and Duties of Prosecuting Attorney: See Remington's Digest, Crim. Law, § 236; State v. Stentz, 30 Wash. 134, 70 Pac. 241, 63 L. R. A. 807; State v. Montgomery, 56 Wash. 443, 105 Pac. 1035, 134 Am. St. Rep. 1119, 21 Ann. Cas. 331; State v. Pryor, 67 Wash. 216, 121 Pac. 56.

§ 4137. [3968.] To Prosecute Violation of Election Laws.

It shall be the duty of the prosecuting attorney of each county to present all violations of the election laws which may come to his knowledge to the special consideration of the proper jury. [L. '66, p. 52, § 10; Cd. '81, § 3150; 1 H. C., § 445.]

§ 4138. [3969.] Special Emoluments Prohibited.

No prosecuting attorney shall receive any fee or reward from any person, on behalf of any prosecution, for any of his official services, except as provided in this chapter, nor shall he be engaged as attorney or counsel for a party in any civil action [or for] a party to any criminal proceedings depending upon the same facts as such criminal [civil] proceedings. [Cf. L. '58, p. 13, § 8; L. '77, p. 248, § 13; Cd. '81, § 2164; L. '83, p. 74, § 17; L. '86, p. 62, § 12; L. '88, p. 189, § 1; 1 H. C., § 234.]

The word "criminal" in the last line should read "civil."

§ 4139. [3970.] Office at County Seat.

The prosecuting attorney of each county in the state of Washington must keep an office at the county seat of the county of which he is prosecuting attorney. [L. '09, p. 417, § 1.]

CHAPTER XII.

COUNTY ASSESSORS.

§ 4140. [3971.] Election.

At the general election of eighteen hundred and ninety in this state, and at each subsequent general election, there shall be elected in each county a county assessor, who shall have the qualifications of a voter, and shall continue in office for two years, or until his successor is elected and qualified. [Cf. L. '69, p. 402, § 1; Cd. '81, § 2752; L. '86, p. 164, § 1; L. '90, p. 478, § 1; 1 H. C., § 235.]

See supra, § 4029, term of office after, 1923.

See infra, § 4201 et seq., salaries classified.

Cited in 100 Wash. 26.

§ 4141. [3972.] Bond and Oath.

Every person elected or appointed to the office of assessor shall file with the board of county commissioners, within the time provided by law, his bond, payable to the state of Washington, with two or more good freehold sureties, to be approved by the said board, in the penal sum to be fixed by the board of county commissioners, conditioned that he will diligently, faithfully and impartially perform the duties enjoined

on him by law; and he shall, moreover, take and subscribe on said bond an oath that he will, according to the best of his judgment, skill, and ability, diligently, faithfully and impartially perform all the duties enjoined on him by this chapter; and if any person so elected or appointed fails to give bond or fails to take the oath required within the time prescribed such failure shall be deemed a refusal to serve. [Cf. L. '54, p. 428, § 2; Cd. '81, § 2753; L. '90, p. 297, § 46; 1 H. C., § 236; L. '93, p. 342, § 46; L. '97, p. 156, § 44.]

See *infra*, § 9934, approval and filing of bond.

"Chapter" interpolated for "act."

Cited in 100 Wash. 26.

§ 4142. [3973.*] Deputies—Appointment.

Any assessor who deems it necessary, to enable him to complete the listing and the valuation of the property of his county within the time prescribed by law, may appoint one or more well qualified citizens of his county to act as his assistants or deputies and assign them to such portion of his county as he thinks proper; and each assistant so appointed shall, under the direction of the assessor, after taking the required oath, perform all the duties enjoined upon, vested in or imposed upon assessors by the provisions of this act; and each of such deputies shall receive for his services while actually employed in such work the sum which may be designated and allowed by the board of county commissioners: Provided, that no assessor shall appoint any deputy unless the same be actually necessary, and then for no longer time than may be actually needed: Provided, further, that the county commissioners may limit the number of deputies to be employed by the assessor: Provided, further, that the assessor may with the consent of the county commissioners appoint one or more expert assistants in the valuation of any particular class of property in the county which assistants need not be residents of said county. [L. '19, p. 202, § 1; L. '91, p. 247, § 47; 1 H. C., § 1061; L. '93, p. 342, § 47; L. '97, p. 157, § 45.]

"Chapter" interpolated for "act."

For further provisions relating to duties of assessor, see § 11109 et seq., "Taxation."

Cited in 100 Wash. 25.

CHAPTER XIII.

COUNTY ENGINEERS.

§ 4143. [3974.] Election—Bond.

The county surveyor shall hereafter be designated as county engineer. He shall be a qualified elector of his county, and a competent civil engineer and surveyor. The county engineer of each organized county shall be elected at the general election for the term of two years, and shall give a bond to the people of this state in the penal sum of two thousand five hundred dollars, to be approved by the county commissioners, conditioned for the faithful and impartial discharge of the duties of his office. [L. '07, p. 351, § 1. Cf. L. '95, p. 135, § 1.]

For former acts on this subject see L. '55, pp. 26-28; L. '66, pp. 554-556; Cd. '81, §§ 2758-2765; L. '86, p. 104, § 1; 1 H. C., §§ 239-244; L. '05, p. 135, § 1; Bal. Code, § 490.

See supra, § 4029, term of office after, 1923.

See infra, § 4201 et seq., compensation.

See infra, § 9934, approval and filing of bond.

Cited in 48 Wash. 463.

Laws '07, p. 351, from which this section is taken, was held constitutional, and its title broad enough to include the sub-

ject of salary: *State ex rel. Funke v. Board of Commissioners*, 48 Wash. 461, 93 Pac. 920.

§ 4144. [3975.] Duties of Engineer and Deputies.

The certificate of the county engineer, or his deputy, of any survey made by him of any lands in the county shall be presumptive evidence of the facts therein contained, unless such engineer or deputy shall be interested therein. The county engineer, in person or by deputy, shall make and execute all surveys, and shall be engineer in charge of all construction within his county required by the county commissioners, or by order of any court, or by application of any person therefor: Provided, that nothing contained in this section shall constrain the county commissioners to place the county engineer in charge of engineering work if they for any cause, believe him incompetent to take charge of such work. [L. '95, p. 136, § 3.]

"Engineer" used in place of "surveyor" in this and following sections. See preceding section.

See infra, § 4466, duties as to diking and drainage assessments.

Cited in 101 Wash. 263.

A plat made by a deputy county engineer, based on his own field-notes, is admissible

in evidence, under this section: *State ex rel. Havercamp v. Superior Court*, 101 Wash. 260, 172 Pac. 254.

§ 4145. [3976.] Disqualification.

Whenever a survey may be required of any land in which the county engineer, or either of his deputies, shall be interested, or when, from any cause, there shall be no engineer or deputy engineer of the county to be found, or able to act, such survey may be made by any surveyor the county commissioners may appoint. [L. '95, p. 136, § 4.]

§ 4146. [3977.] Duties in Respect to Roads.

The county engineer shall prepare profiles of all roads hereafter established and of all roads which are ordered to be improved, and shall recommend to the board of county commissioners what improvements shall be made to the roads and bridges in the county, together with an estimated cost of such improvement. He shall at least annually inspect or cause to be inspected, all bridges of the county, and make a report in writing to the board of county commissioners with such recommendations for the repair and maintenance as he finds necessary. [L. '07, p. 351, § 3.]

See infra, § 6407, outline of road improvements.

See infra, § 6450, proposed roads, to pass upon.

§ 4147. [3978.] Records.

The office of county engineer shall be one of record and there shall be recorded and filed in his office, all matters concerning the public roads, highways, bridges, ditches or other surveys of his county, with the original papers, documents, petitions, surveys, repairs and other papers, in order to have the complete history of any such road, high-

way, bridge, ditch or other survey: Provided, that, in any county where there is no qualified engineer, the records of said office shall be kept in the office of the county auditor. [L. '07, p. 351, § 4.]

§ 4148. [3979.] Office, Where Located.

The county engineer shall keep his office at the county seat in such room or rooms as are provided by the county, and he shall be furnished with all necessary cases and other suitable articles, and also with all blank books and blanks necessary to the proper discharge of his official duties. The records and books in the county engineer's office shall be public records, and shall at all proper times be open to the inspection and examination of the public. [L. '95, p. 138, § 10.]

Cited in 50 Wash. 357.

Under this section, and section 4056, *supra*, mandamus will lie to compel the county commissioners to provide the county surveyor with a transit, where it

is admitted that it is necessary to the proper discharge of his official duties: State ex rel. Manning v. Major, 50 Wash. 355, 97 Pac. 249.

§ 4149. [3979a.] To Keep Highway Plat-book.

He shall keep in his office a highway plat-book in which he shall have accurately platted all public roads and highways established by the board of county commissioners. [L. '07, p. 351, § 2.]

§ 4150. [3980.] To Keep Records.

Each county engineer shall record in a suitable book all surveys made by him and his deputies, except such as are made for a temporary purpose, and surveys of highways and village plats; and he shall make a complete record of all construction notes, and shall also record the survey of any other surveyor, which shall be made in his county, whenever demanded by any person: Provided, the fees for recording the same shall be paid the same as provided for county auditors: Provided further, that such survey appears to have been made in accordance with the laws of the state. The record book shall be so constructed as to have one page for diagrams, to be numbered progressively, and the opposite page for notes and remarks; and no diagram shall be so constructed as to scale less than one inch to twenty chains. The course and distance of all lines run, and the number of acres contained in each piece of land surveyed, shall be entered on the diagram of any section subdivided according to the survey thereof, and shall be considered part of the record. The record shall show in addition the time when, the name of any person by whom, and the person for whom such survey was made, a description of all witness trees marked on the survey, with their respective courses and distances, and the variation of the magnetic from the true meridian. He shall make an index to such record book, referring in suitable manner to each survey so recorded. [L. '95, p. 136, § 5.]

See § 4105, *supra*, schedule of fees of county auditor.

Cited in 12 Wash. 630.

County surveyors are not authorized under the provisions of this section to collect and perfect the field-notes, construction notes and plats of surveys of highways in the county and record the same

in his office, nor can he render the county liable to him for compensation for the performance of such services: State ex rel. Ruth v. Prather, 12 Wash. 629, 41 Pac. 916.

§ 4151. [3981.] Books to be Delivered to Successor.

When the term of office of any county engineer shall expire, or he shall resign or be removed, he shall deliver over all the books and papers relating to his office to his successor therein; and any county engineer who, on the expiration of his term of office, or on his resignation or removal, shall neglect for the space of one month after his successor shall be elected or appointed, and qualified, to deliver such books and papers as aforesaid, and any administrator of any deceased county engineer who shall neglect for the space of one month to deliver to such successor all such books and papers which shall come to his hands, shall forfeit and pay a sum not less than ten nor more than fifty dollars, and a similar sum for every month thereafter during which he shall so neglect to deliver the same as aforesaid. [L. '95, p. 137, § 6.]

§ 4152. [3982.] Chainmen, Oath of.

Every chainman and marker employed in making surveys, pursuant to the provisions of this chapter, shall first take an oath that he will faithfully discharge his duties as such, which oath the county engineer, or the deputy making the survey, is hereby authorized to administer. [L. '95, p. 137, § 7.]

See infra, § 6675, administration of oaths.

§ 4153. [3983.] Collection of Plats, etc.

All field-notes, construction notes and plats of surveys heretofore executed for and now in possession of the county, and not heretofore recorded in the engineer's office, shall be collected by the engineer, perfected and recorded in his office in the same manner as records of surveys are required to be made by the provisions of this chapter. [L. '95, p. 137, § 8.]

Cited in 12 Wash. 630.

§ 4154. [3984.] Location of Boundaries and Corners.

Whenever a majority of the resident owners of any section or part or parts of any section of land in this state, after having given at least ten days' notice to all other persons, or to their agents, holding land in the same section or part or parts of the section, as the case may be, who reside in the township, shall desire to have their corners and lines, or any of them, established, relocated or perpetuated, such engineer shall proceed to make the required surveys, and the expense thereof shall be borne by all the persons benefited in proportion to the amount of work done for each, to be determined by the engineer; and if any person thus benefited, whether a nonresident or otherwise, shall refuse or neglect to pay his share of such expense, such engineer shall certify the same, and to whom due, to the county assessor, who shall assess it upon the land of such person, to be collected in the same manner as other taxes, and held subject to the order of the person named in the engineer's certificate as being entitled to the same. [L. '95, p. 137, § 9.]

See supra, § 947 et seq., establishment of lost boundaries, etc.

Cited in 96 Wash. 419.

Relocation of lost boundaries, under this section: See Remington's Digest, Bound., § 19; Wilkeson Coal & Coke Co.

v. Driver, 13 Wash. 610, 43 Pac. 889; Jackman v. Germain, 96 Wash. 415, 165 Pac. 78.

CHAPTER XIV.

SHERIFFS.

§ 4155. [3985.] Election—Term—Bond.

There shall be elected in each county in this state a sheriff, who shall possess the qualifications of a voter, and hold his office for the term of two years, and shall, before he enters upon the duties of his office, execute a bond, with at least three sureties, in a penal sum not less than two thousand dollars nor more than five thousand dollars. [Cf. L. '54, p. 434, § 1; Cd. '81, § 2766; 1 H. C., § 168.]

See supra, § 497, schedule of fees.

See supra, § 4029, term of office after 1923.

See infra, § 4201 et seq., salary of sheriffs classified.

See infra, § 4210, traveling expenses, allowance of.

See infra, § 9934, approval and filing of bond.

Liability for misconduct, etc., see § 4169, infra.

Cited in 97 Wash. 616.

§ 4156. [3986.] Certificate of Election, etc., to be Recorded.

Every sheriff shall, before he enters on the duties of his office, cause his certificate of election or appointment, with the oath of office indorsed thereon, and his bond, with the approval thereon, to be recorded in the office of the auditor of the county. [L. '54, p. 435, § 9; Cd. '81, § 2774; 1 H. C., § 171.]

§ 4157. [3987.] General Duties.

The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his office, it is his duty,—

1. To arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

2. To defend his county against those who, by riot or otherwise, endanger the public peace or safety;

3. To execute the process and orders of the courts of justice or judicial officers, when delivered to him for that purpose, according to the provisions of this code or other statutes;

4. To execute all warrants delivered to him for that purpose by other public officers, according to the provisions of particular statutes;

5. To attend the sessions of the courts of record held within his county, and to obey their lawful orders or directions.

The county is not responsible for the acts of the sheriff. [L. '91, p. 83, § 1; 2 H. C., § 76.]

See infra, § 4168, special duties as to preserving peace.

See infra, § 10193 et seq., jails.

See infra, § 5859, ex-officio game warden.

Cited in 103 Wash. 178, 179.

Power and duties in general: See Remington's Digest, Sheriffs, §§ 5—31, and cases cited.

Section 860 of the Code of 1881, providing that any sheriff, deputy sheriff, etc., in case of a riot, may call out an "armed force," if necessary, to arrest and secure in custody all persons engaged

therein, does not authorize such peace officers to command the services of the state militia: Chapin v. Ferry, 3 Wash. 386, 28 Pac. 754, 15 L. R. A. 116.

A peace officer is authorized to make an arrest without warrant after a felony had been committed where he had reasonable grounds to believe that the party arrested had committed a felony: Greenius

v. American Surety Co. of New York, 92 Wash. 401, 159 Pac. 384, L. R. A. 1917F, 1134.

Authority to arrest without warrant: See Mitchell v. Hughes, 104 Wash. 231, 176 Pac. 26.

In attempting to make an arrest for a misdemeanor, police officers have no warrant to maim or kill a person who attempts to escape: Coldeen v. Reid, 107 Wash. 508, 182 Pac. 599.

§ 4158. [3988.] To Keep Office at County Seat.

The sheriff must keep his office at the county seat of the county of which he is sheriff. [L. '91, p. 84, § 2; 2 H. C., § 77.]

§ 4159. [3989.] Office Hours.

The sheriff's office must be kept open on the days and during the hours required for the clerk's office to be kept open. [L. '91, p. 84, § 3; 2 H. C., § 78.]

See supra, § 73, county clerk's office, when to be kept open.
See supra, § 4033, infra, § 8969, Saturday half-holidays.

§ 4160. [3990.] May Appoint Deputies.

Each sheriff may appoint as many deputies as he may think proper, for whose official acts he shall be responsible to the amount of their [his] bond, and may revoke such appointments at his pleasure; and persons may also be deputed by any sheriff in writing to do particular acts; and the sheriff shall be responsible on his official bond for the default or misconduct in office of his deputies. [Cf. L. '54, p. 434, § 2; L. '71, p. 110, § 1; Cd. '81, § 2767; 2 H. C., § 79.]

Cited in 96 Wash. 218; 100 Wash. 322.

Authority of Deputies and Assistants: See Remington's Digest, Sheriffs, § 6; State v. Payne, 6 Wash. 563, 34 Pac. 317; Crose v. Tony John, 96 Wash. 216, 164 Pac. 941.

Liability for Acts or Omissions of Deputies or Assistants: See Remington's Digest, Sheriffs, § 12; Hamilton v. Carter, 12 Wash. 510, 41 Pac. 911; Crose v. Tony John, 96 Wash. 216, 164 Pac. 941; Kusah v. McCorkle, 100 Wash. 318, 170 Pac. 1023.

Right of sheriff to appoint non-resident deputy. L. R. A. 1916B, 900.

In whose name acts by deputy sheriff should be performed. 19 L. R. A. 177; 42 L. R. A. (N. S.) 877.

Liability of sheriff for his deputy's tort in making arrest. 12 L. R. A. (N. S.) 1019; L. R. A. 1915E, 172.

Liability of sheriffs for torts of deputies. 11 Am. Dec. 145.

§ 4161. [3992.] Duplicate Receipts.

It is the duty of each sheriff in this state to make duplicate receipts for all payments for his services in every case, and for every service, specifying the particular items thereof, at the time when the same is paid, whether so paid by virtue of the laws of this state or of the United States; such duplicate receipts for each month shall be numbered consecutively, commencing with number one in each calendar month. [L. '09, p. 384, § 1.]

See supra, § 497, schedule of fees of sheriff.

§ 4162. [3993.] Original and Duplicate.

One of such duplicate receipts shall have written or printed upon it the word Original and the other of said duplicate receipts shall have written or printed upon it the word Duplicate. [L. '09, p. 385, § 2.]

§ 4163. [3994.] Duplicate to Payer.

At the time of the payment of any such fees, such sheriff shall deliver to the person making such payment, either personally or by mail, the copy of such duplicate receipts designated Duplicate. [L. '09, p. 385, § 3.]

§ 4164. [3995.] Original Receipt Filed.

The said duplicate receipts designated Original for each month shall be attached to the verified statement (for the corresponding month) provided for and prescribed in section 4213, *infra*, and such sheriff shall file with the county treasurer of his county all of said original duplicate receipts for each month with such verified statement. [L. '09, p. 385, § 4.]

§ 4165. [3996.] Salary Withheld Unless Chapter Complied With.

It shall not be lawful for any sheriff to receive any salary for the preceding month unless the provisions of this chapter have been first complied with. [L. '09, p. 385, § 5.]

§ 4166. [3997.] Penalty.

Any sheriff violating any of the provisions of this act, or failing to perform any of the duties required by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense. [L. '09, p. 385, § 6.]

§ 4167. [3998.] Powers of Deputy.

Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be performed by the sheriff or by his deputies; shall serve or execute, according to law, all process, writs, precepts, and orders, issued or made by lawful authority, and to him directed, and he shall attend upon all courts of record at every session. [L. '54, p. 434, § 3; Cd. '81, § 2768; L. '86, p. 174, § 1; 2 H. C., § 80.]

Cited in 6 Wash. 566, 567; 40 Wash. 435.

§ 4168. [3999.] Duties in Respect to Public Peace.

It shall be the duty of sheriffs and of their deputies to keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons or power of their county as they may deem necessary. [L. '54, p. 434, § 4; Cd. '81, § 2769; 1 H. C., § 169.]

Cited in 3 Wash. 392.

§ 4169. [4000.] Liability for Misconduct, etc.

Whenever any sheriff shall neglect to make due return of any writ or other process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal; such fine, however, not to exceed two hundred dollars, and also to an

action for damages to the party aggrieved. [L. '54, p. 434, § 6; Cd. '81, § 2771; 1 H. C., § 170.]

See *supra*, § 159, action against sheriff, limitation of.

Cited in 100 Wash. 424.

Wrongful Levy on or Other Taking of Property: See Remington's Digest, Sheriffs, §§ 13—19. **Property not Subject to Process of Levy:** State ex rel. Achey v. Creech, 18 Wash. 186, 51 Pac. 363; Messenger v. Murphy, 33 Wash. 353, 74 Pac. 480.

§ 14. — **Property of Third Persons:** Dawson v. Baum, 3 W. T. 464, 9 Pac. 46; Scott v. McGraw, 3 Wash. 675, 29 Pac. 260; Interior Warehouse Co. v. Hays, 91 Wash. 507, 158 Pac. 99.

§ 15. — **Taking Partnership Property Under Execution Against Individual Partner:** Haas v. Gaddis, 1 Wash. 89, 23 Pac. 1010; Skavdale v. Moyer, 21 Wash. 10, 56 Pac. 841, 46 L. R. A. 481.

§ 16. **Notice and Demand:** Dixon v. Barnett, 3 Wash. 645, 29 Pac. 209.

§ 17. **Levy on Mortgaged Property:** Byrd v. Forbes, 3 W. T. 318, 13 Pac. 715.

§ 17-1. **Release of Levy or Property:** Bank of Lind v. Coss, 83 Wash. 151, 145 Pac. 207.

§ 18. **Failure to Make Return, or Making Insufficient or Defective Return:** Washington Mill Co. v. Kinnear, 1 W. T. 99; State ex rel. Commercial Inv. Co. v. Hartman, 26 Wash. 524, 67 Pac. 223.

§ 19. **False Return:** Washington Mill Co. v. Kinnear, 1 W. T. 99; Johnson v. Gregory, 4 Wash. 109, 29 Pac. 831, 31 Am. St. Rep. 907; Morgan v. Fidelity & Deposit Co., 66 Wash. 649, 120 Pac. 106, 38 L. R. A. (N. S.) 292; Larson v. Hodge, 100 Wash. 419, 171 Pac. 251.

Actions Against Officers and Indemnitors: See Remington's Digest, Sheriffs, §§ 20—28. **Right of Action:** Anderson v. Land, 5 Wash. 493, 32 Pac. 107, 34 Am. St. Rep. 875; Seibenbaum v. Delanty, 4 Wash. 596, 30 Pac. 662.

§ 21. — **Defenses:** Haas v. Gaddis, 1 Wash. 89, 23 Pac. 1010; Skavdale v. Moyer, 21 Wash. 10, 56 Pac. 841, 46 L. R. A. 481; Achey v. Creech, 21 Wash. 319, 58 Pac. 208; Pickle v. Smalley, 21 Wash. 473, 58 Pac. 581.

§ 22. — **Pleading:** Sheehan v. Levy, 1 Wash. 149, 23 Pac. 802.

§ 23. — **Presumptions and Admissibility of Evidence:** Dawson v. Baum, 3 W. T. 464, 19 Pac. 46; Levy v. Sheehan, 3 Wash. 420, 28 Pac. 748; Zelinsky v. Price, 8 Wash. 256, 36 Pac. 28; Pickle v. Smalley, 21 Wash. 473, 58 Pac. 581; Greenius v. Moore, 99 Wash. 467, 169 Pac. 976.

§ 24. — **Sufficiency of Evidence:** Zelinsky v. Price, 8 Wash. 256, 36 Pac. 28; Brabston v. Shrewsbury, 101 Wash. 31, 171 Pac. 1012.

§§ 25, 26. — **Damages:** Sheehan v. Levy, 1 Wash. 149, 23 Pac. 802; Brotton v. Langert, 1 Wash. 227, 23 Pac. 803; Chezum v. Parker, 19 Wash. 645, 54 Pac. 22; Brabston v. Shrewsbury, 101 Wash. 31, 171 Pac. 1012.

§ 27. — **Amount of Damages:** McClellan v. Gaston, 18 Wash. 472, 51 Pac. 1062; Messenger v. Murphy, 33 Wash. 353, 74 Pac. 480.

§ 28. — **Appeal and Error:** Jacobson v. Aberdeen Packing Co., 26 Wash. 175, 66 Pac. 419.

LIABILITIES ON OFFICIAL BONDS: See Remington's Digest, Sheriffs, §§ 32, 33. **Wrongful or Irregular Levy:** Mace v. Gaddis, 3 W. T. 125, 13 Pac. 545; Fish v. Nethercutt, 14 Wash. 582, 45 Pac. 44, 53 Am. St. Rep. 892; National Surety Co. v. Fry Co., 86 Wash. 118, 149 Pac. 637; Continental Distributing Co. v. Hays, 86 Wash. 300, 150 Pac. 416, Ann. Cas. 1917B, 708.

§ 33. **Wrongful Arrest:** Greenius v. American Surety Co. of New York, 92 Wash. 401, 159 Pac. 384, L. R. A. 1917F, 1134; Kusah v. McCorkle, 100 Wash. 318, 170 Pac. 1023.

It is unlawful for officers to combine to stop travelers on the highway in an attempt to find and arrest without warrant some person transporting liquors in violation of the prohibition law: Mitchell v. Hughes, 104 Wash. 231, 176 Pac. 26.

In an action on a sheriff's official bond for the wrongful death of a person shot by a deputy sheriff in attempting to make an arrest, evidence warranting a finding that deceased met his death from a shot from the deputy's revolver under circumstances affording no justification, makes a question for the jury, notwithstanding that it was directly opposed to defendant's evidence: Coldeen v. Reid, 107 Wash. 508, 182 Pac. 599.

Duty to Prisoners—Negligence: See Remington's Digest, Sheriffs, § 12-1; Kusah v. McCorkle, 100 Wash. 318, 170 Pac. 1023.

The sheriff is liable for injuries sustained by a prisoner at the hands of other prisoners acting as a "Kangaroo Court," where his want of reasonable care is shown by the character of the other prisoners and knowledge of a prior case of brutal treatment, and he had

approved rules warranting "severe punishment" for failure to pay fines, the other prisoners knew the exact amount of money taken from him by the sheriff, who on releasing plaintiff, withheld the amount of a fine exacted under a threat of further punishment: *Eberhart v. Murphy*, 110 Wash. 158, 188 Pac. 17.

Actions on Official Bonds: See *Remington's Digest, Sheriffs*, §§ 34—37. **Right of Action:** *Magnus v. Woolery*, 14 Wash. 43, 44 Pac. 130.

§ 35. — **Escape or Rescue of Prisoners:** *McPhee v. United States Fidelity & Guaranty Co.*, 52 Wash. 154, 100 Pac. 174, 132 Am. St. Rep. 958, 21 L. R. A. (N. S.) 535.

§ 36. — **Evidence:** *Riggs v. German*, 81 Wash. 128, 142 Pac. 479; *Kusah v. McCorkle*, 100 Wash. 318, 170 Pac. 1023.

§ 37. **Measure of Damages:** *Fish v. Nethercutt*, 14 Wash. 582, 45 Pac. 44, 53 Am. St. Rep. 892; *Continental Distributing Co. v. Hays*, 86 Wash. 300, 150 Pac. 416, Ann. Cas. 1917B, 708.

Liability of sheriff for misperformance or nonperformance of official duties. 95 Am. St. Rep. 96.

Liability of sheriff or his bond for the defaults and misfeassances of his assistants or deputies. 1 A. L. R. 236; 12 A. L. R. 981.

Liability of sheriff in damages for excessive amount of property levied on under execution. Ann. Cas. 1914A, 306.

Presumption as to damages recoverable from officer for failure to execute process. 2 Ann. Cas. 11.

Liability of officer for injury or loss of attached property. Ann. Cas. 1912A, 1114.

Duty of sheriff to pursue property which escapes from his custody. 32 L. R. A. (N. S.) 132.

Liability of officer for voluntary escape of prisoner. Ann. Cas. 1913C, 694.

§ 4170. [4001.] Service of Process When Sheriff Disqualified.

When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same: Provided, that final process shall in no case be executed by any other person than the legally authorized officer; or in case he is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues, who shall make such appointment in writing; and before such appointment shall take effect, the person so appointed shall give security to the party interested for the faithful performance of his duties, which bond of suretyship shall be in writing, be approved by the court or judge appointing him, and be placed on file with the papers in the case. [L. '69, p. 172, § 687; Cd. '81, § 745; 2 H. C., § 796.]

See *infra*, § 9944, coroner to act on sheriff's failure to file bond.

Cited in 20 Wash. 214.

Under this section, where the sheriff of a county is disqualified from acting by reason of being a party to the action,

a writ of garnishment may be served upon him by a private individual: *Russell v. Millett*, 20 Wash. 212, 55 Pac. 44.

§ 4171. [4002.] Sheriff or Coroner not to Practice Law.

No sheriff, deputy sheriff, or coroner shall appear or practice as attorney in any court, except in defense of himself or his deputies. [Cf. L. '54, p. 434, § 5; Cd. '81, § 2770; L. '91, p. 84, § 4; 1 H. C., § 327; 2 H. C., § 82.]

See *infra*, § 7547, ineligible to office of justice of the peace.

Indemnity to Officer: See *Remington's Digest, Sheriffs*, § 10; *Standley v. Marsh*, 1 Wash. 512, 20 Pac. 592; *Brotton v. Lunkley*, 11 Wash. 581, 40 Pac. 140; *Carpenter v. Barry*, 26 Wash. 255, 66 Pac.

393; *Canfield-Caulkins Implement Co. v. Cowden*, 70 Wash. 587, 127 Pac. 216; Ann. Cas. 1914B, 857.

Liabilities of Indemnitors to Officers: See *Remington's Digest, Sheriffs*, §§ 29—

31. **Extent of Liability:** Standley v. Marsh, 1 Wash. 512, 20 Pac. 592; Dawson v. Baum, 3 W. T. 464, 19 Pac. 46; Brotton v. Lunkley, 11 Wash. 581, 40 Pac. 140.

§ 30. — **Defenses:** Van de Vanter v. Davis, 23 Wash. 693, 63 Pac. 555; Barnett v. O'Loughlin, 8 Wash. 260, 35 Pac. 1099.

§ 31. — **Damages and Costs:** Barnett v. O'Loughlin, 8 Wash. 260, 35 Pac. 1099; Brotton v. Lunkley, 11 Wash. 581, 40 Pac. 140.

Right of sheriff to exact indemnity and when enforceable. 16 Am. Dec. 551; 86 Am. St. Rep. 554; 89 Am. St. Rep. 448; 16 Ann. Cas. 1045; Ann. Cas. 1914B, 859.

§ 4172. [4003.] May Demand Fees and Indemnifying Bond.

No sheriff, deputy sheriff, or coroner shall be liable for any damages for neglecting or refusing to serve any civil process unless his legal fees and an indemnifying bond, if he requires one, are first tendered him. [L. '54, p. 434, § 7; Cd. '81, § 2772; 1 H. C., § 328.]

See supra, § 505, fees payable in advance.

Cited in 1 Wash. 96; 26 Wash. 258; 57 Wash. 139; 70 Wash. 588, 591.

This section is not superseded by sections 573—577, which authorize the sheriff to proceed with the sale of property levied upon unless a claimant thereto shall make affidavit of ownership and give bond to make good his title, since the latter sections are not intended to prescribe the sheriff's duties, but merely to give the claimant of property levied upon an additional remedy for its recovery: Carpenter v. Barry, 26 Wash. 255, 66 Pac. 393.

Under this section, the officer has the unqualified right to demand a bond in any case requiring a levy on personal

property involving the taking of actual possession, and not merely in cases where the bond "is required by law," as in sections 573 and 1888, supra, relating to adverse claims to property levied upon: Canfield-Caulkins Implement Co. v. Cowden, 70 Wash. 587, 127 Pac. 216, Ann. Cas. 1914B, 857.

This section applies to constables when their duties in connection with process are exactly the same as the duties of sheriffs; the terms "sheriff, deputy sheriff, or coroner" being used in a generic sense: Canfield-Caulkins Implement Co. v. Cowden, 70 Wash. 587, 127 Pac. 216, Ann. Cas. 1914B, 857.

§ 4173. [4004.] Sheriff and Constable to Complain of Violation.

It shall be the duty of all constables and all sheriffs to make complaint of all violations of the criminal law which shall come to their knowledge within their respective jurisdictions. [L. '69, p. 260, § 311; Cd. '81, § 2801; 1 H. C., § 326.]

See § 2887, vacation of office on conviction of failure to complain.

Cited in 6 Wash. 47.

§ 4174. [4005.] Sheriffs, etc., to Surrender Writs to Successors.

All sheriffs, constables and coroners in the state of Washington, upon the completion of their term of office and the qualification of their successors, shall deliver and turn over to such successors all writs and other processes in their possession not wholly executed, and all personal property in their possession or under their control held under such writs or processes, and take receipts therefor in duplicate, one of which shall be filed in the office from which such writ or process issued as a paper in the action, which receipt shall be a good and sufficient discharge to such officer of and from further charge of the execution of such writs and processes; and shall also deliver to their successors all papers and property in their possession or under their control as such officers. And it shall be the duty of such successors to execute or complete the execution of all such writs and processes so delivered to them, and to finish and

complete any and all business pertaining to such offices so turned over to them. [L. '95, p. 22, § 1.]

Authority of Successor as to Pending Proceedings in Hands of Former Officer: Lewis v. Bartlett, 12 Wash. 212, 40 Pac. 934, 50 Am. St. Rep. 885.

§ 4175. [4006.] Successor to Complete Process.

In all cases where any sheriff, constable or coroner in the state of Washington has executed any writ or other process delivered to him by his predecessor, or has completed any business commenced by his predecessor under any writ or process, and has finished and completed any other business commenced by such predecessor pertaining to such offices, and in all cases where any sheriff, constable or coroner has executed any writ or other process, or completed any business connected with his office after the expiration of his term of office, which writ or process he had commenced to execute, or which business he had commenced to perform prior to the expiration of his term of office, the same shall be valid and effectual for all purposes. [L. '95, p. 23, § 2.]

See supra, § 4031, officer to complete business to close of term.

See infra, § 10569, validating sheriff's deeds, etc.

CHAPTER XV.

CORONERS AND INQUESTS.

§ 4176. [4007.] Election—Term—Bond.

There shall be elected at each biennial election, in every county in this state, a coroner, who shall hold his office for two years and until his successor shall be elected and qualified, and shall take an oath of office and file a copy thereof. He shall execute a bond to his county in the sum of one thousand dollars, conditioned for the faithful performance of the duties of his office. [Cf. L. '54, p. 436, § 1; Cd. '81, § 2775; 1 H. C., § 245.]

See supra, § 4029, term of office after 1923.

See supra, § 4171, not to practice law.

See supra, § 4172, may demand fees and indemnifying bond.

See supra, § 4174, to surrender papers, etc., to successor.

See infra, § 4198, justice of the peace to act as coroner when.

See infra, § 4180, to act as sheriff when.

See infra, § 4229, fees for serving on coroner's jury.

See infra, § 6014, report of deaths to county auditor.

See infra, § 7547, ineligible to office of justice of the peace.

See infra, § 9934, approval and filing of bond.

Cited in 20 Wash. 214.

§ 4177. [4008.] Deputy—Appointment.

In counties having fifty thousand, or more, inhabitants, the coroner thereof is hereby authorized and empowered to appoint one deputy, and take a bond or security from such deputy, not exceeding in amount the sum of one thousand dollars, for his indemnity. Such appointment shall be in writing and signed by the coroner. [L. '05, p. 112, § 1.]

§ 4178. [4009.] Oath of Deputy.

Each deputy shall, before entering upon the duties of his office, take and subscribe an oath or affirmation, in like form as required of the

coroners, which shall be filed in the office of the county clerk. [L. '05, p. 112, § 2.]

§ 4179. [4010.] Deputy's Power and Compensation.

Deputy coroners, duly appointed and qualified, may perform any and all the duties of the coroner in the name of the coroner, and the acts of such deputy shall be held to be the act of the coroner: Provided, that such deputy shall receive no compensation from the county. [L. '05, p. 112, § 3.]

§ 4180. [4011.] Coroner to Act as Sheriff, When.

The coroner shall perform the duties of the sheriff in all cases where the sheriff is interested or otherwise incapacitated from serving; and whenever the coroner acts as sheriff he shall possess the powers and perform all the duties of sheriff, and shall be liable on his official bond in like manner as the sheriff would be; and shall be entitled to the same fees as are allowed by law to the sheriff for similar services: Provided, that nothing herein contained shall prevent the court from appointing a suitable person to discharge such duties, as provided by section 4170. [Cf. L. '54, p. 436, § 2; Cd. '81, § 2776; 2 H. C., § 81; L. '97, p. 21, § 1.]

See supra, § 4170, service when sheriff disqualified.

See infra, § 9944, on failure of sheriff to file bond.

The statute of 1854, allowing a coroner, in certain cases, to perform the duties of a sheriff, is still in force: *Rodolph v. Mayer*, 1 W. T. 133.

The duties and powers of deputy sheriffs, under this section, are such only as are usually incident to the office of sheriff, and are to be performed by him in his official capacity as sheriff, and do not include the execution of duties which are unofficial in character, and which may

by law be performed as well by any other county officer who may be properly requested to perform them: *State v. Payne*, 6 Wash. 563, 34 Pac. 317.

This section was amended by Laws of 1897, whereby any person who is otherwise qualified and appointed by the person desiring the writ may serve a writ of garnishment upon a sheriff: *Russell v. Millett*, 20 Wash. 212, 55 Pac. 44.

§ 4181. [4012.] Inquest, When, Where and How to be Held.

When information is given to any coroner that the body of any person, the cause of whose death is unknown, and there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, he shall go to the place where the body is, and forthwith summon six good and lawful persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of the deceased is, to inquire into the cause of the death. L. '54, p. 436, § 3; Cd. '81, § 2777; 1 H. C., § 246.]

See supra, § 93, jury of inquest.

See infra, § 6014, must report deaths to county auditor.

See infra, § 6955, deaths at insane hospital.

Cited in 33 Wash. 262.

The record of a coroner's report of an inquest is not competent evidence in civil actions of the cause of the death:

Sullivan v. Seattle Electric Co., 51 Wash. 71, 97 Pac. 1109, 130 Am. St. Rep. 1082.

Power of coroner to determine whether inquest shall be held. 11 Ann. Cas. 1023; 31 L. R. A. 540.

§ 4182. [4013.] Failure of Juror to Attend—Penalty.

Every person summoned as a juror who shall fail to appear without having a reasonable excuse shall forfeit any sum not exceeding twenty

dollars, to be recovered by the coroner, in the name of the state, before any justice of the peace in the proper county, and when collected to be paid over to the county treasurer for the use of the county. [L. '54, p. 436, § 4; Cd. '81, § 2778; 1 H. C., § 247.]

§ 4183. [4014.] Oath of Jury—Duty of.

When four or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict therein, according to the evidence afforded them, or arising from the inspection of the body. [L. '54, p. 436, § 5; Cd. '81, § 2719; 1 H. C., § 248.]

§ 4184. [4015.] Power to Summon and Examine Witnesses and Physicians.

The coroner may issue subpoenas for witnesses to the sheriff or any constable of the county, returnable forthwith or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses, on oath by him administered, every person, who, in his opinion or that of any of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body and give under oath a professional opinion as to the cause of the death. The fees for the coroner's physician or surgeon shall not be less than ten (\$10) dollars: Provided, that in counties between the first and eighth classes inclusive the fee herein provided shall not apply. [L. '01, p. 272, § 1. Cf. L. '54, p. 436, § 6; Cd. '81, § 2780; 1 H. C., § 249.]

§ 4185. [4016.] Fees.

Coroners shall collect for their official services, the following fees:

For each inquest held, besides mileage.....\$10.00

For issuing a venire..... 1.00

For drawing all necessary writings, per folio..... .10

For mileage each way, per mile..... .10

For performing the duties of a sheriff, he shall receive the same fees as a sheriff would receive for the same service. [L. '07, p. 88, § 1. See p. 93.]

See *supra*, § 497, fees of sheriff.

§ 4186. [4017.] Compelling Attendance of Witness.

A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace. [L. '54, p. 437, § 7; Cd. '81, § 2781; 1 H. C., § 250.]

§ 4187. [4018.] Verdict must Show What.

After inspecting the body and hearing the testimony, the jury shall render their verdict and certify the same in writing signed by them, and setting forth who the person killed is, if known, and when, where and by what means he came to his death; and if he was killed, or his death occasioned by the act of another by criminal means, who is guilty thereof, if known. [L. '54, p. 437, § 8; Cd. '81, § 2782; 1 H. C., § 251.]

§ 4188. [4019.] Testimony to be Reduced to Writing and Witnesses Recognized, When.

In all cases where murder or manslaughter is supposed to have been committed, the testimony of witnesses taken before the coroner's jury shall be reduced to writing by the coroner, or under his direction, and he shall also recognize such witnesses to appear and testify in the superior court of the county, and shall forthwith file the written testimony, inquisition, and recognizance with the clerk of such court. [L. '54, p. 437, § 9; Cd. '81, § 2783; 1 H. C., § 252.]

§ 4189. [4020.] Proceedings upon Arrest.

If, however, the person charged with the commission of the offense be arrested, the coroner shall deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statements taken before him, and the recognizance, to the clerk of the superior court of the county. [L. '54, p. 437, § 10; Cd. '81, § 2784; 1 H. C., § 253.]

§ 4190. [4021.] Warrant of Arrest.

If the jury find that the person was killed and the party committing the homicide be ascertained by the inquisition, and be not in custody, the coroner shall issue a warrant for the arrest of the person charged, returnable forthwith to the nearest justice of the peace, judge, or committing magistrate. [L. '54, p. 437, § 11; Cd. '81, § 2785; 1 H. C., § 254.]

§ 4191. [4022.] Form of Warrant.

The coroner's warrant shall be in substantially the following form:—

State of Washington, } ss.
County of——.

To any Sheriff or Constable of the County.

An inquisition having been this day found by the coroner's jury, before me, stating that A B has come to his death by the act of C D, by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded, in the name of the state of Washington, forthwith to arrest the above-named C D, and take him before the nearest or most accessible magistrate in this county.

Given under my hand this —— day of ——, A. D. 18—.

E F, Coroner of the County of ——.

[L. '54, p. 437, § 12; Cd. '81, § 2786; 1 H. C., § 255.]

See Const., Art. IV, § 27.

§ 4192. [4023.] Warrant, How and Where to be Served.

The coroner's warrant may be served in any county, and the officers serving it shall proceed thereon, in all respects, as upon a warrant of arrest. [L. '54, p. 438, § 13; Cd. '81, § 2787; 1 H. C., § 256.]

§ 4193. [4024.] Burial by Coroner—Expense of.

In all cases where no demand for the body for burial shall be made by friends of the deceased, the coroner shall provide for such burial at an

expense not exceeding seventy-five dollars, to be paid by the estate of the deceased, if it be sufficient. [L. '54, p. 438, § 14; Cd. '81, § 2788; 1 H. C., § 257; L. '01, p. 11, § 1.]

§ 4194. [4025.] Property of Deceased—Disposition of.

The coroner must, within thirty days after the inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against the coroner to recover the same by a civil action in the name of the county. [L. '54, p. 438, § 15; Cd. '81, § 2789; 1 H. C., § 258.]

§ 4195. [4026.] Duty of Treasurer as to Such Property.

Upon the delivery of money to the treasurer, he shall place it to the credit of the county. If it be other property, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and shall in like manner place the proceeds to the credit of the county. [L. '54, p. 438, § 16; Cd. '81, § 2790; 1 H. C., § 259.]

§ 4196. [4027.] Money to be Delivered to Representatives, When and How.

If the money in the treasury be demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the same may be so paid at any time thereafter, upon the order of the board of county commissioners of the county. [L. '54, p. 438, § 17; Cd. '81, § 2791; 1 H. C., § 260.]

§ 4197. [4028.] Account of Coroner Audited, When.

Before auditing and allowing the account of the coroner, the board of county commissioners shall require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer. [L. '54, p. 438, § 18; Cd. '81, § 2792; 1 H. C., § 261.]

§ 4198. [4029.] Justice of the Peace to Act as Coroner, When.

If the office of coroner be vacant, or he be absent or unable to attend, the duties of his office may be performed by any justice of the peace in the county, with the like authority, and subject to the same obligations and penalties, as the coroner. [L. '54, p. 438, § 19; Cd. '81, § 2793; 1 H. C., § 262.]

§ 4199. [4030.] Fees of.

A justice of the peace acting as coroner, shall be entitled to the same fees, payable in the same manner. [L. '54, p. 438, § 21; 1 H. C., § 264; Cd. '81, § 2795.]

The act of 1913, p. 165 (3 Rem. & Bal. Code, § 4030-1 et seq.), is omitted as unconstitutional: See *State ex rel. Maulsby v. Fleming*, 88 Wash. 583.

CHAPTER XVI.

SALARIES OF COUNTY OFFICERS, COSTS AND FEES.

§ 4200. [4031.*] Classification of Counties.

For the purpose of regulating the compensation of county officers and for all other purposes herein provided for, the several counties of the state are hereby classified according to their population as follows:

Counties containing a population of two hundred and ten thousand or more shall belong to and be known as Class A counties;

Counties containing a population of one hundred and twenty-five thousand and under two hundred and ten thousand shall belong to and be known as counties of the first class;

Counties containing a population of seventy thousand and under one hundred and twenty-five thousand shall belong to and be known as counties of the second class;

Counties containing a population of forty thousand and under seventy thousand shall belong to and be known as counties of the third class;

Counties containing a population of eighteen thousand and under forty thousand shall belong to and be known as counties of the fourth class;

Counties containing a population of twelve thousand and under eighteen thousand shall belong to and be known as counties of the fifth class;

Counties containing a population of five thousand and under twelve thousand shall belong to and be known as counties of the sixth class;

Counties containing a population of four thousand and under five thousand shall belong to and be known as counties of the seventh class;

Counties containing a population under four thousand shall belong to and be known as counties of the eighth class. [L. '19, p. 490, § 1. Cf. L. '17, p. 327, § 1; L. '90, p. 302, § 1; 1 H. C., § 2972; L. '01, p. 289, § 1.]

See *infra*, § 4203, class "6-A" counties.

Cited in 25 Wash. 266; 54 Wash. 456, 457; 65 Wash. 416, 418; 68 Wash. 491; 88 Wash. 584; 113 Wash. 653, 656.

Classification: See Remington's Digest, Counties, § 4; Nelson v. Troy, 11 Wash. 435, 39 Pac. 974; Faucher v. Rosenoff, 65 Wash. 416, 118 Pac. 315.

This section does not affect county officers prior to the election of 1920; county commissioners have no power to

determine the population and fix the status of a county of the first class: James v. McMillan, 113 Wash. 644, 194 Pac. 823.

This section is mandatory; and the county commissioners have no power to determine the population; but it does not affect county officers prior to the general election of 1920: James v. McMillan, 113 Wash. 644, 194 Pac. 823.

§ 4201. Salaries in Counties to the Eighth Class Inclusive.

The salaries of the county officers of class A counties, and counties of the first, second, third, fourth, fifth, sixth, seventh and eighth classes, as determined by the last preceding federal census, shall be per annum respectively as follows:

Class A counties: Auditor, clerk, treasurer, sheriff, attorney, assessor, engineer, superintendent of schools, members of board of county commissioners, thirty-six hundred dollars (\$3600.00); coroner, two thousand dollars (\$2000.00).

Counties of the first class: Auditor, clerk, treasurer, sheriff, assessor, engineer, superintendent of schools, members of board of county com-

missioners and attorney, three thousand dollars (\$3000.00); coroner, fifteen hundred dollars (\$1500.00).

Counties of the second class: Auditor, clerk, treasurer, sheriff, attorney, assessor, engineer, superintendent of schools, members of board of county commissioners, twenty-four hundred dollars (\$2400.00); coroner, twelve hundred dollars (\$1200.00).

Counties of the third class: Auditor, clerk, treasurer, sheriff, attorney, assessor, engineer, superintendent of schools, twenty-two hundred and fifty dollars (\$2250.00); members of board of county commissioners, two thousand dollars (\$2000.00); coroner, eight hundred dollars (\$800.00).

Counties of the fourth class: Auditor, clerk, treasurer, sheriff, attorney, assessor, engineer, superintendent of schools, two thousand dollars (\$2000.00); members of the board of county commissioners, fifteen hundred dollars (\$1500.00); coroner, four hundred and fifty dollars (\$450.00).

Counties of the fifth class: Auditor, clerk, treasurer, sheriff, attorney, assessor, engineer, superintendent of schools, eighteen [hundred] dollars (\$1800.00); members of board of county commissioners, six dollars (\$6.00) per day for time actually spent in the performance of their duties; coroner, three hundred dollars (\$300.00).

Counties of the sixth class: Auditor, clerk, treasurer, sheriff, assessor, engineer, superintendent of schools, attorney, fifteen hundred dollars (\$1500.00); coroner, one hundred dollars (\$100.00); members of board of county commissioners, six dollars (\$6.00) per day for time actually spent in the performance of their duties.

Counties of the seventh class: Auditor, fourteen hundred dollars (\$1400.00); clerk, treasurer, sheriff, thirteen hundred dollars (\$1300.00); attorney, assessor, engineer, superintendent of schools, twelve hundred dollars (\$1200.00); coroner, one hundred dollars (\$100.00); members of the board of county commissioners, six dollars (\$6.00) per day for the time actually spent in the performance of their duties.

Counties of the eighth class: Auditor, treasurer, twelve hundred dollars (\$1200.00); sheriff, one thousand dollars (\$1000.00); clerk, attorney, superintendent of schools, nine hundred dollars (\$900.00); coroner, sixty dollars (\$60.00); assessor, engineer, members of board of county commissioners, six dollars (\$6.00) per day for time actually spent in the performance of their duties.

All county officers shall be entitled to their necessary traveling expenses in the performance of their official duties, bills therefor to be audited by the county commissioners. [L. '19, p. 491, § 2.]

See *infra*, § 4203, salaries in class "6-A" counties.

Compensation: See Remington's Digest, Counties, §§ 26—30. **Right in General:** State ex rel. Thurston County v. Grimes, 7 Wash. 445, 35 Pac. 361.

§ 27. — **Salaries:** Anderson v. Whatcom County, 15 Wash. 47, 45 Pac. 665, 33 L. R. A. 137; State ex rel. Smith v. Neal, 25 Wash. 264, 65 Pac. 188, 68 Pac. 1135; Lewis County v. Montfort, 72 Wash. 248, 130 Pac. 115.

§ 28. — **Commissions:** School District v. Cole, 4 Wash. 395, 30 Pac. 448.

§ 29. — **Additional Compensation:** State ex rel. Olmstead v. Mudgett, 21 Wash. 99, 57 Pac. 351; State ex rel. Maltbie v. Will, 54 Wash. 453, 103 Pac. 479, 104 Pac. 797; Franklin County v. Barnes, 68 Wash. 488, 123 Pac. 779.

§ 30. — **Particular Officers, Agents and Servants:** State ex rel. Ames v. Gasch, 9 Wash. 226, 37 Pac. 427; Sayles v. Walla Walla County, 30 Wash. 194, 70 Pac. 256.

§ 4202. Class "6-A" Counties.

All counties having a population of not less than five thousand six hundred (5,600) and not more than six thousand (6,000), as determined by the last preceding federal census, shall be known as class "6-A" counties. [L. '21, p. 746, § 1.]

§ 4203. Salaries of Class "6-A" County Officers.

The salary of county officers of class "6-A" counties shall be per annum, respectively as follows: Auditor, twenty-one hundred dollars (\$2100); treasurer, twenty-one hundred dollars (\$2100); assessor, twenty-one hundred dollars (\$2100); clerk, nineteen hundred and fifty dollars (\$1950); sheriff, eighteen hundred dollars (\$1800); superintendent of schools, eighteen hundred dollars (\$1800); attorney, eighteen hundred dollars (\$1800); engineer, twenty-seven hundred dollars (\$2700); coroner, one hundred dollars (\$100); members of the board of county commissioners, ten dollars (\$10) per day for time actually spent in the performance of their duties. All such county officers shall be entitled to their necessary traveling expenses in the performance of their official duties, bills therefor to be audited by the county commissioners. [L. '21, p. 746, § 2.]

§ 4204. Application of Act to Class "A" Counties.

All provisions of law relative to the powers and duties of first class counties and the officers thereof shall apply with equal force to class "A" counties, except as otherwise provided by law. [L. '21, p. 489, § 1.]

§ 4205. [4032.] Enumeration of County Officers.

The officers of the county shall be: One county sheriff, one county clerk, one county auditor, one county treasurer, one county attorney, one county assessor, one county superintendent of public [common] schools, one county engineer, one county coroner, and three county commissioners; but in counties with a population of three thousand or less, whenever the county commissioners, at the regular August [July] session prior to any general state election, shall so order and enter said order on their journal, any two or more offices which do not conflict so far as the duties are concerned may be combined, and one person elected to fill the offices thus combined. [The officers in the different counties in the state shall each receive the salary hereinafter set forth,] and in cases where one officer perform[s] the duties of one or more offices he shall receive the combined salaries thereof. And in all cases where the duties of any office are greater than can be performed by the person elected to fill the same, said officer may employ, with the consent of the county commissioners, the necessary help, who shall receive a just and reasonable pay for services. The officer appointing such deputies or clerks shall be responsible for the acts of such appointees upon his official bond. [L. '90, p. 304, § 2; 1 H. C., § 2973.]

"Surveyor" changed to "engineer": See § 4143, *supra*.

That part of this section relating to compensation is superseded by §§ 4200 and 4201, *supra*.

See Const., Art. XI, § 5, compensation of county officers.

See *infra*, § 4210, allowance and compensation of deputies.

See *supra*, § 4074, and notes, limitations on county expenses.

See § 4774, *infra*, traveling expenses of county superintendent of schools.

See notes to § 11321, salaries of county treasurer as ex-officio tax collector in cities.

Cited in 10 Wash. 3; 11 Wash. 437, 438, 445; 12 Wash. 395, 415; 18 Wash. 161; 30 Wash. 196; 48 Wash. 465; 49 Wash. 393; 82 Wash. 121.

OFFICERS AND AGENTS: See Remington's Digest, Counties, §§ 22½—25. **Who are County Officers:** Nelson v. Troy, 11 Wash. 435, 39 Pac. 974; Bilger v. State, 63 Wash. 457, 116 Pac. 19; State ex rel. Lopas v. Shagren, 91 Wash. 48, 157 Pac. 31.

§ 22-1. **Appointment or Election of Officers or Deputies:** State ex rel. Egbert v. Blumberg, 46 Wash. 270, 89 Pac. 708; State ex rel. Murhard Estate Co. v. Superior Court, 49 Wash. 392, 95 Pac. 488.

Under this section, and section 4210, the officer has the absolute right to determine the personnel of such deputies as may have been allowed: Thomas v. Whatcom County, 82 Wash. 113, 143 Pac. 881.

§ 23. **Appointment of Agents or Em-**

ployees: State ex rel. Griffith v. Newland, 37 Wash. 428, 79 Pac. 983.

§ 24. **Eligibility and Qualification:** State ex rel. O'Connell v. Nelson, 7 Wash. 114, 34 Pac. 562; Koontz v. Kutzman, 12 Wash. 59, 40 Pac. 622.

§ 25. **Term of Office, Vacancies, and Holding Over:** McMurray v. Hollis, 5 Wash. 458, 32 Pac. 293; Smalley v. Snell, 6 Wash. 161, 32 Pac. 1062; Nelson v. Troy, 11 Wash. 435, 39 Pac. 974.

Supervision of County Officers, and Power to Employ Additional Help Under This Section: See Remington's Digest, Counties, §§ 16, 17; Nelson v. Troy, 11 Wash. 435, 39 Pac. 974; Dillon v. Whatcom County, 12 Wash. 391, 41 Pac. 174; State ex rel. Manning v. Major, 50 Wash. 355, 97 Pac. 249; McElwain v. Abraham, 58 Wash. 26, 107 Pac. 832; State ex rel. Whitney v. Friars, 10 Wash. 348, 39 Pac. 104.

§ 4207. [4062.] County Engineer—Office When Open.

In counties of five thousand or less population the county engineer shall keep his office open at least one day in each week. In counties of more than five thousand, and less than ten thousand, he shall keep his office open at least two days each week, and a notice of such days must be posted on his office door. In all counties of ten thousand and more population, . . . his office shall be kept open at all times as other county offices of record are kept open. [L. '07, p. 352, § 5.]

This is only part of the above section, which fixed the compensation of the county engineer and has been superseded, in part, if not in toto.

Cited in 48 Wash. 61.

§ 4208. [4063.] Traveling Expenses of County Engineer.

The county engineer, or his deputy, and his assistants, shall be allowed actual traveling expenses while officially employed. [L. '07, p. 352, § 6.]

§ 4209. [4064.] Limitations.

All officers paid a per diem under the provisions of this chapter shall only be paid for the time actually and necessarily spent in the discharge of their duties. No superintendent of common schools shall receive any compensation for his services other than the salary fixed by this act. [L. '95, p. 418, § 30.]

"This act" has reference to the act of 1895, included in this chapter, and partly superseded.

See § 4774, *infra*, traveling expenses of county superintendent of schools.

Cited in 30 Wash. 196; 48 Wash. 465.

§ 4210. [4065.] Salary to be Full Compensation—Deputies, etc.

In accordance with the classification herein made, the county officers of the counties of this state, according to their class, shall receive as a salary for the services required of them by law, or by virtue of their office, which salary shall be full compensation for all services of every kind and description rendered by the officers named herein: Pro-

vided, that in case the salaries herein provided for are, in the judgment of the board of county commissioners, inadequate for the services required of the officers named herein, then the said board of county commissioners may allow such officer a deputy, or such number of deputies as, in their judgment, may be required to do the business of such office in connection with the principal, for such time as may be necessary, and at such salary as they may designate; the said deputies shall be paid in the same manner and time as their principals: Provided, that the county commissioners shall pay the actual traveling expenses of the sheriff while on official duties, to be audited by the board of county commissioners. [L. '90, p. 312, § 32; 1 H. C., § 3003.]

Cited in 11 Wash. 438; 12 Wash. 396, 416; 68 Wash. 491; 82 Wash. 122.

Naturalization fees paid under United States statutes: Franklin County v. Barnes, 68 Wash. 483, 123 Pac. 779.

Right of clerk on salary basis to retain fee for naturalization. 30 L. R. A. (N. S.) 810.

§ 4211. [4066.] Collection and Disposition of Fees.

All salaried officers of the several counties of this state shall charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, all the fees now or hereafter allowed by law, paid or chargeable in all cases except such fees as are a charge against the county or state. [L. '90, p. 313, § 33; 1 H. C., § 3004.]

See *infra*, § 4217, disposition of fees.

See *infra*, § 4218, time for payment of fees into treasury.

Cited in 68 Wash. 491.

§ 4212. [4067.] Each Officer must Keep Fee-book.

Each of the officers authorized to receive fees under the provisions of this act shall keep a fee-book, open to public inspection during office hours, in which must be entered at once and detailed all fees or compensation of whatever nature, kind, or description, collected or chargeable. On the first Monday of each and every month, the officer must add up each column in his fee-book to the first of the month, and set down the totals. On the expiration of the term of such officer he must deliver to the county auditor all fee-books kept by him. [L. '90, p. 313, § 34; 1 H. C., § 3018.]

See *infra*, § 4223, posting schedule of fees.

§ 4213. [4068.] Fees—Statements of, to be Verified—Form of Affidavit.

The fees and compensation collected and chargeable for the county in each month shall be paid to the county treasurer on the first Monday of the following month, and must be accompanied by a statement and copy of the fee-book for the month last past, duly verified by the officer making such payment, and certified to by the proper officer. The affidavit shall be in the following form:

State of Washington, }
County of ———. } ss.

I, ——— county ———, do swear that the fee-book in my office contains a true statement in detail of all fees and compensation of every kind and nature, for official services rendered by me, paid or chargeable, my deputies or assistants, for the month of ———, A. D. 19—, and that said fee-

book shows the full amount received or chargeable in said month, and since my last monthly payment; and neither myself nor to my knowledge or belief, any of my deputies or assistants, have rendered any official services, except for the county or state, which is not fully set out in said fee-book; and that the foregoing statement thereof is a full, true and complete copy thereof. Subscribed and sworn to before me this — day of —, 19—.

The certificate of the checking officer shall be in the following form:

State of Washington, } ss.
County of —.

This is to certify that I have checked the records of the office of the county — for the month of —, 19—, and find the same to be properly entered on his fee-book, and that the foregoing statement is a full, true and complete copy thereof.

Witness my hand and official seal this — day of —, 19—.

[L. '90, p. 313, § 35; 1 H. C., § 3005; L. '07, p. 107, § 3.]

§ 4214. [4069.] Officers' Monthly Statement to Auditor.

Each of the salaried officers authorized to receive fees under the laws of this state, shall on or before the first Monday of each month and at the end of his term of office submit to the county auditor a statement and copy of his fee-book for the month last past, duly verified as provided in the preceding section: Provided, that the county auditor shall submit the statement and copy of his fee-book to the county clerk. [L. '07, p. 107, § 1.]

§ 4215. [4070.] Checking of Statements.

It shall thereupon be the duty of the county auditor and county clerk to check such statements submitted to him with the fee-book of their respective offices and the records pertaining thereto, and if they are found to be correct he shall return same after having attached thereto his official certificate. [L. '07, p. 107, § 2.]

§ 4216. [4071.] Errors or Irregularities.

If any errors or irregularities are found by the checking officer he shall immediately notify the officer interested, and if within three days after such notification said errors or irregularities are not corrected by such officer, it shall be the duty of the checking officer to so notify the board of county commissioners in writing and upon receipt of such notification it shall be the duty of said board to proceed against such officer in the manner provided by law. [L. '07, p. 108, § 4.]

§ 4217. [4072.] Disposition of Fees of Salaried Officers.

All officers enumerated in this section, who are paid a salary in lieu of fees, shall collect the fees herein prescribed for the use of the state or county, as the case may be, and shall pay the same into the state or county treasury, as the case may be, on the first Monday of each month. [L. '07, pp. 88—95, § 1.]

See next section.

This is only part of the above section: See L. '07, p. 95. The officers enumerated in this section are clerk of the supreme court, clerks of the superior court, sheriffs, constables, county auditors, coroners, secretary of state, and notaries public.

For fees prescribed, see the following: Clerks of court, § 497, *supra*; sheriffs, § 497; constables, § 7561; county auditors, § 4105; coroners, § 4185; secretary of state, § 10993; notaries, § 9907.

For fees of jurors: See *infra*, § 4229.

§ 4218. [4073.] Payment of Fees into County Treasury.

Every county officer, who, by the laws of this state is allowed a salary, shall, on the first Monday of each month, pay into the county treasury all moneys and sums which have come into his hands for fees and charges in his office, or by virtue of his office, during the preceding month. And no officer is permitted to retain to his own use or profit any sums paid him in his office or by virtue of his office, no matter from what source, but all of such moneys so paid him by virtue of the laws of this state, or of the United States, shall be the property of the county. [L. '93, p. 184, § 1.]

See *supra*, § 4211, collection and disposition of fees.

See *infra*, § 4224, vacancy declared on failure to account for fees collected.

See *infra*, § 4225, penalty for extorting illegal fees.

See *infra*, § 4226, payment of fees collected, penalty.

Cited in 56 Wash. 90; 68 Wash. 491.

§ 4219. [4074.] Salary Fund Created—Transfer of Funds to.

For the purpose of paying the salaries provided for in this act, all fees directed to be paid into the county treasury shall be set apart therein as a separate fund, to be known as the salary fund, to be applied to the payment of said salaries; should the amount received from such source be insufficient, it shall be the duty of the county treasurer, from time to time, to transfer to said fund from the general county fund such sums as may be necessary to pay said salaries as they become due, notifying the county auditor of such transfer. At the regular term of county commissioners' court they shall transfer any excess of the salary fund to the general county fund, should they deem it expedient so to do. [L. '90, p. 314, § 36; 1 H. C., § 3006.]

See *infra*, § 11234, county current expense fund.

Cited in 14 Wash. 682.

This section cannot be confined to moneys in the general fund not otherwise appropriated, but applies to any moneys which may be in that fund, al-

though warrants may have been drawn thereon prior to such transfer: *Spokane & Eastern Trust Co. v. Lavinge*, 14 Wash. 681, 45 Pac. 664.

§ 4220. [4075.] Payment of Salaries.

The salaries of such officers named in this act as are entitled to salaries shall be paid monthly out of the county treasury, and from the funds hereinbefore provided, and it shall be the duty of the county auditor, on the first Monday of each and every month, to draw his warrant upon the county treasurer in favor of each of said officers for the amount of salary due him, under the provisions of this act, for the preceding month: Provided, the county commissioners shall have entered an

order on the record journal empowering him so to do. [L. '90, p. 314, § 37; 1 H. C., § 3007.]

"This act": Act of 1890, p. 312.

Cited in 108 Wash. 399.

§ 4221. [4076.] Salary Warrant, When may be Drawn.

The auditor shall not draw his warrant for the salary of any such officer for any month until the latter shall have first filed his duplicate receipt with the auditor, properly signed by the treasurer, showing that he has made the statement and settlement for that month required in this act. [L. '90, p. 314, § 38; 1 H. C., § 3008.]

§ 4222. [4077.] Itemized Receipt for Fees to be Given—Penalty.

Every officer, upon receiving any fees for official duty, service, or reward, may be required by the person paying the same to make out in writing, and deliver to such person, a particular account of such fees, specifying for what they accrued, respectively, and shall receipt the same; and if he refuse or neglect so to do when required, he shall be liable to the party paying the same in treble the amount so paid. [L. '90, p. 315, § 40; 1 H. C., § 3010.]

§ 4223. [4078.] Statement of Fees to be Posted.

It shall be the duty of each county officer entitled to collect fees herein from the public to keep posted in his office a plain and legible statement of the fees allowed by law; a failure so to do shall subject the officer to a fine of one hundred dollars and costs, to be recovered in any court of competent jurisdiction. [L. 90, p. 315, § 41; 1 H. C., § 3011.]

§ 4224. [4079.] Receiving Illegal Fees, Office may be Declared Vacant for, When.

The board of county commissioners of any county in this state, upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon proof thereof must declare his office vacant and appoint his successor. [L. 90, p. 315, § 42; 1 H. C., § 3012.]

Extortion by public officer through
exaction of unauthorized fee.

Ann. Cas. 1913D, 453; 40 L. E. A.
(N. S.) 802.

§ 4225. [4080.] Taking Illegal Fees, How Punished.

If any officer shall take more or greater fees than are herein allowed, he shall be liable to indictment, and on conviction shall be removed from office and fined in any sum not exceeding one thousand dollars. [Cd. 81, § 2090; 1 H. C., § 3019.]

See, also, § 2612, *supra*.

§ 4226. [4081.] Failure to Pay Over Fees is Embezzlement.

Any county officer who is paid a salary, who shall fail to pay to the county treasury all sums that shall have come into his hands for fees and charges in his office, or by virtue of his office, whether under the laws of this state or of the United States, shall be deemed to be

guilty of embezzlement in office, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one year nor more than three years: Provided further, upon conviction, his office shall be declared to be vacant by the court pronouncing the sentence. [L. '93, p. 184, § 2.]

See, also, § 2569.

Cited in 15 Wash. 415; 56 Wash. 87, 88; 68 Wash. 492.

An information charging that the defendant is a county auditor who receives a salary and that he collected fees and refused to account for and embezzled the same, charges an offense under this sec-

tion: State v. Leonard, 56 Wash. 83, 105 Pac. 163, 21 Ann. Cas. 69.

May estoppel to deny authority to receive money alleged to have been embezzled be invoked against public officer charged with embezzlement. 23 L. R. A. (N. S.) 761.

§ 4227. [4082.] Withholding County Funds—Penalty for.

Any and all officers of a county, or their deputies, who shall collect fees for the county and neglect to turn the money into the county treasury, as herein provided, shall be guilty of a misdemeanor, and on conviction shall be fined in any sum not exceeding two hundred dollars for each offense. [L. '90, p. 316, § 46; 1 H. C., § 3015.]

§ 4228. [4083.] New or Altered Counties, How Classified.

Counties created or organized after the passage and approval of this act shall immediately come under and be governed by its provisions, so far as the same are applicable thereto: Provided, that when the population of any existing county shall have been reduced, by reason of the creation of any new county from the territory thereof, below the class and rank to which it was first entitled hereunder, it shall then be the duty of the county commissioners to designate, by order, the class to which said county has been reduced by reason thereof, and such county shall then enter the list of such class: Provided further, that the salary of county officers shall in no way be affected by reason of such division for the time for which they were elected. [L. '90, p. 316, § 47; 1 H. C., § 3016.]

See note to § 4220.

§ 4229. [4084.] Schedule of Fees of Jurors, etc.

Each grand and petit juror shall receive for each day's attendance upon the superior court, besides mileage, three dollars.

Each talesman serving in the superior court, per day\$2.00

For each day's attendance upon a justice of the peace

court 1.00

For serving on a coroner's jury, per day 2.00

Mileage, each way, per mile10

[L. '07, p. 88, § 1. See p. 93.]

Fees of officers, witnesses, etc.: See § 497, supra.

See, supra, § 1845, fee in justice court.

Under this section, jurors are not entitled to compensation for Saturdays, where the court has excused them from Friday evening until Monday morning, for the purpose of hearing motions, al-

though such jurors were unable to reach home and return during the time for which they were excused: State ex rel. Hastie v. Lamping, 25 Wash. 278, 65 Pac. 537.

§ 4230. [4085.] Mileage of Jurors, etc., Clerk to Certify Amount, etc.

Whenever a juror, witness, or officer is required to attend a court, or travel on official business out of the limits of his own county, and entitled to mileage, in lieu thereof he may at his option receive his actual and necessary traveling expenses by the usually traveled route in going to and returning from the place where the court is held, or where the business is discharged. At the close of each term of the district court the clerk shall ascertain the amount due each juror for his mileage and per diem; and he shall also certify the amount of fees that may be due to the sheriff of any other county than that in which the court is held, who may have attended the term, having a prisoner in custody charged with or convicted of a crime, or for the purpose of conveying such prisoner to or from the county, which, when approved by the court or judge, shall be a charge upon the county to which the prisoner belongs; and he shall also certify the amount which may be due witnesses attending from another county in a criminal case for their fees, which, when approved by the court or judge, shall be a charge upon the county to which the case belongs. [Cf. L. '63, p. 424, §§ 6, 8; L. '69, p. 419, § 7; Cd. '81, § 2109; 1 H. C., § 3049.]

See note to the last section.

See supra, § 498, requisites for allowance of juror and witness fees.

Cited in 7 Wash. 448, 449; 13 Wash. 487.

Under this section, the court acts judicially and not ministerially in passing upon cost bills; and, where it has approved a bill with the fees for certain witnesses stricken out, mandamus will not lie at the suit of such witnesses to compel the court to allow their fees: *State ex rel. Carraher v. Graves*, 13 Wash. 485, 43 Pac. 376.

Under § 4136, supra, it is the duty of the prosecuting attorney to carefully tax all cost bills in criminal cases, and take care that no useless witness fees are taxed as part of such costs: *State ex rel. Thurston County v. Grimes*, 7 Wash. 445, 35 Pac. 361.

Each juror is entitled to receive from the clerk, at the close of his term of service, a certificate of the amount of his per diem and mileage, without regard to the cases he has been called to sit in, whether civil or criminal: *Id.*

The judge does not pass upon jurors' certificates: *Id.*

Witnesses are allowed fees and mileage in criminal cases, which must be included in the cost bill, certified by the clerk,

and approved by the judge: *State ex rel. Thurston County v. Grimes*, 7 Wash. 445, 35 Pac. 361.

A witness who attends and testifies upon request, without the service of a subpoena upon him, is entitled to compensation: *Christensen v. Union Trunk Line*, 6 Wash. 75, 32 Pac. 1018.

Computation and Allowance of Mileage and Per Diem Fees: See *Remington's Digest*, Costs, § 46; *United States v. Small*, 3 W. T. 478, 17 Pac. 739; *Kimble v. Kimble*, 14 Wash. 369, 44 Pac. 866; *Carlson Bros. & Co. v. Van de Vanter*, 19 Wash. 32, 52 Pac. 323; *State v. Lorenz*, 22 Wash. 289, 60 Pac. 644; *Hall v. Northwest Lumber Co.*, 61 Wash. 351, 112 Pac. 369; *Aldredge v. Oregon-Washington R. & Nav. Co.*, 79 Wash. 349, 140 Pac. 550; *Pearson v. Gullans*, 81 Wash. 57, 142 Pac. 456; *Henry v. Chicago, Mil. & Puget S. R. Co.*, 84 Wash. 633, 147 Pac. 425; *Fryar v. Hazelwood Holstein Farms*, 97 Wash. 78, 165 Pac. 1084.

Meaning of "necessary travel" or "necessarily traveled" as used with respect to mileage allowance of officer. *Ann. Cas.* 1918D, 934.

§ 4231. [4086.] Official Oaths to be Administered Without Charge.

No fees shall be charged by any officer for administering and certifying the oath of office. [L. '69, p. 374, § 18; Cd. '81, § 2096; 1 H. C., § 3025.]

§ 4232. [4087.] Pension Papers—Officers not to Charge Fees.

No judge, or clerk of court, county clerk, county auditor, or any other county officer, shall be allowed to charge any honorably discharged soldier or seaman, or the widow, orphan, or legal representative thereof, any fee for administering any oath or giving any official certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths, and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher. [L. '91, p. 28, § 1; 1 H. C., § 3046.]

§ 4233. [4088.] Requiring or Accepting Such Fees, Punishment for.

Any such officer who may require and accept fees for such services shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars. [L. '91, p. 28, § 2; 1 H. C., § 3047.]

§ 4234. [4089.] Fees in Special Cases, Allowance of.

Each and every officer who shall be called on or required to perform service for which no fees or compensation are provided for in this chapter shall be allowed fees similar and equal to those allowed him for services of the same kind for which allowance is made herein. [L. '54, p. 375, § 4; L. '61, p. 41, § 5; Cd. '81, § 2098; 1 H. C., § 3027.]

Cited in 9 Wash. 108, 109, 111; 10 Wash. 3.

§ 4235. [4090.] Fee-bills to be Made if Required.

All officers shall, when requested so to do, make out a bill of their fees in every case, and for any services, specifying each particular item thereof, and receipt the same when it is paid, which bill of fees shall always be subject to examination and correction by the several courts; and any officer who refuses or declines to comply with the requirements of this section shall forfeit his fees in every case. [L. '54, p. 376, § 6; L. '61, p. 41, § 3; Cd. '81, § 2102; 1 H. C., § 3030.]

See, also, § 4222, *supra*.

County Board of Health. See "Health," § 6091.

County Circulating Libraries. See "Education," § 4926.

County Clerk. See §§ 70—81.

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DIKES AND DRAINS.

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DIKES AND DRAINS.

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CHAPTER I.

DIKING DISTRICTS.

Assessments on state lands, see §§ 4478—4482, and 8125—8136, *infra*.

§ 4236. [4091.*] Organization—Authorized.

Any portion of a county requiring diking may be organized into a diking district, and when so organized, such district, and the board of

commissioners hereinafter provided for, shall have and possess the power herein conferred or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as diking district No. — (here insert number) of the county of — (here insert the name of county) of the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal. The commissioners hereinafter provided for, and their successors in office, shall, from the time of the organization of such diking district, have the power, and it shall be their duty, to manage and conduct the business and affairs of the district; make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law. [L. '21, p. 548, § 1. Cf. L. '95, p. 304, § 1.]

This chapter supersedes §§ 1928—1934, 1 Hill's Code (L. '88, pp. 90—92). Compare Code '81, §§ 2519—2531; L. '83, pp. 30—32; L. '90, p. 730, § 1.

Cited in 15 Wash. 316; 19 Wash. 205; 20 Wash. 91, 518; 63 Wash. 332; 81 Wash. 482; 82 Wash. 32; 84 Wash. 253; 105 Wash. 241; 108 Wash. 150.

In General: See Remington's Digest, Drains, §§ 1—22, and cases cited.

The act contained in this chapter is not unconstitutional under Article VII, § 9, of the Constitution: Hansen v. Hammer, 15 Wash. 315, 46 Pac. 332.

Chapter 2, Title XXI (1 Hill's Code, § 1928 et seq.), relating to public dikes and dams, is unconstitutional, for the reason that it is in violation of Article I, § 16, which provides that no private property shall be taken or damaged for public or private use without just compensation having been first made or paid into court for the owner: Snohomish County v. Hayward, 11 Wash. 429, 39 Pac. 652.

Dike and ditch taxes levied subsequent to the adoption of the state constitution by a district organized prior thereto are illegal and void, when the dike and drain-

age laws are in conflict with provisions of the constitution, since the effect of the adoption of the constitution was to abrogate and annul all territorial laws repugnant to it: Pickering v. Ball, 19 Wash. 185, 52 Pac. 1022.

That portion of the act (L. '90, p. 652) providing for taking of lands for right of way for construction of ditches being unconstitutional, the whole of the act must fall with it, as the remaining provisions are so closely connected therewith that full effect cannot be given them independent of that which is unconstitutional: Skagit County v. Stiles, 10 Wash. 388, 39 Pac. 116; Askham v. King County, 9 Wash. 1, 36 Pac. 1097.

A diking district under this act is an organized public entity distinct from and free of all control by the county: Whitten v. Silverman, 105 Wash. 238, 177 Pac. 737; Columbia River Timber & Logging Co. v. Diking Dist. No. 2, 108 Wash. 148, 183 Pac. 134.

§ 4237. [4092.*] Districts, How Formed.

For the purpose of the formation of such diking districts a petition shall be presented to the board of county commissioners of the county in which said proposed diking district is located, which petition shall set forth the object for the creation of said district; shall designate the boundaries thereof and set forth therein the number of acres of land to be benefited by the proposed diking system, and shall also contain the names of all the record owners of land within said proposed district (so far as known), and shall contain a brief description of the proposed system of diking, the route over which the same is to be constructed, together with the proposed spurs or branches, if any there may be, and the termini thereof, and set forth the further fact that the establishment of said district and the proposed system of diking will be con-

ducive to the public health, convenience and welfare, and increase the public revenue, and that the establishment of said district and said system of diking will be of special benefit to the property included therein. Said petition shall be signed by such a number as own at least a majority of the acreage in the proposed district, and shall pray that the same be organized under the provisions of this chapter. Said petitioners shall, at the time of the filing of said petition, file a bond with said commissioners, running to the state of Washington, in the penal sum of five hundred dollars, with two or more sureties, to be approved by the board of county commissioners, conditioned that they will pay all costs in case said district, for any reason, shall not be established. [L. '21, p. 549, § 2. Cf. L. '95, p. 304, § 2.]

§ 4238. [4093.*] Petition to be Published—By Whom Filed.

Said petition shall be presented at a regular or special meeting of the board of county commissioners of said county, and shall be published for at least two weeks in two successive issues of some weekly newspaper printed and published in said county, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein, before the time at which the same is to be presented, together with a notice stating the time of the meeting at which the same shall be presented. When such petition is presented for hearing, the board of county commissioners shall hear the same, or may adjourn said hearing from time to time, not exceeding one month in all; and any person or corporation may appear before said board of county commissioners and make objections to the establishment of said district, or the proposed boundary lines thereof, and upon a final hearing said board of county commissioners shall make such changes in the proposed boundaries as they deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the number of acres of land that will be benefited by said proposed system of dikes, and shall find whether the proposed diking system will be conducive to the public health, welfare and convenience, increase the public revenue, and be of special benefit to the majority of the land included within the said boundaries of said proposed district so established by said board of county commissioners: Provided, that no changes shall be made by said board of county commissioners in said boundary lines to include any territory outside of the boundaries described in said petition: Provided further, that any person or persons owning land within the proposed boundaries and who did not sign said petition, or any person, persons, or corporations owning land not included within the proposed boundaries, may file a petition with the board of county commissioners asking that the proposed boundaries be extended to include other lands described therein; setting forth in said petition the reason therefor; but no person, persons, or corporations not owning lands included within the boundaries, as originally petitioned for, shall have the right to file such petition unless they ask therein to have their own lands included within the proposed boundaries: Provided, any corporation owning land included within the boundaries described in the original petition, may also petition the board of county commissioners for an extension of the proposed boundaries: Provided further, that the boundaries

of any diking district heretofore or hereafter established may be extended by the board of county commissioners to include other lands in said county, upon petition signed by the owners of a majority of the acreage of said land within the proposed extension; which said petition for extension shall set forth and contain, with reference to the extension, such matters and things and data so far as applicable, as is provided for in the petition required for presentation to the board of county commissioners for the purpose of the formation of the original diking district: Provided further, that all necessary expense incident to making such extension, together with a proportionate share of the first cost of any system of dikes existing in the original diking district at the time of making such extension, shall be levied against and apportioned to the land included in such extension, as in this act provided. In such case, the board of county commissioners shall give like notice as provided for in this section of the hearing of the original petition, and the final hearing thereof may, in such case, be continued from time to time, for a period of not exceeding sixty days; and if, upon final hearing, the board of county commissioners deem it advisable and to the best interests of all concerned, they may grant the prayer of said petitioners in whole or in part, and said board of county commissioners of such county shall enter an order on the records of their office setting forth all facts found by them upon the final hearing of said petition, and which may be adduced by them from the evidence heard upon the final hearing thereof. [L. '21, p. 550, § 3. Cf. L. '05, p. 177, § 1; L. '95, p. 305, § 3.]

§ 4239. [4094.] Election to Establish Districts—Commissioners—Notices—Costs.

Upon the entry of the findings on the final hearing of said petition as set forth in the last preceding section, said board of county commissioners of said county, if they find said proposed system of dikes will be conducive to the public health, welfare and convenience and will increase the public revenue and be of special benefit to the majority of the lands included within said boundaries, shall give notice of an election to be held in such proposed diking district for the purpose of determining whether the same shall be organized under the provisions of this chapter as a diking district of the state of Washington, and for the further purpose of choosing at such election three commissioners who shall be known and designated as "dike commissioners" for said district proposed to be organized, which said three commissioners shall, upon their election, be the district authorities of said diking district; and such notice shall particularly describe the boundaries as established by the board of county commissioners on its final hearing of said petition, and shall state the name of such proposed diking district and approximately the number of acres of land in said district to be benefited thereby, and the same shall be published for at least two weeks prior to such election in a weekly newspaper printed and published within the county within which said district is located, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein, for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of said proposed district, which

notice shall designate the place within the proposed district where the said election shall be held, and require the voters to cast ballots which shall contain the words "Diking district, yes," or "Diking district, no," and also the names of the persons voted for for commissioners of said diking district. The board of county commissioners shall appoint two judges, one inspector and two clerks for such election, whose compensation shall be the same as in other elections for the election of county and state officers, and shall be a charge upon said district, in case the same be established, and shall be paid in the same manner as other expenses are paid which are incurred in the establishment and construction of said improvement. In case said district be not established, then all costs and expenses shall be collectable from the bond hereinbefore provided for, and any person having a charge against said district shall have a right of action thereon. [L. '95, p. 307, §4.]

Upon the formation of a diking district under this act, personal service upon every person within the district of notice of the petition to organize the district is unnecessary, and failure to give such

personal service would not constitute a taking of private property without due process of law: Hansen v. Hammer, 15 Wash. 315, 46 Pac. 332.

§ 4240. [4095.] Election, When Held—Commissioners, Qualification of.

Said election shall be held on the day designated in such notice, and shall be conducted in accordance with the general election laws of the state, and no person shall be entitled to vote at such election or at the elections of commissioners hereinafter provided for unless he shall be a qualified elector of the county in which such district is located, and shall own land in the district. It shall be the duty of the county auditor, upon the request of the board of county commissioners, to certify to the election officers of any such election the names of all persons owning land in the district as shown by the records of his office, and at any such election the election officers may require any such land owner, offering to vote, to take an oath that he is a qualified elector of the county before he shall be allowed to vote: Provided, that at any election held under the provisions of this act, an officer or agent of any corporation owning land in the district, duly authorized thereto in writing may cast a vote on behalf of said corporation; when so voting he shall file with the election officers such written instrument of his authority. The board of county commissioners shall, on the Monday next succeeding such election, count and canvass the votes cast thereat, and if, upon said canvass and count, it appears that a majority of the votes cast are for "Dike Districts, yes," the board shall immediately enter an order upon its records declaring the proposed territory duly organized as a dike district, giving to such district a proper number, followed by the name of the county and state, and shall also declare the three persons receiving, respectively, the highest number of votes, the duly elected dike commissioners of such diking district. Said board shall cause a copy of the order entered of record, duly certified, to be filed in the office of the secretary of state, and from and after the date of such filing, said organization shall be deemed complete; and the members of said board of commissioners, so chosen at said election, before entering upon the discharge of their duties, shall qualify as county officers are required to qualify, and each shall enter

into a bond, payable to the state of Washington, for the benefit of said district, with two or more sureties, in a penal sum of not less than one thousand dollars nor more than five thousand dollars, conditioned for the faithful performance of their duties as dike commissioners, to be approved by the board of county commissioners, and to be filed with the county clerk, of the county in which said district is situated. The said dike commissioners shall hold office until the next general election at which officers of said dike district are to be elected, and until such further time as their successors are elected and qualified. The members of each successive board of dike commissioners, whether elected or appointed, shall, before entering upon their duties, enter into a bond as herein provided, and after being approved by the board of county commissioners, shall be filed in the office of the county clerk, of the county in which said district is situated. [L. '15, p. 261, § 1. Cf. L. '95, p. 308, § 5; L. '99, p. 187, § 1.]

Cited in 105 Wash. 242.

§ 4241. [4095-1.] Validation of Defective Districts.

Whenever a petition for the formation of a diking district, under the provisions of section 4237, shall have been filed with the board of county commissioners of any county, and such petition shall have conformed to the requirements of said section, except that the description of the proposed system of diking, the route over which the same is to be constructed, and the proposed spurs or branches, and the termini thereof, shall not have been definitely set forth in said petition, or said petition shall have been defective in any particular, and whenever said petition shall have been published, as required in section 4238, and a hearing shall have been held thereon, and supplemental petitions shall have been filed, and the board of county commissioners shall have, at the final hearing, entered findings and an order granting the prayer of the petitioners, in whole or in part, as provided in said section 4238, and said board of county commissioners shall have given notice of an election to be held in such proposed diking district, and shall have appointed officers of election in the manner prescribed in section 4239, and such election shall have been held, and the board of county commissioners shall have counted and canvassed the votes cast thereat, and it shall have appeared that a majority of the votes cast were for "Dike Districts, yes," and the board shall have entered an order upon its records declaring the proposed territory duly organized as a diking district, and given such district a proper number, followed by the name of the county and state, and declared the three persons receiving respectively the highest number of votes the duly elected dike commissioners of such diking district, and caused a copy of the order entered of record, to be duly certified and filed in the office of the secretary of state, in the manner prescribed in section 4240, the organization of said diking district so attempted to be organized shall be deemed complete, and the organization of any such diking district so attempted to be organized in the manner hereinabove set forth, is hereby validated, and said diking district is hereby declared to be a duly organized and established diking district. [L. '15, p. 483, § 1.]

§ 4242. [4096.*] General Election, When Held—Expenses of—Notice.

A general election for the election of a board of dike commissioners for such district shall be held upon the first Tuesday after the first Monday in March, 1916, and annually thereafter. The term of office of commissioners shall be for three years and until their successors are elected and qualified, but of the commissioners elected at the first election held under the provisions of this act the commissioner receiving the highest number of votes shall hold office for three years. The commissioner receiving the second highest number of votes shall hold office for two years, and the commissioner receiving the third highest number of votes shall hold office for one year. The term of office shall begin on the first Monday of the following April, and such election shall be held in accordance with the general election laws of the state of Washington for the election of county and state officers, and the expenses thereof shall be defrayed by said district, and the judges, clerks and inspectors of said election shall each receive as compensation for the services rendered at such election the sum of two dollars per day. Provided, that at least thirty days' notice immediately preceding any such general election shall be given thereof by the board of commissioners of such diking district, by posting the same in four public places within said district. Said notice shall contain the names of two electors of the county owning land in the district as judges of said election and the name of one elector of the county owning land in the district as inspector thereof, the same to be chosen by said board of commissioners. Said board of commissioners shall be a canvassing board to canvass the votes of each election, and they shall meet the day following such election and canvass said votes and declare the result thereof and issue certificates of election. [L. '21, p. 552, § 4; L. '15, p. 373, § 1.]

Cited in 105 Wash. 242.

§ 4243. [4097.] Eminent Domain—Powers of Districts.

All diking districts organized under the provisions of this act shall have the right of eminent domain with the power by and through its board of commissioners to cause to be condemned and appropriated private property for the use of said organization, in the construction and maintenance of a system of dikes and make just compensation therefor; that the property of private corporations may be subjected to the same rights of eminent domain as private individuals, and said board of commissioners shall have the power to acquire by purchase all of the real property necessary to make the improvements provided for by this act. All diking districts and the commissioners thereof now organized and existing, and all diking districts hereafter to be organized, and the commissioners thereof shall have in addition to the rights, powers and authority now conferred by any law of this state:

(1st) The right, power and authority to straighten, widen, deepen and improve any and all rivers, watercourses or streams, whether navigable or otherwise, flowing through or located within the boundaries of such diking district.

(2d) To construct all needed and auxiliary drains, ditches, canals, flumes, locks and all other necessary artificial appliances, in the construc-

tion of a diking system which may be necessary or advisable to protect the land in any diking district from overflow, or to provide an efficient system of drainage for the land situated within such diking district or to assist and become necessary in the preservation and maintenance of such diking system.

(3d) In the accomplishment of the foregoing objects, the commissioners of such diking districts are hereby given, in addition to the right and power of eminent domain now conferred by law upon the commissioners of any diking district, the right, power and authority by purchase, or the exercise of the power and authority of eminent domain, or otherwise, to acquire all necessary or needed rights of way in the straightening, deepening or widening of such rivers, watercourses or streams, and such auxiliary drains, ditches or canals hereinabove mentioned, and when so acquired shall have and are hereby given the right, power and authority, by and with the consent and approval of the United States government, in cases where such consent is necessary, to divert, alter or change the bed or course of any such river, watercourse or stream aforesaid, or to deepen or widen the same. [L. '15, p. 441, § 1. Cf. L. '95, p. 309, § 7; L. '07, p. 175, § 1.]

Damages from Construction or Maintenance: See Remington's Digest, Drains, § 13; Askham v. King County, 9 Wash. 1, 36 Pac. 1097; Skagit County v. Stiles, 10 Wash. 388, 39 Pac. 116; Snohomish

County v. Hayward, 11 Wash. 429, 39 Pac. 652; Hansen v. Hammer, 15 Wash. 315, 46 Pac. 332; Skagit County v. McLean, 20 Wash. 92, 54 Pac. 781.

§ 4244. [4097-2.] Construction of Drainage System—Resolution.

Before entering upon the construction of any system of drainage for the land situated within such diking district, the commissioners thereof shall adopt a resolution which shall contain a brief and general description of the proposed improvement, a statement that the costs thereof shall be paid by warrants drawn and payable in like manner as for the original construction of the dikes of such district, and fixing a time and place within such district for hearing objections to such proposed improvement or for the proposed method of paying the costs thereof. The time so fixed shall be not less than thirty days or more than sixty days from the date said resolution shall be adopted. Such resolution may be adopted by the commissioners upon their own motion and it shall be their duty to adopt such resolution at any time when a petition signed by the owners of sixty per cent or more of the acreage within such diking district is presented, requesting them to do so. [L. '15, p. 442, § 2.]

§ 4245. [4097-3.] Notice of Hearing.

Notice of such hearing shall be given by posting in three (3) public places within such district a true copy of said resolution signed by the commissioners of the diking district and attested with the seal thereof, which notice shall be posted for at least ten (10) days prior to the day fixed in said resolution for said hearing. [L. '15, p. 443, § 3.]

§ 4246. [4097-4.] Procedure in Absence of Objections.

At the time fixed, the commissioners shall meet and if no objections have been made to the proposed improvement or to the proposed method

of paying the costs thereof, they shall adopt an order reciting that fact and shall thereupon proceed to construct such system of drainage and pay the costs thereof in accordance with the terms specified in the resolution. [L. '15, p. 443, § 4.]

§ 4247. [4097-5.] Consideration of Objections.

But if objections in writing are filed either to the proposed improvement or to the proposed method of paying the costs thereof, the commissioners shall proceed to hear and consider the same and may, thereupon, order that such proposed improvement be abandoned for the time being or may direct such improvement to be constructed and the order of the commissioners in that regard shall be final and conclusive on all parties interested: Provided, however, that no such proceeding shall be abandoned unless the owners of at least twenty-five per cent of the acreage within said district shall have at or prior to said hearing, filed protests against the same. But nothing contained in this act shall be held to forbid the commissioners in their discretion overruling all protests and directing the construction of such improvement.

Commissioners shall likewise hear and consider all objections that may be filed to the proposed method of paying the costs of such improvement. [L. '15, p. 443, § 5.]

§ 4248. [4097-6.] Assessment of Benefits.

In case the commissioners at such hearing shall determine that the benefits accruing to any such lot or parcel of lands within said district by reason of the construction of such drainage system are greater or less than the amount theretofore fixed in the original or any subsequent proceeding for the construction of dikes, they shall determine the amount of such benefits to each lot or parcel of land and certify their findings and determination in that regard to the county auditor and the county auditor shall note the same on the transcript of the judgment (and in case there has been any readjustment or assessments of such diking district, then upon such transcript as readjusted). [L. '15, p. 444, § 6.]

§ 4249. [4097-7.] Appeal to Superior Court—Trial De Novo.

Any person deeming himself aggrieved by the assessment for benefits made against any lot or parcel of land owned by him, may appeal therefrom to the superior court for the county in which the diking district is situated; such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts and all notices of appeal shall be filed with the said board, and the board of diking commissioners shall at the appellant's expense certify to the superior court so much of the record as appellant may request, and the hearing in said superior court shall be de novo, and the superior court shall have power and authority to reverse or modify the determination of the commissioners and to certify the result of its determination to the county auditor and shall have full power and authority to do anything in the premises necessary to adjust the assessment upon the lots or parcels of land involved in the appeal in accordance with the benefits. [L. '15, p. 444, § 7.]

§ 4250. [4097-8.] Assessments—Segregation.

In all cases wherein it is finally determined that the assessments for the system of drainage differ from the assessment theretofore made, as to any tract or parcel of land within said diking district, the diking commissioners in making their annual estimate shall segregate the amount necessary to be raised for the construction, repair and maintenance of the system of drainage or for the payment of the principal or interest of any bonds issued for drainage purposes from the amount necessary to be raised for all other diking purposes and the county auditor in apportioning said estimate for drainage purposes to the lands in such district shall base such apportionment upon the assessment fixed for drainage purposes and shall apportion the remainder of such estimate upon the basis fixed in the original or any subsequent proceeding for all other diking purposes. But in all other cases, the estimate and apportionment shall be made in accordance with existing laws. [L. '15, p. 445, § 8.]

§ 4251. [4097-9.] Issuance of Bonds.

Authority is hereby given to any diking district heretofore organized, or that may be hereafter organized, to issue bonds of such diking district for the purpose of procuring funds with which to construct a drainage system, such bonds to be issued in accordance with the terms of section 4282. [L. '15, p. 445, § 9.]

§ 4252. [4097-10.] Appeals to Supreme Court.

Either the dike commissioners or any land owner who has appealed to the superior court in accordance with the provisions of this act shall have a right to appeal to the supreme court within the time and in the manner prescribed by existing law. [L. '15, p. 445, § 10.]

§ 4253. [4098.] Rights of Way Over State, County, etc., Property.

The right, power and authority to acquire the necessary and needed rights of way for any and all purposes now existing by law or created by this act, may be acquired by the commissioners of any diking district over, across and upon any land, or interest therein, of the state of Washington or any county of this state, and streets, avenues, alleys or public places of any city, town or municipal corporation of this state: Provided, however, that the construction of such dike or dikes shall not have the effect of impairing any right, power or authority now existing on the part of any city or town to construct in, upon, underneath, above or across such dike or dikes, sewers, water pipes, mains, or the granting of any franchise thereon, or the improvement by way of planking, replanking, paving, repaving or any other power, right or authority which but for this act such city or town would have in or to such street, avenue, alley or public place; except, however, that such right, power or authority on behalf of such city or town shall not be exercised either by such city or town or by any person, persons, firms or corporations to whom it might grant any right or franchise, which will materially impair the efficiency of such dike or dikes. The provisions of this section as regards said system of dikes to be located within the boundaries of any

incorporated city or town shall apply to the extension or enlargement of any dike or dikes already existing upon, over and across any street, avenue, alley or public place of any city or town, as well as the original construction thereof. [L. '07, p. 176, § 2.]

"Act" in this section refers to §§ 4243, 4253—4256.

§ 4254. [4099.] Organization—Matters to be Set Forth in Proceedings.

In all proceedings hereafter had to organize diking districts, all notices, petitions or proceedings shall contain and set forth all matters and things required by existing law, and in addition thereto shall contain and set forth, so far as is necessary or applicable, all matters and things required by the provisions of this act, and all diking districts now existing, which may exercise any of the rights, powers or authority conferred by the provisions of this act, the proceedings to obtain the benefits hereof, must contain such allegations, and such steps and proceedings must be taken, as is rendered necessary by the provisions of this act; and the commissioners of existing diking districts are hereby given the right, power and authority to institute all proceedings and to take all necessary steps to secure the benefits of the provisions of this act, and all proceedings to secure the benefits thereof and all judgments to be rendered in such proceedings, including the filing of transcripts and the making of levies, and all other proceedings, shall be in addition to proceedings, assessments or levies, theretofore made in any prior proceedings. [L. '07, p. 177, § 3.]

"Act" in this section refers to §§ 4243, 4253—4256.

§ 4255. [4100.] Grant of Overflowed State Lands.

All the right, title and interest of the state of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the boundaries of any diking district up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes, to the extent that the same under any proceedings to be had under this act shall cease to become a part of such river, stream, waterway or watercourse by reason of the diversion of such river, stream, waterway or watercourse, under any proceedings had under this act, are hereby given, granted and vested in the respective diking districts now existing or hereafter to be formed; and the commissioners of such respective diking districts are hereby given the right, power and authority to sell such beds and shores in such manner and upon such notices and proceedings as govern, under existing laws of this state, the board of county commissioners in the sale and disposition of any real estate belonging to counties of this state. The proceeds of such sales are to be used for the benefits of such diking district in the payment of any expenses connected with the construction of such dikes or maintenance thereof: Provided, however, that the commissioners of such diking district may, in their discretion, exchange such abandoned beds and shores for other property needed in the straightening, deepening or widening of such rivers, watercourses or streams; and which exchange may be made upon

such terms, conditions and in such areas as in the discretion of such commissioners they may deem advisable and for the best interests of such diking district, without any notice or other formality of proceedings whatever. [L. '07, p. 178, § 4.]

"Act" in this section refers to §§ 4243, 4253—4256.

See Const., Art. XV, § 1, no right to sell tide lands within harbor areas.

§ 4256. [4101.] County Auditor Authorized to Sign Petition for County.

Whenever the county owns any land situated within the boundaries of a proposed diking district, the county auditor, when so directed by the board of county commissioners of the county in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such diking district for and on behalf and as the act and deed of such county, and when so signed the same shall be considered in determining the question of a majority signature in acreage to the petition for the formation of such district. [L. '07, p. 178, § 5.]

§ 4257. [4102.*] Commissioners, Duty of.

Said board of dike commissioners hereinbefore provided for shall have the exclusive charge of the construction and maintenance of all dikes or dike systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties, as provided by law. In case of vacancy or vacancies occurring in said board by the death, failure to elect, failure to qualify, resignation or removal of one or more of the members thereof from said district, such vacancy or vacancies shall be filled at once from the freeholders and qualified electors of the county owning land in the district by the judge of the superior court of said county, and said appointee shall serve the unexpired term, or until the next general election or until a successor is elected and qualified: Provided, that in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment. [L. '21, p. 553, § 5. Cf. L. '95, p. 310, § 8.]

Cited in 108 Wash. 151.

§ 4258. [4103.] Diking, Method of Procedure—Estimates—Right of Way.

Whenever it is desired to prosecute the construction of a system of dikes within said district, said district, by and through its board of commissioners, shall file a petition in the superior court of the county in which said district is located, setting forth therein the route over which the same is to be constructed, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, together with the estimated cost of such proposed improvement, showing therein the names of the land owners whose lands are to be benefited by such proposed improvement; the number of acres owned by each land owner, and the maximum amount of benefits per acre to be derived by each land owner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase

the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the land owners through whose land the right of way is desired for the construction of said dikes; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right of way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of the benefits to be derived by such land owners by reason of the construction of said system. Such estimate shall be made, respectively, to each person through whose land said right of way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right of way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of dikes is necessary for the protection of all the lands from overflow described in said petition, and that all lands sought to be appropriated for said right of way are necessary to be used as a right of way in the construction and maintenance of said improvements; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by the construction of said dikes, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from such proposed improvement shall be estimated in said petition against said road or railroad. [L. '95, p. 310, § 9.]

Cited in 108 Wash. 151, 153.

§ 4259. [4104.] Surveyors, When Employed.

In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the said superior court, the board of commissioners of said diking district may employ one or more good and competent surveyors and draughtsmen to assist them in compiling data required to be presented to the court with said petition as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [L. '95, p. 311, § 10.]

Cited in 108 Wash. 151.

A diking district organized under this act, becomes a legal entity as a public corporation, and its commissioners, under sections 4259, 4277, have discretionary powers which will not be reviewed by the courts in the absence of fraud: *Columbia River Timber & Logging Co. v. Commissioners of Diking District No. 2*, 108 Wash. 148, 183 Pac. 134.

It cannot be said that the commissioners abused their discretion in employing an attorney for \$3,000 to do all the legal work in connection with the construction of an improvement costing \$168,000, including the assessment of benefits and damages in eminent domain proceedings: *Columbia River Timber & Logging Co. v. Commissioners of Diking District No. 2*, 108 Wash. 148, 183 Pac. 134.

§ 4260. [4105.] Summons to Contain, What—Service of.

A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be

appropriated, and those which it is claimed will be benefited by such improvement, and stating the court wherein said petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. Said summons must be subscribed by the commissioners, or their attorney running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or in case of a foreign corporation, at its principal place of business in this state with some person of more than sixteen years of age; in case of domestic corporation said service shall be made upon the president, secretary or other director or trustee of such corporation; in case of minors, on their guardian, or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or insane persons, on their guardian, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in such real or other property is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of one or more of the commissioners of said district shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by such deponent, service may be made by publication thereof in a newspaper published in the county where such lands are situated once a week for three successive weeks; and in case no newspaper is published in such county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated, or which it is claimed will be benefited by said improvement. Such publication shall be deemed service upon each nonresident person or persons whose residence is unknown. Such summons may be served by any competent person over twenty-one years of age. Due proof of service of such summons by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such court before the court shall proceed to hear the matter. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subse-

quent proceedings. In all cases not otherwise provided for, service of notice, order and other papers in the proceeding authorized by this chapter may be made as the superior court, or the judge thereof, may direct: Provided, that personal service upon any party outside of the state shall be of like effect as service by publication. [L. '95, p. 312, § 11.]

§ 4261. [4106.] Appearance of Defendants—Jury—Verdict—Decree.

Any or all of said defendants may appear jointly or separately, and admit or deny the allegations of said petition, and plead any affirmative matter in defense thereof, at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable, and conducive to the public health, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits as herein provided, if in attendance upon his court; and if not, he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summon from the citizens of the county in which said petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary to complete the jury in any case, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned, the cost thereof shall be taxed as part of the costs in the proceeding, and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or land owner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvement, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find the maximum amount of benefits, per acre, to be derived by each of the land owners from the construction of said improvement. And upon a return of the verdict into court, the same shall be recorded as in other cases; whereupon a decree shall be entered

in accordance with the verdict so rendered, setting forth all the facts found by the jury, and decreeing that said right of way be appropriated, and directing the commissioners of said drainage [diking] district to draw their warrant on the county treasurer for the amount awarded by the jury to each person, for damages sustained by reason of the establishment of said improvement, payable out of the funds of said diking district. [L. '95, p. 313, § 12.]

Cited in 81 Wash. 484, 487.

§ 4262. [4107.] Assessment of Benefited Lands Formerly Omitted—Procedure—Appeals.

If at any time it shall appear to the board of diking commissioners that any lands within or without said district as originally established are being benefited by the diking system of said district and that said lands are not being assessed for the benefits received, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the diking system of said district, and said board of diking commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the diking system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessments on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land, and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessment or equalizing the assessments upon lands already assessed, or both.

Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other diking district, said summons shall also be served upon the commissioners of such other diking district.

In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other diking district, and the diking commissioners of such other district believe that the maintenance of the dike or dikes of such other district is benefiting lands within the district instituting the proceedings, said diking commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the diking system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the diking system of their district, to the end

that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the diking district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention.

In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private dike against salt or fresh water for the benefit of said lands, and shall believe that the maintenance of such private dike is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other diking district and are being assessed for the maintenance of the dikes of such other district, and the owner of such lands believes that the maintenance of the dike or dikes of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective dikes may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various dikes benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such dikes, and may interplead in said proceeding such other diking district in which his lands sought to be assessed in said proceeding are being assessed for the maintenance of the dike or dikes of such other district.

No answer to any petition or petition in intervention shall be required, unless the party served with summons, desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence.

Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the dike or dikes to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any dike, structure or improvement, and to credit, or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvements or structures thereon or easements granted in connection therewith affecting any other tract or tracts included in such proceedings, and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the diking commissioners of some other district than that instituting the proceeding, such judgment to be supplemental

to all such original decrees, and thereafter, all assessments and levies for the future maintenance of any dike or dikes described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal to the supreme court within thirty days after the entry thereof, and such appeal shall bring before the supreme court the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be allowed on such appeals. Nothing in this section contained shall be construed as affecting the right of diking districts to consolidation in any manner provided by law. [L. '13, p. 267, § 1. Cf. L. '95, p. 315, § 13; L. '01, p. 226, § 1.]

Cited in 63 Wash. 333; 81 Wash. 482, 485; 82 Wash. 32, 33; 94 Wash. 455.

Under this section, errors going to the validity of the organization of the district or regularity of the proceedings leading up to the judgment of condemnation cannot be considered on appeal from the final judgment: *Calispel Diking District v. McLeish*, 63 Wash. 331, 115 Pac. 508.

This section is not unconstitutional in that it authorizes the exercise of extra-territorial jurisdiction and enables the taxing of land outside the district which may be within another district, since the charges are measurable only by the benefits resulting to the land charged: *State ex rel. Conner v. Superior Court*, 81 Wash. 480, 143 Pac. 112.

This section is not unconstitutional as authorizing the diking district to levy taxes on land outside its boundaries, in violation of constitution, article XI, section 12, providing that the legislature shall have no power to impose taxes

upon counties, cities, towns, or other municipal corporations, since it is a special tax levied according to the benefits resulting to the land to be charged therewith, and not according to value, as is required in the levying of general taxes; and it is not a violation of legislative power that the tax is imposed by officers in whose election the owners of land have no voice: *State ex rel. Conner v. Superior Court*, 81 Wash. 480, 143 Pac. 112.

Certiorari, and not appeal, is the proper method of reviewing a judgment in the original proceeding awarding damages or assessing benefits for the appropriation of land for diking purposes, since under this section the only appeal allowed is in case of supplemental proceedings to subject new lands to assessment, the statute providing that judgment therein shall be supplemental to all original decrees, and that any party aggrieved may appeal from "any such judgment": *State ex rel. Davis v. Superior Court*, 82 Wash. 31, 143 Pac. 168.

§ 4263. [4108.] Proceedings, When may be Dismissed.

In case the damages or amount of compensation for such right of way, together with the estimated cost of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court. [L. '95, p. 315, § 14.]

§ 4264. [4109.] Damages, How Paid.

Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge

thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [L. '95, p. 315, § 15.]

§ 4265. [4110.] Transcript to Contain, When—Assessments, When Due.

Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvements belonging to each person or corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax-rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption and the lands sold for the collection of said taxes shall be subject to the same right of redemption as in the sale of lands for general taxes: Provided, that said assessment shall not become due and payable except at such time or times and in such amount as may be designated by the board of commissioners of said dike district, which designation shall be made to the county auditor by said board of commissioners of said diking district, by serving a written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits, to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporations, according to said notice, upon the assessment-rolls in his said office, and collected therewith: And provided further, that no one call for assessments by said commissioners shall be in an amount to exceed twenty-five per cent of the actual amount necessary to pay the costs of the proceedings, and the establishment of said district and system of dikes and the cost of construction of said work. [L. '95, p. 316, § 16.]

Cited in 81 Wash. 484.

§ 4266. [4111.] Conditional Tax, How Levied.

In the event of the dismissal of said proceedings and the rendition of judgment against said district, as hereinbefore provided, said diking commissioners shall levy a tax upon all of the real estate within said district, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said judgment, and the cost of levying said tax, and shall cause said tax-roll to be filed in the office of the clerk of the superior court in which such judgment was rendered. If said tax is not paid within sixty days after the filing of

said tax-roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer, as is or may be provided by law for the sale of real estate for taxes for general purposes; and the same rate of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes. [L. '95, p. 317, § 17.]

§ 4267. [4112.] Improvements, When Ordered—Contractor's Bond.

After the filing of said certificate said commissioners of such diking district shall proceed at once in the construction of said improvements, and in carrying on said construction or any extension thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary, and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: Provided, that in case the whole or any portion of said improvement is let to any contractor, said commissioners shall require such contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by such contract, with two or more good and sufficient sureties to be approved by the board of commissioners of said diking district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further and additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said diking district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, shall perform the whole or any portion of said work under contract of said original contractor; shall pay or cause to be paid all just claims of all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: Provided further, that no sureties on said last-mentioned bond shall be liable thereon unless the persons or corporations performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of such improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the commissioners of said diking district. [L. '95, p. 317, § 18.]

§ 4268. [4113.] Work, When to Begin—Changes, How Made.

The work on said improvement shall begin without delay, and shall be carried on with all expedition possible, and said board of commissioners of said diking district, or any contractor thereunder, shall have

no power whatever to change the location of the dikes or the system of improvement or the manner of doing the work therein so as to make any radical changes in said improvement, without the written consent of all the land owners to be benefited thereby, and the land owners which may be damaged thereby. And in case any substantial changes in said system of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be procured from said land owners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plans or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners [clerk] shall cause a summons to be served, setting forth the prayer of said petition, under the seal of said court, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the land owners or others claiming any lien thereon or interest therein appearing of record in said district, and any or all of such parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of such proceedings that the property rights of any of said land owners will be affected by such proposed change in said improvement, then the court, after having passed upon all preliminary questions as in the original proceedings, shall cause a jury to be impaneled as in the case of the original proceedings for the establishment of said improvement, and upon the final hearing of said cause the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations the same as upon the original petition, by reason of such proposed change, and the amount of compensation to be paid to any persons or corporations therefor, and for any additional right of way that may be necessary to be appropriated by reason of said proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said land owners by reason of such proposed change in said improvement, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages, and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings under the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvement according to the changes made therein. [L. '95, p. 318, § 19.]

There is no sufficient evidence of fraud or arbitrary action by commissioners of a diking district to warrant interference by the courts, where it merely appears that there was a difference of opinion as to the necessity for the more elaborate

improvements decided upon by the commissioners and increasing the cost, and a conflict in the evidence: *Columbia River Timber & Logging Co. v. Commissioners of Diking District No. 2*, 108 Wash. 148, 183 Pac. 134.

§ 4269. [4114.] Contractors, When Paid.

During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: Provided, that no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five per cent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five per cent of the contract price shall be reserved at all times by said board of commissioners until such work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvement; and upon the completion of said work and the payment of all claims hereinbefore provided for, according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor. [L. '95, p. 320, § 20.]

§ 4270. [4115.] Private Dikes, How Connected—Additional Plans—Costs.

In case any diking district organized under the provisions of this chapter desires to connect its system of dikes with the system of dikes of any other district theretofore organized or constructed, said last-mentioned diking district shall be made a party defendant in the proceedings in the superior court for the establishment of the improvement proposed to be constructed by such first-mentioned diking district, and the petition to be filed in said court, in addition to the facts to be set forth therein as hereinbefore provided for, shall set forth the further fact that said district is desirous of connecting its said system of dikes with the system of such other diking district, and shall set forth an estimate of the additional cost per annum, if any, for the future maintenance of the diking system so sought to be connected with, and also an estimate of the cost of any additional improvement in said system so sought to be connected with, if any, by reason of such connection, and shall also set forth the amount of compensation which should be made by said diking district for the privilege of connecting with the said system of dikes: and in case it shall be deemed necessary to enlarge or strengthen the system of dikes to be connected with by reason of such connection, there shall be filed with said petition, in addition to the plans, specifications and data hereinbefore provided to be filed, plans and specifications and the estimated cost of the proposed improvement to be made in the system sought to be connected with by reason of such connection, and the proceedings thereon shall be the same as in other cases for the establishment of diking districts under the provisions of this chapter: Provided, that the jury shall, in addition to the other findings provided for in other cases under the provisions of this chapter, find the amount of compensation to be paid said district with whose system connection is sought to be made, for any additional cost, if any, which may be thrown upon said district by reason of the increased cost of maintenance by reason of such connection, and shall estimate the amount of such increased cost of maintenance per annum, and also the amount of com-

pensation to be made to said district for the privilege of joining on to its system of dikes; the compensation to be made for the increased cost of maintenance shall be paid per annum out of the revenue derived from the assessments to be levied as in other cases, and the compensation to be made as may be found by the jury to said district whose system is sought to be connected with for the privilege thereof, shall be paid such district as damages are paid in other cases under the provisions of this act; and all amounts so paid to said district sought to be connected with as compensation for the cost of maintenance, shall be used as an additional fund for the maintenance of said diking system of such district, and the amount of compensation paid for the privilege of connecting with the system of such district shall also be added to the general fund of said district, to be used for the payment of the cost of maintenance of the system of such district sought to be connected with. [L. '95, p. 320, § 21.]

§ 4271. [4116.] Enlarging Dikes, Costs of.

In case it shall be found necessary to enlarge or strengthen the system of dikes sought to be connected with, by reason of such connection, the jury shall determine the cost of such enlarging or strengthening, and said petitioner district shall have the right, by and through its representatives, assistants and employees, to make such improvement on the system of such other district as may have been found necessary upon the hearing of said petition, and the costs thereof shall be assessed against the land owners of said petitioner district to be benefited by the construction of said entire system, and no additional cost or burden, by reason of such improvement, shall be thrown upon the land owners of said district sought to be connected with. [L. '95, p. 321, § 22.]

§ 4272. [4117.] Dikes, Protection Against Injury from Rivers.

Where any diking system is sought to be constructed by any district organized under the provisions of this chapter along any river or watercourse to prevent overflow therefrom, and it shall become necessary to provide against the washing away of the banks of said river or watercourse so as to prevent injury to such proposed diking system, or any system which may have already been completed, such district, by and through its boards of commissioners, may make such portions of lands lying along said dikes which are threatened to be washed away by said river or watercourse part of the right of way of said dike system, and may construct along the banks of said river or watercourse, as a part of said diking system, such protection as may be necessary to protect said dike, and in such cases such tract or parcel of land may be condemned and appropriated under the law of eminent domain as provided herein as a part of the right of way of such dike system; and when not condemned or appropriated at the time said system is established and constructed, said diking district, by and through its board of commissioners, may, at any time thereafter, when any portion of said system is threatened to be washed away by such river or watercourse, file their petition with the court condemning and appropriating for the use of said district so much of the land lying along said river or watercourse

as may be necessary to be used for the protection of said diking system, and the proceedings therein for the making of compensation therefor and the payment of damages by reason of such appropriation shall be the same, or as near as may be applicable, as other proceedings, for the condemnation of right of way provided for in this chapter. [L. '95, p. 322, § 23.]

§ 4273. [4118.] Condemnation — Appropriation of Banks — Cost, How Paid.

Whenever any land is appropriated along the bank of any river or watercourse, as provided for in the last preceding section, the expenses of such appropriation, including the costs and damages to be paid therefor—when such appropriation is taken subsequently to the construction of any system of dikes under the provisions of this chapter—shall be added to the annual cost of the maintenance of said system and be paid as such, as provided herein. [L. '95, p. 323, § 24.]

§ 4274. [4119.] Public Highways—Construction on.

In the construction of any diking system under the provisions of this chapter, where it is desired to construct the same along the right of way of any public road which has theretofore been legally established, said district shall have a right to construct its dikes along such road: Provided, that the dikes so constructed along such road shall not destroy or impair the same for the use of the public convenience as a public highway; and in case of the construction or improvement of any dike along any public highway, such dike shall be constructed of sufficient width and in such manner as will be conducive to the public as a public highway. [L. '95, p. 323, § 25.]

§ 4275. [4120.] Incorporated Towns may be Included.

Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a diking district under the provisions of this chapter, or the whole or any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein. [L. '95, p. 323, § 26.]

§ 4276. [4121.] Maintenance, Cost of to be Certified to County Auditor.

The board of commissioners of any diking district organized under the provisions of this act shall, on or before the first day of November of each year, make an estimate of the cost of maintenance of the diking system in such district, which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be for the succeeding year, and the amount so estimated shall be certified by the board of — commissioners to the auditor of the county in which such district is located, on or before said date, and the amount thereof shall be levied against and apportioned to the land in such district benefited by said improvement, in proportion to the maximum benefit originally assessed, and such amount shall be added to the general taxes against said lands

and collected therewith: Provided, however, that in case of emergency not in contemplation at the time of making such annual estimate the diking commissioners may incur additional obligations and issue valid warrants therefor in excess of such estimate, and all such warrants so issued shall be valid and legal obligations of such district; and all warrants heretofore issued for such purposes under the provisions of this act, are hereby declared to be valid and legal obligations of the district so issuing the same. [L. '13, p. 271, § 2. Cf. L. '95, p. 323, § 27; L. '05, p. 179, § 2.]

Cited in 81 Wash. 484.

§ 4277. [4122.] Organization of Board—Warrants, How Issued.

The board of commissioners of such district shall elect one of their number chairman and one secretary, and shall keep minutes of all their meetings, and may issue warrants of such district in payment of all claims of indebtedness against such district. Such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: Provided, that no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. [L. '95, p. 324, § 28.]

Cited in 108 Wash. 152.

§ 4278. [4123.*] Bonds—Issuance—Calls—Notice.

Upon the establishment of any district under the provisions of this chapter and the establishment of a system of diking therein as provided for in this act, the board of commissioners of such diking district may, upon petition of the land owners owning a majority of all the lands within such district to be benefited thereby, issue bonds for the total amount of the cost of construction of said improvements, together with the costs of the establishment thereof, including damages assessed and compensation made to land owners for right of way and the expenses and costs of the entire proceeding payable at a time not less than five years nor longer than ten years from the date thereof; and such commissioners may, at any time thereafter without such petition issue bonds for the purpose of funding any outstanding warrants or obligations of such district, and in case of such last named issue, all the outstanding warrants of such district shall immediately become due and payable upon receipt of the money by the county treasurer from the sale of said bonds, and upon a call of such outstanding obligations to be issued by him, which call shall be made by said treasurer immediately upon receipt of the proceeds from the sale of said bonds by publication for two weeks successively in the county paper authorized to do the county printing, and such warrants and outstanding obligations shall cease to draw interest at the end of thirty days after the date of the first publication of said call, such last named bonds shall be payable at a time not less than five years nor longer than ten years from the date thereof: Provided, that no bonds shall, under the provisions hereof, be sold for less than their par value. [L. '21, p. 231, § 1. Cf. L. '95, p. 324, § 29.]

§ 4279. [4124.] Bonds, Numbers and Denominations of.

Said bonds shall be numbered from one upwards, consecutively, and be in denominations of not less than one hundred dollars nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than ten years nor less than five years from the date of their issue, and bear interest at a rate not exceeding seven per cent per annum, payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of diking commissioners, and shall be attested by the secretary of said board, and the seal of such district shall be affixed to each bond, but not to the coupons. [L. '95, p. 325, § 30.]

§ 4280. [4125.] Bonds, Exchanged for Warrants.

Said bonds may be exchanged at not less than their par value for an equal amount of the warrants of the district issuing such bonds. [L. '95, p. 325, § 31.]

§ 4281. [4126.] Sinking Fund to Liquidate.

Five years before said bonds shall become due the diking commissioners of such district issuing them are hereby authorized and required, annually, to levy an assessment sufficient to liquidate said bonds at maturity. Such assessment shall be collected by the county treasurer and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section. [L. '95, p. 325, § 32.]

The "following" section, refers to § 4283.

§ 4282. [4126-1.] Bonds—Extraordinary Demands on Funds.

Whenever by reason of any extraordinary occurrence or other casualty there occur such changes in conditions as to warrant, in the opinion of the commissioners of any diking district, an estimate for making repairs and improvements, including the yearly maintenance expense in an amount equal to twenty-five per cent of the estimated cost of the original improvements, as provided for in section 4258, the funds therefor may be provided by the issuance of bonds of said diking district, payable in not to exceed ten years, and to pay the same, such commissioners shall make a levy extending over such period of time and in such amount as shall be necessary to take care of such bonds and interest, and such levy when made shall state the year for which it is made and the amount thereof, and thereafter, the county auditor shall each year extend such levy without any further orders from said commissioners: Provided, however, that if for any cause whatsoever, said levy shall not be sufficient to take care of said bonds and interest or pay said fixed estimate a further levy shall be made for that purpose. Said bonds shall be sold at not less than par and shall bear interest not to exceed seven per cent per annum, and the proceeds thereof shall be used in such repairs, improvements or maintenance or warrants issued in payment therefor and for no other purpose: Provided, however, that such bonds shall only be issued when they are presented to and filed with such commissioners and shall become a part of their record, a petition of prop

erty owners owning at least sixty per cent of all the acreage in such district requesting the issuance of such bonds. [L. '13, p. 512, § 1.]

See supra, § 4251, this act made applicable to diking districts.

§ 4283. [4127.] Treasurer, Duties of.

It shall be the duty of the treasurer of any county in which there may be a district issuing bonds under the provisions of this chapter, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the bonds issued under the provisions of this chapter as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning with bond number one, until all of said bonds are paid: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said bonds by their number said bonds shall cease to bear interest, which shall be stated in the notice. [L. '95, p. 325, § 33.]

§ 4284. [4128.] Annual Assessments to Pay Interest.

It shall be the duty of such diking commissioners, annually, to levy an assessment sufficient for the payment of the coupons hereinbefore mentioned as they fall due. Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this chapter, and, when presented to the county treasurer and no funds are in the treasury to pay said coupons, it shall be his duty to indorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are indorsed, and thereafter said coupons shall bear interest at the same rate as other warrants so presented and unpaid. [L. '95, p. 326, § 34.]

Cited in 81 Wash. 484.

§ 4285. [4129.] Bonds Registered.

Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the bond register, in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall in all cases be paid by the purchaser thereof to the county treasurer. [L. '95, p. 326, § 35.]

§ 4286. [4130.] Treasurer to Indorse Warrants—When and How Called.

All warrants issued under the provisions of this chapter shall be presented by the holders thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this act until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for

payment of as many of the outstanding warrants as he may be able to pay: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks, consecutively, and said warrants shall be called in and paid in the order of their indorsement. [L. '95, p. 326, § 36.]

In an action to enjoin the payment of alleged illegal diking district warrants, the diking district is not a necessary party defendant, where the collection and disbursement of the dike taxes is in the

hands of the county treasurer, and the diking district has no control over the funds of the treasurer: *Abbott v. Gaches*, 20 Wash. 517, 56 Pac. 28.

§ 4287. [4131.] Questions Submitted to Jury.

Upon the trial of any questions of issue by a jury under the provisions of this chapter, the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein. [L. '95, p. 327, § 37.]

§ 4288. [4132.] Lands of Public Corporations Subject to.

All state, county, school district or other lands belonging to other public corporations requiring to be diked as a protection from overflow shall be subjected to the provisions of this chapter, and such corporations, by and through the proper authorities, shall be made parties in all proceedings therein affecting said lands and shall have the same rights and liable to the same right of eminent domain as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations. [L. '95, p. 327, § 38.]

See notes to next section.

§ 4289. [4133.] Benefits.

In case lands belonging to the state, county, school district or other public corporations are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporations at the times and in the same manner as assessments are called and paid in case of private persons out of any general fund of such corporation. [L. '95, p. 327, § 39.]

See *infra*, §§ 4314, 4315, method of assessing benefits to county or public roads.

See notes to § 4336.

See *infra*, §§ 4478—4482 and 8125—8136, assessments on state lands.

See notes to § 4490, partial unconstitutionality of assessment against school lands.

§ 4290. [4134.] Fees.

Fees for service of all process necessary to be served under the provisions of this chapter shall be the same as for like services in other civil cases, or as is or may be provided by law. [L. '95, p. 327, § 40.]

§ 4291. [4135.] Commissioners, Compensation of—Objections to.

In performing their duties under the provisions of this chapter, the board of diking commissioners shall receive such compensation as may

be just and reasonable for all necessary services actually performed, not exceeding three dollars per day, to be determined and allowed by the court upon presentation by said commissioners, or either of them, of an itemized statement duly verified by either member or all of said board, that the same is just, reasonable, necessary and actually performed and that no part of the same has ever been paid. In case such services are rendered by said board in the establishment and construction of said improvement, the amount thereof so allowed by the court shall be deemed to be a part of the cost of the construction and establishment of said improvement, and in case such compensation to be allowed by the court shall be for services rendered by said board in the repairing or maintenance of such improvement, such allowance shall be added to the annual cost of maintenance of such system: Provided, that any person interested therein may file objections to the allowance asked for, either in whole or in part, and such claims so filed shall not be passed upon or allowed by the court until the expiration of thirty days from the filing thereof. Said board of commissioners, or the members thereof presenting such claim for allowance, shall at the time of the filing thereof in the court, post notices in at least four public places within said district, which said notice shall set forth therein the fact that an application for allowance has been filed in said court, giving the date of the filing thereof and the amount of the allowance applied for, and demand that any and all persons having any interest therein shall file objections in said court, if any they have, to the allowance of said claim or any portion thereof, within thirty days from the filing of such application for allowance, and the court shall hear said application and the objections thereto, if any be made and filed, and shall, in its discretion, make such allowance and in such amount as it may deem to be just in the premises, and the same shall be paid as other claims against said district are paid. [L. '95, p. 327, § 41; L. '09, p. 630, § 1.]

§ 4292. [4136.] Power of Court.

The court may compel the performance of the duties imposed by this chapter and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose. [L. '95, p. 328, § 42.]

§ 4293. [4136-1.] Consolidation of Diking Districts—Petition—Election.

Any two or more contiguous diking districts heretofore organized or which may hereafter be organized under the diking laws of the state of Washington, desiring to consolidate into one district, may, upon petition signed by the owners of real property representing a majority of the acreage therein to the commissioners of their respective districts, effect such consolidation by the commissioners of said districts so desiring to consolidate giving thirty days' notice of an election for such purpose to be held in each of said districts, setting forth in said notice the date of said election, and the object of the same, said notice to be given and posted in the same manner as notice of the annual election of commissioners, as provided in the general diking law, and the further publication of the same for at least three successive issues in a weekly newspaper published in the county in which such districts are located, and of general circulation in said districts: Provided, that where

there is no newspaper so published and circulated, the publication of the notice of said election may be dispensed with. [L. '13, p. 106, § 1.]

§ 4294. [4136-2.] Ballots.

At such election held pursuant to said notice, a printed ballot shall be furnished by the commissioners of said districts, having printed thereon: "For consolidation of Diking District No. — and No. — (here insert numbers), to be known as 'Consolidated Diking District No. — (here insert number), of — (here insert name of county) County, Washington.'" And "Against consolidation of Diking District No. — and No. — (here insert numbers)" in such form as to enable the voters to express their choice as to the proposition submitted. [L. '13, p. 106, § 2.]

§ 4295. [4136-3.] Election—Canvass—Order.

The manner of conducting said election and the hours between the opening and closing of the polls and the officers of said election shall be the same as provided in the general diking law for the annual election of officers of diking districts, and in case a canvass of the votes cast at said election shall show a majority of the votes cast in each of the districts seeking to consolidate to be in favor of consolidation, an order shall at once be entered upon the minutes of each of said districts by the commissioners thereof, showing the result of said vote cast at said election, and setting forth therein the name of such consolidated district, and a copy of the minutes so entered duly certified by the commissioners of each of said districts shall be filed, one each with the auditor and treasurer of the county within which said districts are located, and one with the clerk of the superior court of such county, to be entered and filed by the clerk of such court in the original proceedings establishing said districts, and a certified copy of such entry shall be transmitted to the secretary of state by the clerk of said court, and thereafter the territory embraced in said districts so consolidated shall be known and designated as "Consolidated Diking District No. — (here insert number) of — (here insert name of county) County, Washington," as provided in said order, and thereafter the said district shall have the same powers and duties as other diking districts organized under the diking laws of the state of Washington. [L. '13, p. 107, § 3.]

§ 4296. [4136-4.] Commissioners—Term of Office.

The diking commissioners of the districts constituting such consolidated district shall be the board of commissioners of such consolidated district and discharge the duties of such officers until the next general election for the election of diking commissioners, and until a board of commissioners for said consolidated district are elected and qualified, and thereafter the officers of said consolidated district shall be elected, qualified and perform the same duties as in case of other diking districts. [L. '13, p. 107, § 4.]

§ 4297. [4136-5.] Indebtedness—Future Obligations.

In case of such consolidation all indebtedness and outstanding obligations, of the districts so consolidated, and all assessments levied and

moneys collected and to be collected thereunder, shall remain unaffected by said proceedings for the consolidation of the same, and the payment of such indebtedness and obligations and the expenditure of moneys collected or to be collected under such previous assessments shall be made in the same manner, based upon the same assessments, and against and for the benefit of the same lands liable therefor prior to such consolidation, but the duties relating thereto shall be discharged by the commissioners of such consolidated district: Provided, however, that all assessments made for the future repair, improvement or maintenance of the diking system of said consolidated district shall be apportioned to and assessed against the lands included in such consolidated district, in the same manner as though the same had been originally incorporated in one district, and in accordance with the general provisions of the diking laws relating thereto. [L. '13, p. 108, § 5.]

CHAPTER II.

DRAINAGE DISTRICTS.

§ 4298. [4137.] Organization.

Any portion of a county, requiring drainage, which contains five or more inhabitants and freeholders therein may be organized into a drainage district, and when so organized such district and the board of commissioners hereinafter provided for shall have and possess the power herein conferred or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as drainage district No. — (here insert number), of the county of — (here insert the name of the county), of the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession and shall adopt and use a seal. The commissioners hereinafter provided for and their successors in office shall, from the time of the organization of such drainage district have the power, and it shall be their duty, to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law. [L. '95, p. 271, § 1.]

For former laws on this subject see §§ 1863—1927, 1 Hill's Code; L. '90, pp. 652—670, declared unconstitutional in *Skagit County v. Stiles*, 10 Wash. 388; *Askham v. King County*, 9 Wash. 1, 36 Pac. 1097. See, also, L. '58, pp. 30, 31; L. '63, p. 485; L. '65, p. 29, §§ 1—3; L. '75, pp. 93—96; L. '77, pp. 314, 315; Cd. '81, §§ 2501—2516; L. '83, pp. 77—92; L. '93, p. 218, superseded.

See note to § 4236, *supra*.

Cited in 31 Wash. 32; 42 Wash. 497—505; 44 Wash. 24; 82 Wash. 499; 94 Wash. 451.

Drains, establishment, etc.: See 1 Remington's Digest, Drains, §§ 1—22.

Law of drainage districts. *Ann. Cas.* 1915C, 9.

Effect of partial invalidity of statutes relating to drainage. *Ann. Cas.* 1914D, 48.

§ 4299. [4138.] Districts, How Formed.

For the purpose of the formation of such drainage districts a petition shall be presented to the board of county commissioners of the

county in which said proposed drainage district is located, which petition shall set forth the object for the creation of said district, the number of acres to be benefited by the proposed drainage system, shall designate the boundaries thereof, shall contain the names of all the freeholders residing within said proposed district so far as known, a brief description of the proposed system of drainage, the designation of a good and sufficient outlet for the drainage of said district, which point of outlet may be within or without the boundaries of said district; the route over which said drainage system is to be constructed, together with the proposed spurs and branches, if any there may be, and the termini thereof, and shall set forth the further fact that the establishment of said district and the proposed system of drainage will be conducive to the public health, convenience and welfare, and increase the public revenue, and that the establishment of said district and system of drainage will be of special benefit to the property included therein. Said petition shall be signed by the owners of at least a majority of the acreage in the proposed district and shall pray that the same be organized under the provisions of this chapter. At the time of the filing of said petition said petitioners shall file a bond with said county commissioners running to the state of Washington, in the penal sum of five hundred (\$500) dollars, executed in behalf of petitioners by one or more sureties to be approved by the board of county commissioners, conditioned that they will pay all costs in case said district, for any reason, shall not be established. [L. '13, p. 260, § 1; L. '95, p. 272, § 2.]

Cited in 82 Wash. 499.

Purposes for Which Drains may be Established: See Remington's Digest, Drains, §§ 2, 3. **Improvement of Land:** Hansen v. Hammer, 15 Wash. 315, 46 Pac. 332; Lewis County v. Gordon, 20 Wash. 80, 54 Pac. 779.

§ 3. — Promotion of Public Health or Welfare: Askham v. King County, 9 Wash. 1, 36 Pac. 1097.

A board of county commissioners cannot be permanently enjoined from entertaining a petition for the establishment of a drainage district, because the county and the chairman of the board, on behalf of the county, signed the petition praying for the establishment of the district, and the members of the board, as individuals, are

not interested in the result: O'Connell v. Baker, 35 Wash. 376, 77 Pac. 678.

Scope and import of term "owner" in statutes relating to formation of drainage districts. 2 A. L. R. 791.

Property interest as disqualifying one to participate in proceeding to establish drainage district. 11 A. L. R. 193.

Constitutionality of statute prescribing property qualification on right to vote on establishment of drainage district. 44 L. R. A. (N. S.) 539.

Right to withdraw name from petition for drainage district. 11 L. R. A. (N. S.) 372; 35 L. R. A. (N. S.) 1113.

§ 4300. [4139.] Petitions to be Published — Boundaries—Located—Extended.

Such petition shall be presented at a regular or special meeting of the board of county commissioners of said county, and shall be published for at least two weeks in two successive issues of some weekly newspaper printed and published in said county, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein, before the time at which the same is to be presented, together with a notice stating the time of the meeting at which the same shall be presented. When such petition is presented for hearing the board of county commissioners shall hear the

same, or may adjourn said hearing from time to time, not exceeding one month in all; and any person or corporation may appear before said board of county commissioners and make objections to the establishment of said district, or the proposed boundary lines thereof, and upon final hearing said board of county commissioners shall make such changes in the proposed boundaries as they may deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the number of acres of land that will be benefited by said proposed drainage system, the number of freeholders residing within said boundaries of the said proposed district, and shall find whether the proposed drainage system will be conducive to the public health, welfare and convenience, increase the public revenue, and be of special benefit to the majority of the lands included within said boundaries of the said proposed district so established by said board of county commissioners: Provided, that no changes shall be made by said board of county commissioners in said boundary lines so as to include any territory outside of the boundaries described in said petition: Provided, further, that any person or persons owning land within the proposed boundaries, and who did not sign said petition, or any person, persons or corporations owning land not included within the proposed boundaries, may file a petition with the board of county commissioners asking that the proposed boundaries be extended so as to include other lands described therein; setting forth in said petition the reasons therefor: Provided, however, that no person, persons or corporations not owning lands included within the proposed boundaries, as originally petitioned for, shall have the right to file such petition unless they ask therein to have their own lands included within the proposed boundaries: Provided, further, that any corporation owning land included within the boundaries described in the original petition, may also petition the board of county commissioners for an extension of the proposed boundaries: Provided, further, that the boundaries of any drainage district heretofore or hereafter established may be extended by the board of county commissioners so as to include other lands in said county upon petition signed by the owners of a majority of the acreage of said land within the proposed extension; which said petition for extension shall set forth and contain with reference to the extension such matters and things and data so far as applicable, as is provided for in the petition required for presentation to the board of county commissioners for the purpose of the formation of the original drainage district: Provided, further, that all necessary expense incident to making such extension, together with a proportionate share of the first cost of any drainage system existing in the original district at the time of making such extensions, shall be levied against and apportioned to the lands included in such extension, as in this chapter provided. In such case the board of county commissioners shall give the like notice as provided for in this section of the hearing of the original petition, and the final hearing thereof may, in such case, be continued from time to time for a period not exceeding sixty days, and if upon final hearing the board of county commissioners deem it advisable, and to the best interest of all concerned, they may grant the prayer of such petitioner or petitioners in whole or in part. And said board of county commissioners of such

county shall enter an order on the records of their office setting forth all facts found by them upon the final hearing of said petition, and which may be adduced by them from the evidence heard on the final hearing thereof: And provided, further, that any drainage system constructed in the original drainage district may be extended into the said extension by the board of drainage commissioners of said drainage district, in the same manner, and by the same method of procedure as is provided by law for the construction of said drainage system within the said original drainage district. [L. '13, p. 261, § 2. Cf. L. '95, p. 272, § 3; L. '05, p. 360, § 1.]

Cited in 42 Wash. 499, 500.

Laws of 1905, page 360, § 1, entitled "An act amending sections 3, 9 and 24, of the drainage act entitled," etc., is unconstitutional as to the clause amending section 5 of the drainage act, not mentioned in the title; but the same does not affect the amendments of this section and §§ 4307 and 4324, *infra*, as they

are independent of section 5, which relates only to the bond of the ditch commissioners: State ex rel. Matson v. Superior Court, 42 Wash. 491, 85 Pac. 264.

Mode and Plan of Construction: See Remington's Digest, Drains, § 11; State ex rel. Matson v. Superior Court, 42 Wash. 491, 85 Pac. 264.

§ 4301. [4140.] Election to Establish District — Commissioner, How Chosen.

Upon the entry of the findings on the final hearing of said petition as set forth in the last preceding section, said board of county commissioners of said county, if they find said proposed drainage system will be conducive to the public health, welfare and convenience, and will increase the public revenue and be of special benefit to the majority of the lands included within said boundaries, shall give notice of an election to be held in such proposed drainage district for the purpose of determining whether the same shall be organized under the provisions of this chapter as a drainage district of the state of Washington, and for the further purpose of choosing at such election three commissioners who shall be known and designated as "drainage commissioners" for said district proposed to be organized, which said three commissioners shall, upon their election, be the district authorities of said drainage district; and such notice shall particularly describe the boundaries as established by the board of county commissioners on its final hearing of said petition, and shall state the name of such proposed drainage district and approximately the number of acres of land in said district to be benefited thereby, and the same shall be published for at least two weeks prior to such election in a weekly newspaper printed and published within the county within which said district is located, and in case no such newspaper be printed or published therein, then in some such newspaper of general circulation therein, for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of said proposed district; such notice shall designate the place within the proposed district where the election shall be held, and require the voters to cast ballots which shall contain the words "Drainage District, yes," or "Drainage District, no," and also the names of persons voted for for commissioners of said drainage district. The board of county commissioners shall also appoint two judges, one inspector and two clerks for such election, whose compensation shall be the same as

in other elections for the election of county and state officers and shall be a charge upon said district, in case the same be established, and shall be paid in the same manner as other expenses are paid which are incurred in the establishment and construction of said improvement. In case said district be not established, then all costs and expenses shall be collectable from the bond hereinbefore provided for, and any person having a charge against said district shall have a right of action thereon. [L. '95, p. 274, § 4.]

§ 4302. [4141.] Election of Drainage Commissioners—Bonds of.

Such election shall be held on the day designated in such notice, and shall be conducted in accordance with the general election laws of the state of Washington, and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county in which such district is located, and shall have resided within the limits of such district, as established by the board of county commissioners, for at least thirty days next preceding such election. The board of county commissioners shall meet on the Monday next succeeding such election and proceed to canvass the votes cast thereat, and if, upon such canvass, it appears that a majority of the votes cast are for drainage district "Yes," the board shall have an order entered upon their minutes and declaring such territory duly organized as a drainage district under the name and style of Drainage District No. — (here insert number) of (here insert name of county) of the state of Washington, and shall declare the three persons receiving respectively the highest number of votes to be duly elected as a board of commissioners for such drainage district. Said board shall cause a copy of said order, duly certified, to be filed in the office of the secretary of state, and from and after the date of filing such organization shall be deemed complete, and such board of commissioners so chosen at such election shall be entitled to enter immediately upon the duties of their office, and upon qualifying as county officers are required to qualify, and giving a bond to the state of Washington for the benefit of said drainage district, for the faithful performance of their duties as such board of drainage commissioners in the penal sum of twenty-five hundred dollars, with two or more sureties, to be approved by the board of county commissioners, and shall hold such office until the next general election for the election of officers in such drainage district, and until their successors are elected and qualified. Each board of commissioners thereafter, which may be constituted either by appointment or election, shall enter into a like bond and of like effect before entering upon their duties, which bond shall be approved by the judge of the superior court of the county in which said district is located, and shall be filed in said court. [L. '95, p. 275, § 5; L. '09, p. 563, § 1.]

See note to § 4300.

§ 4303. [4142.*] General Election—Expenses of—Notice.

A general election for the election of a board of drainage commissioners of such district shall be held upon the first Tuesday after the first Monday in March, 1922, and annually thereafter. The term of office of commissioners shall be for three years and until their successors are elected and qualified, but of the commissioners elected at the first

election held under the provisions of this act the commissioner receiving the highest number of votes shall hold office for three years. The commissioner receiving the second highest number of votes shall hold office for two years, and the commissioner receiving the third highest number of votes shall hold office for one year. The term of office shall begin on the first Monday of the following April, and such election shall be held in accordance with the general election laws of the state of Washington for the election of county and state officers, and the expenses thereof shall be defrayed by said district, and the judges, clerks and inspectors of said election shall each receive as compensation for the services rendered at such election the sum of two dollars per day: Provided, that at least thirty days' notice immediately preceding any such general election shall be given thereof by the board of commissioners of such drainage district, by posting the same in four public places within said district. Said notice shall contain the names of two electors of said district as judges of said election and the name of one elector of said district as inspector thereof, the same to be chosen by said board of commissioners. Said board of commissioners shall be a canvassing board to canvass the vote of each election, and they shall meet the day following such election and canvass said votes and declare the result thereof and issue certificates of election. [L. '21, p. 161, § 1; L. '95, p. 276, § 6.]

Cited in 46 Wash. 476.

§ 4304. Additional Powers of District.

That whenever it shall appear to the board of commissioners of any drainage district now organized or that may be hereafter organized under the laws of the state of Washington, that existing drainage systems or improvements are inadequate or insufficient to properly drain the lands within said district or any portion or portions thereof, such commissioners shall have the power and they are hereby authorized to construct such additional system or systems or to extend, add to, or enlarge any existing system as in their judgment is necessary. In such event the procedure for the establishment of such additional system or extension of existing system and the manner and method of the payment of the cost of construction and maintenance of the same by the assessment of the lands particularly benefited thereby, as well as the obtaining of necessary rights of way shall be the same as that provided by existing laws for the establishment of the original drainage system within said district. In the exercise of any of the powers herein granted it shall be immaterial whether the outlet of any of the ditches, drains, or other necessary structures or appliances are to be located within or without the boundaries of said district. This section is intended to grant supplemental and additional powers to such drainage districts and shall not be construed to limit or repeal any existing powers of such districts, nor to repeal any existing laws relating thereto. [L. '19, p. 525, § 1.]

§ 4305. [4143.*] Eminent Domain.

All drainage districts organized or that may hereafter be organized under the provisions of this chapter or the acts amendatory thereof shall

have the right of eminent domain, with the power by and through its board of commissioners, to cause to be condemned and appropriated private property for the use of said corporation in the construction and maintenance of a system or systems of drainage, and make just compensation therefor, and such right of eminent domain may be exercised either within or without the boundaries of such districts, and may be exercised with respect to rights of way for ditches, drains, dams, outlets or any other necessary appliances or structures and whether for the original system or any additions, enlargements or extensions thereof or for additional outlets or systems of drainage: Provided, that the property of private corporations may be subjected to the same rights of eminent domain as that of private individuals: Provided, further, that the said board of commissioners shall have the power to acquire by purchase all the real property necessary to make the improvements herein provided for. [L. '19, p. 526, § 2; L. '95, p. 277, § 7.]

The drainage law (L. '90, p. 652) is unconstitutional, as it provides for the taking of private property without just compensation; and cannot be upheld as an exercise of police power for the abatement of a nuisance, when the act does not declare the nuisance to be in such imminent danger to the public welfare as to require the private property of others than those maintaining the nuisance to be taken without compensation: *Askham v. King County*, 9 Wash. 1, 36 Pac. 1097; see *Peterson v. Smith*, 6 Wash. 163, 32 Pac. 1050.

That portion of said act providing for taking land for right of way for ditches being unconstitutional, the whole act

falls with it: *Skagit County v. Stiles*, 10 Wash. 388, 39 Pac. 116.

Right of Way and Other Interests in Land: *Skagit County v. Stiles*, 10 Wash. 388, 39 Pac. 116; *Skagit County v. McLean*, 20 Wash. 92, 54 Pac. 781; *Bice v. Brown*, 98 Wash. 416, 167 Pac. 1097.

A drainage district has the power to condemn a right of way outside of the district for the purpose of an outlet for the main ditch, under this section, and § 4299, supra: *State ex rel. Hardesty v. Superior Court*, 82 Wash. 497, 144 Pac. 708.

Drainage of land as constituting public use. 14 *Ann. Cas.* 905; 20 *Ann. Cas.* 272; *Ann. Cas.* 1913D, 1004.

§ 4306. [4144.] Commissioners, Duties of.

Said board of drainage commissioners hereinbefore provided for, shall have exclusive charge of the construction and maintenance of all drainage systems which may be constructed by said district and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. In case of vacancy or vacancies occurring in said board by the death, failure to elect, failure to qualify, resignation or removal of one or more of the members thereof from said district such vacancy or vacancies shall be filled at once from the freeholders and qualified electors of said district by the judge of the superior court of said county, and said appointee shall serve the unexpired term or until the next general election: Provided, that in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment. [L. '13, p. 264, § 3; L. '95, p. 277, § 8.]

Cited in 46 Wash. 476.

§ 4307. [4145.] Drainage—Method of Procedure.

Whenever it is desired to prosecute the construction of a system of drainage by said drainage district, said district, by and through its board of commissioners, shall file a petition in the superior court of the

county in which said district is located, setting forth therein the route and termini of said system, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, with drafts of any artificial appliances or equipment necessary in aid thereof together with the estimated cost of such proposed improvement, showing therein the names of the land owners whose lands are to be benefited by such proposed improvement; the number of acres owned by each land owner, and the maximum amount of benefits per acre to be derived by each land owner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the land owners through whose land the right of way is desired for said improvement; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right of way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of any benefits to be derived by such land owners by reason of the construction of said improvement. Such estimate shall be made, respectively, to each person through whose land said right of way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right of way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of drainage is necessary to drain all of said lands described in said petition, and that all lands sought to be appropriated for said right of way are necessary to be used as a right of way in the construction and maintenance of said improvement; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by its construction, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from said proposed improvement shall be estimated in said petition against said road or railroad: Provided, however, that all maps, plats, field-notes, surveys, plans, specifications, or other data heretofore made, ascertained or prepared under laws heretofore enacted on the subject of this chapter, may be used under the provisions of this chapter. [L. '13, p. 264, § 4; L. '95, p. 277, § 9; L. '05, p. 362, § 2.]

Cited in 42 Wash. 499; 82 Wash. 502.

Proceedings for Establishment: See Remington's Digest, Drains, § 9. **Petition for Drain:** State ex rel. Matson v. Superior Court, 42 Wash. 491, 85 Pac. 264; State ex rel. Hardesty v. Superior Court, 82 Wash. 497, 144 Pac. 708; Fulton v. Methow Trading Co., 45 Wash. 136, 88 Pac. 17.

In condemnation for an irrigation ditch, the quantity of land required is sufficiently stated in the petition when the route is definitely described and the dimensions of the ditch stated: Fulton v. Methow Trading Co., 45 Wash. 136, 88 Pac. 17.

§ 4308. [4146.] Surveyors and Draftsmen.

In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the superior court, the board of commissioners of said drainage district may employ one or more good and competent surveyors and draftsmen to assist them in compiling data required to be presented to the court with said petition, as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [L. '95, p. 279, § 10.]

§ 4309. [4147.] Summons—How Served.

A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated, and those which it is claimed to be benefited by such improvement, and stating the court wherein said petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owners, encumbrancer, tenant or otherwise interested therein. Said summons must be subscribed by the commissioners, or their attorney, running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode, or in case of a foreign corporation, at its principal place of business in this state with some person of more than sixteen years of age; in case of domestic corporations, said service shall be made upon the president, secretary or other director or trustee of such corporation; in case of minors, on their guardians; or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or insane persons, on their guardian; or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in such real or other property is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of one or more of the commissioners of said district shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by such deponent, service may be made by publication thereof in a newspaper published in the county where such lands

are situated, once a week for three successive weeks; and in case no newspaper is published in such county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated, or which it is claimed will be benefited by said improvement. Such publication shall be deemed service upon each nonresident person or persons whose residence is unknown. Such summons may be served by any competent person over twenty-one years of age. Due proof of service of such summons by affidavit of publication shall be filed with the clerk of such court before the court shall proceed to hear the matter. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for service of notice, order and other papers in the proceedings authorized by this chapter may be made as the superior court, or the judge thereof, may direct: Provided, that personal service upon any party outside of the state shall be of like effect as service by publication. [L. '95, p. 279, § 11.]

§ 4310. [4148.] Appearance — Jury—Verdict — Assessment of Damages and Benefits—Decree.

Any or all of said defendants may appear jointly or separately and admit or deny the allegations of said petition and plead any affirmative matter in defense thereof at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable and conducive to the public health, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, and that said improvement has a good and sufficient outlet, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits, as herein provided, if in attendance upon his court; and if not he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summons from the citizens of the county in which petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary, to complete the jury in any case, the sheriff, under the directions of the court or the judge thereof shall summon as many qualified persons as [may] be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned the cost thereof shall be taxed as part of the cost in the proceedings and paid by the district

seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or land owner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvements and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find a maximum amount of benefits per acre to be derived by each of the land owners, and also the maximum amount of benefits resulting to any municipality, public highway, corporate road, or district from construction of said improvement. And upon a return of the verdict into court the same shall be reported as in other cases; whereupon, a decree shall be entered in accordance with the verdict so rendered setting forth all the facts found by the jury, and decreeing that said right of way be appropriated, and directing the commissioners of said drainage district to draw their warrant on the county treasurer for the amount awarded by the jury to each person for damages sustained by reason of the establishment of said improvement, payable out of the funds of said drainage district. [L. '95, p. 281, §12; L. '09, p. 564, § 2.]

This section is not unconstitutional as a delegation of legislative authority; since the court does not originate or devise the system or plan but simply approves those proposed by the county commissioners: *State ex rel. Matson v. Superior Court*, 42 Wash. 491, 85 Pac. 264.

The failure of ditch commissioners to qualify by filing a bond in the required amount, does not invalidate an assessment made by them as de facto officers: *State ex rel. Matson v. Superior Court*, 42 Wash. 491, 85 Pac. 264.

Benefit to Property: See *Remington's Digest, Drains*, § 16-1; *State ex rel. Espy Estate Co. v. Board of Commrs. Pacific*

County, 48 Wash. 230, 93 Pac. 326; *Oregon-Wash. R. & Nav. Co. v. Commissioners of Yakima County*, 103 Wash. 480, 175 Pac. 37.

The finding of the jury as to the maximum benefits is conclusive that the property was not benefited to a greater extent; and a judgment showing that the full amount of the original assessment was collected is *res adjudicata* and a bar to a proceeding for a supplemental assessment to cover a deficiency, the improvement having cost more than the original estimate, and more than the amount of the award of the jury: *Poolman v. Langdon*, 94 Wash. 448, 162 Pac. 578.

§ 4311. [4149.*] Omitted Lands—Petition — Summons — Parties — Jury Trial—Appeals.

If at any time it shall appear to the board of drainage commissioners that any lands within or without said district as originally established are being benefited by the drainage system of said district and that said lands are not being assessed for the benefits received, or if after the construction of any drainage system, it appears that lands embraced therein have in fact received or are receiving benefits different from those found in the original proceedings, and which could not reasonably have been foreseen before the final completion of the improvement, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the drainage system of said district, and said board of drain-

age commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of drainage system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessment on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessments or equalizing the assessments upon lands already assessed, or both. Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other drainage district, said summons shall also be served upon the commissioners of such other drainage district. In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other drainage district, and the drainage commissioners of such other district believe that the maintenance of the drain or drains of such other district is benefiting lands within the district instituting the proceeding, said drainage commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the drainage system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the drainage system of their district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the drainage district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention. In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private drain against salt or fresh water for the benefit of said lands, and shall believe that the maintenance of such private drain is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other drainage district and are being assessed for the maintenance of the drains of such other district, and the owner of such lands believes that the maintenance of the drain or drains of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective drains may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various

drains benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such drains, and may interplead in said proceeding such other drainage district in which his lands sought to be assessed in said proceeding are being assessed for the maintenance of the drain or drains of such other district. No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence. Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of lands are receiving or will receive from the maintenance of the drain or drains to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any drain, structure or improvement, and to credit or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvements or structures thereon or easements granted in connection therewith, affecting any other tract or tracts included in such proceedings, and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the drainage commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the cost of construction or future maintenance of any drain or drains described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal to the supreme court within thirty (30) days after the entry thereof, and such appeal shall bring before the supreme court the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be required on such appeals. Nothing in this section contained shall be construed as affecting the right of drainage districts to consolidation in any manner provided by law. [L. '17, p. 564, § 1; L. '95, p. 282, § 13; L. '01, p. 181, § 1.]

Certiorari will not lie to review errors of the trial court in assessing damages and benefits to lands by reason of the construction of a drainage system, since this section provides a review of all errors by appeal: *State ex rel. Nelson v. Superior Court*, 31 Wash. 32, 71 Pac. 601.

Collateral Attack on Proceedings: See *Remington's Digest, Drains, § 10*; *Northern Pac. R. Co. v. Pierce County*, 51

Wash. 12, 97 Pac. 1099, 23 L. R. A. (N. S.) 286; *State ex rel. O'Phelan v. Lundquist*, 103 Wash. 339, 174 Pac. 440.

Where no objections were made or appeal taken from an order finding the plan impracticable and assessing costs against the district, all objections to the legality of the district are waived. *State ex rel. O'Phelan v. Lundquist*, 103 Wash. 339, 174 Pac. 440.

§ 4312. [4150.] Proceedings, When may be Dismissed.

In case the damages or amount of compensation for such right of way, together with the estimated costs of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or, if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, or will not have sufficient outlet, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court. [L. '95, p. 282, § 14.]

Cited in 103 Wash. 343.

Liabilities of District or Land Owners for Expenses or Damages: See Remington's Digest, Drains, § 13-1; Drainage Dist. v. Armstrong, 44 Wash. 23, 87 Pac. 52.

Property included in the district which was found to be not benefited may be proportionately taxed with all the other

land in the district to pay the preliminary expenses to ascertain whether the proposed improvement should be carried out, upon abandonment and dismissal of the proceedings for lack of sufficient benefit to cover the cost: Northern Pac. R. Co. v. Pierce County, 51 Wash. 12, 97 Pac. 1099, 23 L. R. A. (N. S.) 286.

§ 4313. [4151.] Damages, How Paid.

Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [L. '95, p. 283, § 15.]

§ 4314. [4153.] Certifying Benefits Assessed to Road District—Payment of Judgment.

Whenever, upon the trial to fix and assess the benefits and damages resulting from the construction of any diking or drainage system under the laws of this state, the jury shall find by its verdict that any public or county road will be benefited from the construction of such improvement, the clerk of the court in which such trial is had shall, upon the entry of the judgment upon such verdict, certify to the board of county commissioners of the county in which such road is situated the amount of benefits to such road so found and adjourned. The said county commissioners shall, upon the receipt of such certified statement, allow the same as for other road work and shall order the amount thereof to be paid out of the road and bridge fund of the road district in which the road so benefited is situated, and shall direct the auditor of said county to issue a warrant for the amount of such benefits against the road and bridge fund of such road district in favor of the county treasurer of said county. The said county treasurer shall, upon the payment of said

warrant, place the proceeds therefrom to the credit of the drainage or diking district from which such benefits resulted. [L. '09, p. 690, § 1.]

Compare § 4378.

§ 4315. [4154.] Additional Assessments and Maintenance.

Any additional assessments for the construction of any diking or drainage system, and also all assessments for the maintenance of same shall be based upon the benefits so found and adjudged and the proportion of benefits resulting to such public or county road therefrom, on such basis, shall be allowed and paid for by such county in the same manner as in the case of the original construction. [L. '09, p. 691, § 2.]

See note to last section.

§ 4316. [4155.] Transcript, to Contain What—Assessments, When Due.

Upon the entry of the judgment upon the verdict of the jury the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person and corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax-rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption, and the lands sold for the collection of said taxes shall be subject to the same right of redemption as the sale of lands for general taxes: Provided, that said assessments shall not become due and payable except at such time or times and in such amounts as may be designated by the board of commissioners of said drainage district, which designation shall be made to the county auditor by said board of commissioners of said drainage district, by serving written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporation, according to said notice, upon the assessment-rolls in his said office, and collected therewith; Provided further, that no one call for assessments by said commissioners shall be in an amount to exceed twenty-five per cent of the amount estimated by the board of commissioners to be necessary to pay the costs of the proceedings, and the establishment of said district and drainage system and the cost of construction of said work; Provided, further, that where the amount realized from the original assessment and tax shall not prove sufficient to complete the original plans and specifications of any drainage system, alterations, extensions or changes therein, for which the said original assessment was made, the board of commissioners of said district shall make such further assessment as may be necessary to complete said system according to the original plans and specifications, which

assessment shall be made and collected in the manner provided in this section for the original assessment. [L. '95, p. 283, § 16; L. '07, p. 669, § 1.]

Cited in 94 Wash. 452, 456.

This section merely authorizes a supplemental assessment for the cost of constructing the original improvement, if the amount of the deficiency plus the amount of the original assessment does not exceed the amount of the maximum benefits fixed by the jury; since it would be unconstitutional as impairing vested rights if construed to authorize an assessment in excess of the maximum benefits

as fixed by the jury: *Poolman v. Langdon*, 94 Wash. 448, 162 Pac. 578.

Validity of rule of assessment for drainage improvement. 2 A. L. R. 625.

Loss of right to contest assessment in drainage proceeding by waiver, estoppel, or the like. 9 A. L. R. 842.

Persons and property liable for drainage assessments. 58 L. R. A. 372; 69 L. R. A. 810.

§ 4317. [4156.] Conditional Tax, How Levied.

In the event of the dismissal of said proceedings and the rendition of judgment against said district, as hereinbefore provided, said drainage commissioner[s] shall levy a tax upon all the real estate within said district, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said judgment and the cost of levying said tax, and shall cause said tax-roll to be filed in the office of the clerk of the superior court in which such judgment was rendered. If said tax is not paid within sixty days after the filing of said tax-roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer as is or may be provided by law for the sale of real estate for taxes for general purposes; and the same right of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes. [L. '95, p. 284, § 17.]

§ 4318. [4157.] Commissioners, Duty of—Contractor's Bond—Liabilities.

After the filing of said certificate said commissioners of such drainage district shall proceed at once in the construction of said improvement, and in carrying on said construction or any extensions thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: Provided, that in case the whole or any portion of said improvement is let to any contractor said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by said contract, with two or more sureties to be approved by the board of commissioners of said drainage district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further or additional bond in the same amount, with two or more good and sufficient sureties

to be approved by said board of commissioners of said drainage district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators, or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: Provided further, that no sureties on said last mentioned bond shall be liable thereon unless the persons or corporation performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of said improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the board of commissioners of said drainage district. [L. '95, p. 285, § 18.]

§ 4319. [4158.] Work, Where to Begin—Changes, How Effected.

The work on said improvement shall begin and shall be completed with all expedition possible, and said board of commissioners of such drainage district, or any contractor thereunder, shall have no power whatever to change said route or system of improvement or the manner of doing the work therein so as to make any radical changes in said improvement, without the written consent of all the land owners to be benefited thereby, and the land owners which may be damaged thereby. And in case any substantial changes in said system of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be produced from said land owners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plan or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners shall cause a summons to be served, setting forth the prayer of said petition, under the seal of said court, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the land owners or others claiming any lien or interest therein appearing of record in said district and any or all of said parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of all of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of said proceedings that the property rights of any of said land owners will be affected by such proposed change in said improvements, then the court, after having passed upon all preliminary questions as in the original proceedings may call a jury to be impaneled as in the case of the original proceeding for the establishment of said improvements, and upon the final hearing of said cause the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations, the same as upon the original petition,

by reason of such proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said land owners by reason of said proposed change in said improvements, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings upon the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvements according to the changes made therein. [L. '95, p. 286, § 19; L. '09, Ex. Sess., p. 47, § 1.]

§ 4320. [4159.] Contractors, When Paid.

During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: Provided, that no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five per cent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five per cent of the contract price shall be reserved at all times by said board of commissioners until said work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvements; and upon the completion of said work and the payment of all claims hereinbefore provided for according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor. [L. '95, p. 287, § 20.]

§ 4321. [4160.] Private Drains—Proceedings to Connect.

Any person or corporation owning land within said district shall have a right to connect any private drains or ditches for the proper drainage of such land with said system, and in case any persons or corporations shall desire to drain such lands into said system and shall find it necessary, in order to do so, to procure the right of way over the land of another, or others, and if consent thereto cannot be procured from such person or persons, then such land owner may present in writing a request to the board of commissioners of said district, setting forth therein the necessity of being able to connect his private drainage with said system, and pray therein that said system be extended to such point as he may designate in said writing, and immediately thereon said board of commissioners shall cause a petition to be filed in the superior court, for and in the name of said drainage district, requesting in said petition that said system be extended as requested, setting forth therein the necessity thereof and praying that relief [leave] be granted by the board to extend the system in accordance with the prayer of said petition, and the proceedings in such case, upon the presentation of such petition and the hearing thereof, shall be, in all matters, the same as in the hearing and presentation of the original petition for the establishment of the original system of drainage in said district, as far as applicable. The costs in such proceedings shall be paid from the assess-

ment of benefits to be made on the lands of the person or persons benefited by such extension, and the assessment and compensation for the right of way, damages and benefits, and payment of damages and compensation, and the collection of the assessments for benefits, shall be the same as in the proceedings under the original petition, and the construction of the said extension shall be made under the same provisions as the construction of the original improvement; and all things that may be done or performed in connection therewith shall be, as near as may be applicable, in accordance with the provisions already set forth herein for the establishment and construction of said original improvement: Provided, that such petitioner or petitioners shall, at the time of filing such petition by said drainage commissioners, enter into a good and sufficient bond to said drainage district in the full penal sum of five hundred dollars, with two or more sureties to be approved by the court, conditioned for the payment of all costs in case the prayer of said petition should not be granted, which bond shall be filed in said cause. [L. '95, p. 288, § 21.]

§ 4322. [4161.] Districts Above—Proceedings to Connect.

In case of the establishment of a drainage district and system of drainage under the provisions of this chapter above any other district that may have theretofore been established and above any other system of drainage that may have theretofore been constructed in said district, and in case said district to be established above may desire to connect its drainage system with the lower or servient district, shall be made a party to the proceedings for the establishment of such system, and the petition to be filed in the superior court for the establishment of the system of drainage in said upper district shall, in addition to the facts hereinbefore provided and required to be set forth therein, set forth the fact that said lower system in said lower district is necessary to be used as an outlet for the system of drainage of said upper district, and that the same will be a sufficient outlet and will afford sufficient capacity to carry the drainage of both said upper and lower districts; and in case said system of said lower district will be required to be enlarged by widening or deepening the same, or both, in order to give sufficient outlet to said upper district and afford sufficient drainage for said upper and lower districts, then the plans and specifications for enlarging the system of said lower district shall be filed with said petition in addition to the other data hereinbefore provided for in this chapter. All the land owners in said lower district, or any person claiming any interest therein as mortgagee or otherwise, shall be made parties defendant in said petition, and the proceedings therein as to the assessment of damages and compensation for land taken, if any be necessary to be taken in enlarging said lower system, shall be the same as in the establishment of systems of drainage in the lower or servient district as hereinbefore provided for; but the jury, in addition to the facts to be found by them as provided for in the establishment of a drainage system in the lower district, shall find and determine whether said lower system, when improved according to the plans and specifications filed with the said petition, will afford sufficient drainage for both said upper and lower districts, which finding shall be made by the jury before consider-

ing any other question at issue in said proceeding; and in case said jury should find that the system of said lower district when improved as proposed in said petition would not be sufficient, then, in that case, said finding shall terminate the proceedings, and no further proceedings in said case shall be had, and the costs of said proceeding shall be paid as costs in other proceedings, as hereinbefore provided for; but in such case the finding of said jury shall not terminate the objects of said upper district or operate to disorganize the same, but said upper district may begin new proceedings for the establishment of a system of drainage with some new outlet provided therein. All costs for the enlarging or improving of said lower system that may be required shall be assessed to the land owners in the upper district according to the benefits to be derived from the construction of said entire system, and no additional cost shall be thrown upon the lower district, and all compensation for taking any right of way that may be necessary to be taken in enlarging said lower system, and all damages occurring therefrom, if any, to the land owners of said lower district, shall be ascertained and paid in the same manner as hereinbefore provided for for the adjustment of compensation and damages in the establishment of drainage systems in lower districts. Said lower district, by and through its board of commissioners, may appear in said cause and show therein any injury it may sustain as a district by reason of the additional cost of maintenance of said lower system as improved and enlarged, and such fact shall be determined in said cause and the jury shall find the amount of the increased costs of maintenance per annum, which will be sustained by said lower district by reason of said enlarging or improving of the same, and judgment shall be rendered in favor of said lower district against said upper district for such amount so found, and the same shall be paid each year as the cost of construction is paid as provided for in this chapter, and the amount so paid shall be held by said lower district as an additional fund for the maintenance of its said system as improved and enlarged by said upper district. [L. '95, p. 289, § 22.]

§ 4323. [4162.] Incorporated Towns may Act as Drainage Districts.

Any town or city already incorporated or which may hereafter be incorporated, may exercise the functions of a drainage district under the provisions of this chapter, or the whole or any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein. [L. '95, p. 291, § 23.]

§ 4324. [4163.*] Cost of Maintenance, Estimate—Tax Levy.

The board of commissioners of any drainage district organized under the provisions of this act shall, on or before the first Monday in October, of each year, make an estimate of the cost of maintenance of the drainage system in such district, which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be for the succeeding year, and the amount so estimated shall be certified by the board of ——— commissioners to the auditor of the county in which such district is located, on or before said date, and the amount thereof shall be

levied against and apportioned to the lands in such district benefited by said improvement, in proportion to the maximum benefits originally assessed, and such amount shall be added to the general taxes against said lands and collected therewith: Provided, however, that in case of emergency not in contemplation at the time of making such annual estimate the drainage commissioners may incur additional obligations and issue valid warrants therefor in excess of such estimate, and all such warrants so issued shall be valid and legal obligations of such district. [L. '17, p. 567, § 2; L. '95, p. 291, § 24; L. '05, p. 363, § 3; L. '07, p. 219, § 1.]

Cited in 42 Wash. 499; 52 Wash. 399.

Under this section an assessment for the maintenance of a drainage district is

void where no estimate was made of the cost, as required by the act: McDougall v. Bridges, 52 Wash. 396, 100 Pac. 835.

§ 4325. [4164.] Commission, Officers and Duty of.

The board of commissioners of such district shall elect one of their number chairman and one secretary, and shall keep minutes of all their proceedings, and may issue warrants of such district in payment of all claims of indebtedness against such district; such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: Provided, that no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. [L. '95, p. 291, § 25.]

Cited in 46 Wash. 476.

Drainage Bonds and Warrants: See Remington's Digest, Drains, § 8; Abbot v. Gaches, 20 Wash. 517, 56 Pac. 28;

State ex rel. Rush v. St. John, 30 Wash. 630, 71 Pac. 192; Epy Estate Co. v. Pacific County, 40 Wash. 67, 82 Pac. 129.

§ 4326. [4165.] Bonds, to Issue, When.

Upon the establishment of any district under the provisions of this chapter, and the establishment of a system of drainage therein as provided for in this act, the board of commissioners of such drainage district may, upon petition of a majority of all the land owners owning land within such district to be benefited thereby, issue bonds for the total amount of the costs of construction of said improvement, together with the costs of the establishment thereof, including damages assessed and compensation made to land owners for right of way and the expenses and costs of the entire proceeding, payable at a time not less than five years nor longer than ten years from the date thereof; and such commissioners may, at any time thereafter, issue such bonds in the manner and form herein prescribed for the purpose of funding any outstanding warrants or obligations of such district, and in case of such last named issue all the outstanding warrants shall immediately become due and payable upon receipt of the money by the county treasurer from the sale of said bonds, and upon a call of such outstanding obligations to be issued by him, which call shall be made by said treasurer immediately upon receipt of the proceeds from the sale of said bonds by publication for two successive weeks in the county paper authorized

to do the county printing, and such warrants and outstanding obligations shall cease to draw interest at the end of thirty days after the date of the first publication: Provided, that no bonds shall, under the provisions hereof, be sold for less than their par value. [L. '95, p. 292, § 26.]

Cited in 46 Wash. 476.

§ 4327. [4166.] Bonds—Terms of.

Said bonds shall be numbered from one upwards, consecutively, and be in denominations of not less than one hundred dollars nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than ten years nor less than five years from the date of their issue, and bear interest at a rate not exceeding seven per cent per annum, payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of drainage commissioners, and shall be attested by the secretary of said board, and the seal of such district shall be affixed to each bond, but not to the coupons. [L. '95, p. 292, § 27.]

§ 4328. [4167.] Bonds, How Exchanged.

Said bonds may be exchanged at not less than their par value for an equal amount of the warrants of the district issuing such bonds. [L. '95, p. 293, § 28.]

§ 4329. [4168.] Bonds, Liquidation of.

Five years before said bonds shall become due the drainage commissioners of such district issuing them, are hereby authorized and required, annually, to levy an assessment sufficient to liquidate said bonds at maturity; such assessment shall be collected by the county treasurer and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section. [L. '95, p. 293, § 29.]

§ 4330. [4169.] Treasurer, Duties as to Taking Up.

It shall be the duty of the treasurer of any county in which there may be a district issuing bonds under the provisions of this chapter, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds, to advertise in the newspaper doing the county printing, for the presentation to him for payment of as many of the bonds issued under the provisions of this chapter as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning with bond number one, until all of said bonds are paid: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said bonds by their number, said bonds shall cease to bear interest, which shall be stated in the notice. [L. '95, p. 293, § 30.]

§ 4331. [4170.] Coupons, Payment of.

It shall be the duty of such drainage commissioners annually to levy an assessment sufficient for the payment of the coupons hereinbe-

fore mentioned as they fall due. Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this chapter, and, when presented to the county treasurer, and no funds are in the treasury to pay said coupons, it shall be his duty to indorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are indorsed, and thereafter said coupons shall bear interest at the same rate as other warrants so presented and unpaid. [L. '95, p. 293, § 31.]

§ 4332. [4171.] Bonds to be Registered.

Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the bond register, in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall in all cases be paid by the purchaser thereof to the county treasurer. [L. '95, p. 294, § 32.]

§ 4333. [4172.] Warrants Presented for Indorsement—When Paid.

All warrants issued under the provisions of this chapter shall be presented by the holders thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this act until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks consecutively, and said warrants shall be called in and paid in the order of their indorsement. [L. '95, p. 294, § 33.]

§ 4334. [4173.] Trial—Findings and Forms of Verdict.

Upon the trial of any questions of issue by a jury under the provisions of this chapter the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein. [L. '95, p. 294, § 34.]

§ 4335. [4174.] No Lands Exempt.

All state, county, school district or other lands belonging to other public corporations, requiring drainage shall be subject to the provisions of this chapter, and such corporations, by and through the proper authorities, shall be made parties in all proceedings herein affecting said lands, and shall have the same rights as private persons, and their lands

shall be subject to the right of eminent domain the same as the lands of private persons or corporations. [L. '95, p. 294, § 35.]

See notes to next section

§ 4336. [4175.] Assessments on Public Lands.

In case lands belonging to the state, county, school district or other public corporation are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporation at the times and in the same manner as assessments are called and paid in case of private persons, out of any general fund of such corporation. [L. '95, p. 295, § 36.]

See supra, §§ 4314, 4315, method of assessing benefits to county or public roads.

See infra, §§ 4478—4482 and 8125—8136, assessments on state lands.

See note to § 4490, partial unconstitutionality of assessment against school lands.

Although school lands benefited by the construction of a ditch cannot be rendered liable for the payment thereof, such benefits cannot be charged up against private property, and, in such cases, the assessment should be levied against the school lands, leaving it to the state to provide therefor by proper legislation: *State ex rel. Latimer v. Henry*, 28 Wash. 38, 68 Pac. 368.

§ 4337. [4176.] Service Fees.

Fees for service of all process necessary to be served under the provisions of this chapter shall be the same as for like services in other civil cases, or as is or may be provided by law. [L. '95, p. 295, § 37.]

Cited in 42 Wash. 497.

§ 4338. [4177.] Commissioners, Compensation of — Objections — Procedure.

In performing their duties under the provisions of this chapter the board of drainage commissioners shall receive such compensation as may be just and reasonable for all necessary services actually performed, not exceeding three dollars and fifty cents per day, to be determined and allowed by the court upon presentation by said commissioners, or either of them, of an itemized statement duly verified by either or all of such board, that the same is just, reasonable, necessary and that such services were actually performed, and that no part of said compensation has ever been paid, and in case such services are rendered by said board in the establishment or construction of said improvement, or any extension thereof, the amount thereof so allowed by the court shall be deemed to be a part of the cost of the construction and establishment of said improvement, and in case such compensation to be allowed by the court shall be for services rendered by said board in the repairing or maintenance of such improvement, such allowance shall be added to the annual cost of maintenance of such system: Provided, that any person interested therein may file objections to the allowance asked for either in whole or in part, and such claims so filed shall not be passed upon or allowed by the court until the expiration of thirty days from the filing thereon. Said board of commissioners, or the member thereof presenting such claim or allowance, shall, at the time of the filing thereof in the court, post notices in at least four public places within said district,

which said notices shall set forth therein the fact that an application for allowance has been filed in said court, giving the date of the filing thereof and the amount of the allowance applied for, and demand that any and all persons having any interest therein shall file objections in said court, if any they have, to the allowance of such claim or any portion thereof within thirty days from the filing of such application for allowance, and the court shall hear said application and the objections thereto, if any be made and filed, and shall in its discretion, make such allowance in such amount as it may deem to be just in the premises and the same shall be paid as other claims against said district are paid. [L. '95, p. 295, § 38; L. '07, p. 101, § 1.]

§ 4339. [4178.] Natural Watercourses—Improvement of.

The whole or any portion of any natural watercourse, the whole or any portion of which lies within any district established under this chapter, or the whole or any portion of any ditch of drainage system already constructed or partially constructed prior to the passage of this chapter, may be improved and completed as a system under the provisions of this chapter. Provided, that vested rights in any such watercourse acquired by appropriation of the water thereof for irrigation, mining or manufacturing purposes under existing law, shall not be disturbed. [L. '95, p. 296, § 39; L. '03, p. 42, § 1.]

§ 4340. [4179.] Power of Court.

The superior court may compel the performance of the duties imposed by this chapter, and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose. [L. '95, p. 296, § 40.]

Cited in 46 Wash. 477.

§ 4341. [4180.] Dissolution of District—Hearing—Notice.

Any drainage district or diking district in the state of Washington may be dissolved by order of the superior court of the county wherein the same is organized, upon a hearing had upon a verified petition praying for such dissolution, signed by not less than two-thirds of the adult land owners of such district, who own in the aggregate not less than three-fourths in area of the land contained in said district, when it shall be determined by the court, that not less than four weeks' notice of such hearing has been given by posting notices in five of the most public places of the district sought to be dissolved, and by the insertion in a weekly newspaper of such county for four successive weeks next prior to such hearing, and the costs of dissolution have been advanced and that it is for the best interest of the land owners in said district that the same be dissolved: Provided, the ditches, drains, dikes and other improvements of dissolved districts, shall be and remain for the common use of the land owners in said district so dissolved. [L. '15, p. 31, § 1. Cf. L. '07, p. 376, § 1.]

§ 4342. [4181.] Sale of Property—Application of Proceeds—Indebtedness.

If said dissolved district owns any property, either real or personal, other than such ditches, drains, dikes or other improvements, it may be

sold by an order of the superior court, directed to the sheriff of said county, whose duty it shall be to advertise and sell such property in manner otherwise provided by law for the sale of real and personal property, and the proceeds of such sale, after the costs are paid, shall be used to pay any indebtedness of such dissolved district. If the indebtedness of any such district exceeds the amount received from the sale of such property the amount of such excess shall be certified to the auditor of the county in which such district is located and the amount thereof shall be levied against and apportioned to the lands in such district in proportion to and upon the basis of the value of such lands as fixed by the last-preceding equalized assessment-roll of said county and said amount shall be added to the general taxes against said lands and collected therewith. If the amount received from the sale of any property in such district exceeds the indebtedness of such district the excess shall be distributed to the land owners of such district in proportion to the value of their respective holdings therein. [L. '07, p. 376, § 2.]

§ 4343. [4181-1.] Annexation of Territory to Drainage District.

Any land which is in need of drainage, adjoining any drainage district organized under the provisions of sections 4298 to 4342, may be annexed to and included in such drainage district under the provisions of this act. [L. '13, p. 104, § 1.]

"Act" refers to the last four sections of this chapter.

§ 4344. [4181-2.] Petition for Annexation—Election.

Upon the presentation to the board of commissioners of such drainage district, of a petition signed by the owners of a majority of the acreage or area, of lands described in the said petition, and also a petition signed by at least ten freeholders of the said district, which petitions shall ask for the annexation to the said district of the lands described therein, and that the same may be made a part of said district, it shall be the duty of the said board of commissioners to call an election in the said district, and also in the said territory which it is proposed to annex thereto, for the purpose of submitting to the electors thereof the question of such annexation; notice of which election shall be given by the said board of commissioners, in both said district, and in the said territory to be annexed, the same as the notice required in the regular annual election of officers in said district. [L. '13, p. 104, § 2.]

§ 4345. [4181-3.] Election Officers.

The said board of commissioners shall appoint an election board of three electors for the election to be held in the said district and another election board of three electors in the said territory to be annexed, for the election to be held therein. [L. '13, p. 105, § 3.]

§ 4346. [4181-4.] Election Returns—Certificate of Result.

Return of such election shall be by the officers thereof made to the board of commissioners of said district forthwith, and such board shall as soon as practicable make canvass of the said returns, and if a majority of the votes cast at each of the said elections shall be in favor of the

annexation of said territory, the said board of commissioners shall forthwith certify to the county auditor and also to the county assessor of the county wherein such district and such territory are located, the fact of such election, the result thereof, and a particular description of the territory annexed by such election, which certificate shall be filed and become a part of the records of the said auditor and the said assessor; and thereafter the said territory shall be taken to be and shall be annexed to, and be a part of the said district, and shall be liable to assessment for extensions and improvement of drains, and for the cost and expense of maintenance and repairs the same as other property in the said district, and for the purposes of such assessment, the maximum benefits derived to such annexed territory shall be conclusively presumed to be equal to but not greater than those of abutting property, within the district as the same existed before the said annexation. [L. '13, p. 105, § 4.]

CHAPTER III.

REORGANIZATION OF DIKING OR DRAINAGE DISTRICTS.

§ 4347. Reorganization Authorized.

Any drainage district or diking district organized under the provisions of chapter I or chapter II, of this title, and the acts amendatory thereof, may be reorganized as a drainage improvement district or a diking improvement district, upon proceedings had in accordance with the provisions of this act. [L. '17, p. 553, § 1.]

§ 4348. Petition for Reorganization.

For the purpose of securing such reorganization, a petition shall be presented to the clerk of the board of county commissioners of the county in which such district is located, at a regular or special meeting of the board. The petition shall be signed by the board of commissioners of the district and shall state the number of the district seeking to reorganize, and shall pray that such district be reorganized as a drainage or a diking improvement district. [L. '17, p. 553, § 2.]

§ 4349. Notice of Election.

Whenever a petition is presented as provided in section 4348, the clerk of the board of county commissioners shall give notice of an election to be held on a day, and at a place within the district, to be fixed in such notice, at which the electors of the district shall vote for or against the reorganization of the district so petitioning as a drainage or a diking improvement district. The notice shall state the number of the district so petitioning to reorganize, the place where and the time when the election is to be held, and shall require the voters to cast ballots which shall contain the words "Reorganization, Yes," or "Reorganization, No." Such notice shall be posted for at least twenty days prior to the date fixed for the election in four of the public places in the district; and if the board of county commissioners shall so direct, shall be published once a week for four successive weeks in some newspaper published in the county, the last publication of which shall be not less than ten days prior to the day fixed for such election. [L. '17, p. 553, § 3.]

§ 4350. Result of Election—Costs of Proceeding.

An election board for such election shall be appointed, and such election shall be held and the votes cast thereat shall be canvassed as is provided for elections held for the organization of a drainage district. If, upon such canvass and count, it appears that a majority of the votes cast are for "Reorganization, Yes," the board shall enter an order upon their minutes declaring such district reorganized as a drainage or as a diking improvement district. If it appears that a majority of the votes cast are for "Reorganization, No," the board shall enter an order dismissing the proceedings, and shall, in either case, cause a statement of the costs of such proceeding to be prepared and transmitted to the commissioners of the district, who shall allow and pay the same as an expense of maintenance of the district. [L. '17, p. 554, § 4.]

§ 4351. Reorganization Effected—Election of Supervisors—Dissolution of Old District.

Upon the entry of the order provided for in section 4350, such reorganized district shall be known as a drainage or a diking improvement district of the same number as borne by it as a diking or a drainage district; and the board of commissioners of such district shall, together with the county engineer, constitute the board of supervisors of the reorganized district until the second Tuesday of December following such reorganization, when an election shall be held as provided for annual elections in drainage improvement districts, at which two supervisors shall be elected, who shall serve for the terms and whose successors shall be elected in the manner provided for the first board of supervisors in drainage improvement districts. From the entry of said order such reorganized district, and its board of supervisors herein provided for, shall have all the rights and powers of and be subject to all laws applicable to a diking or drainage improvement district, and such district so reorganized shall be dissolved without any further proceedings therefor. Notwithstanding such dissolution and reorganization, none of the outstanding bonds, warrants or other indebtedness of the district, shall be affected thereby; and all lands liable to be assessed to pay any of such bonds, warrants or other indebtedness shall remain liable to the same extent as if such reorganization had not been made, and any and all assessments theretofore levied or made against any such lands shall be and remain unimpaired and shall be collected in the same manner as if no such reorganization had been had. The board of county commissioners of the county in which such reorganized district is situated shall have all the powers possessed at the time of the reorganization by the board of commissioners of such district to levy, assess, and cause to be collected any and all assessments or charges against any of the lands within such district that may be necessary or required to provide funds for the payment of all the bonds, warrants and other indebtedness thereof. [L. '17, p. 554, § 5.]

§ 4352. Refunding Bonds—Levy of Assessments.

Whenever in any district reorganized under the provisions of this act any bonds issued prior to such reorganization shall become payable and the board of county commissioners shall determine that it will be for

the best interests of the owners of a majority of the acreage of lands included in such district to issue refunding bonds and to levy an assessment, payable in ten or fifteen years, instead of levying the annual assessments required by law to be levied to liquidate such outstanding bonds, they may levy such assessment and fix the time for the payment thereof at either ten or fifteen years, and fix the installments in which such assessment shall be paid as provided for the payment of assessments for the costs of construction under the provisions of chapter VI of this title, and acts amendatory thereof; and they may issue refunding bonds of the district in the manner thereafter provided, to provide funds with which to pay such outstanding bonds then payable. [L. '17, p. 555, § 6.]

§ 4353. Apportionment of Assessment—Refunding Bonds—Resolution of Intention.

The board shall determine the amount of the assessment necessary to be levied to provide funds to liquidate the bonds of the district then payable and shall cause such assessment to be apportioned to the lands of the district in proportion to the maximum benefits as fixed by the judgment of the jury, and shall cause to be prepared an assessment-roll showing the assessment apportioned against each tract, lot or parcel of land contained in such judgment and shall file such roll with the clerk of the board. Thereupon the board shall adopt a resolution which shall set forth:

(1) A schedule showing the bonds outstanding against the district then payable which they propose to refund, and the assessment necessary to be levied to provide funds for the payment thereof.

(2) That the assessment-roll for the collection of the assessments proposed to be levied against the lands of the district is on file with the clerk of the board and open to the inspection of all persons interested.

(3) That the commissioners propose to levy such assessments for collection in installments according to the schedule attached thereto.

(4) A schedule showing the installments in which such assessments are to be paid.

(5) That the assessments contained in such assessment-roll may be paid in full at any time prior to the expiration of thirty days after such assessment-roll shall have been turned over to the treasurer for collection and he shall have published a notice to that effect, and that all assessments not so paid shall thereafter bear interest until due at a rate to be fixed therein.

(6) That the commissioners propose to issue bonds under the provisions of chapter VI of this title, and acts amendatory thereof, payable in — years (to be stated in the resolution), to refund such outstanding bonds then payable.

(7) A date which shall be not more than sixty nor less than thirty days from the date of the adoption of such resolution, on which the board will hear any objections offered to the proposed levy and issuance of refunding bonds, or to the assessment-roll prepared by the commissioners. [L. '17, p. 556, § 7.]

§ 4354. Notice to File Objections.

Upon the preparation of the roll and the adoption of the resolution, the clerk of the board shall cause to be published in some newspaper published in the county and of general circulation therein, a notice containing a copy of the resolution and stating that on the date fixed therein for the hearing the board will meet and hear any objection offered to the proposed levy of the assessment or to the issuance of refunding bonds or to the assessment-roll or any assessment therein contained; and stating that all persons interested may file any objections they may have to the proposed levy or issuance of bonds or the assessment-roll with the board of commissioners prior to the date fixed for such hearing. The last publication of such notice shall not be less than ten days prior to the date fixed for such hearing. [L. '17, p. 557, § 8.]

§ 4355. Confirmation of Assessment-roll.

The board shall meet on the day fixed in the notice or to which the hearing may have been adjourned, and shall consider all objections which shall have been filed, and may modify any action as proposed in said resolution; and may correct any errors in the assessment-roll and shall confirm the roll as corrected and shall levy the assessments therein contained for collection as prescribed in the resolution as finally adopted and shall enter an order confirming said roll.

Upon the confirmation of the assessment-roll and the levy of the assessments therein contained, the board shall cause the clerk to attach thereto a copy of the resolution and certify such roll and resolution and turn the assessment-roll over to the county treasurer for collection in accordance with the resolution attached thereto.

If before or at the hearing herein provided for protests have been filed by the owners of more than fifty per cent of the acreage of land in the district objecting to the proposed levy and issuance of bonds, the board shall enter an order dismissing the proceedings and shall charge the cost thereof to the district as a maintenance charge. [L. '17, p. 557, § 9.]

§ 4356. Collection of Assessments.

As soon as the assessment-roll has been turned over to the treasurer for collection, he shall publish a notice in the official newspaper of the county, once a week for at least two successive weeks, that the said roll is in his hands for collection and that any assessments therein or any portion of any such assessments may be paid at any time on or before a date stated in such notice, which date shall be thirty days after the date of the first publication, without interest. All assessments levied as provided herein, which shall not be paid within thirty days as herein provided for shall be collected in the manner provided for the collection of assessments levied to pay the costs of construction in drainage improvement districts, and all the provisions of chapter VI of this title, and acts amendatory thereof, shall govern the collection of such assessments so far as the same shall be applicable. [L. '17, p. 558, § 10.]

§ 4357. Refunding Bonds—Issuance and Sale.

Upon the expiration of thirty days from the first publication of the notice given by the treasurer as provided herein, the board of county commissioners may issue and sell refunding bonds of the district, payable as determined by them in their resolution, in the manner provided for the issuance of bonds to pay the costs of construction in drainage improvement districts; and all the provisions of law governing the issuance, sale and payment of such bonds shall govern the issuance, sale and payment of the bonds herein provided for. [L. '17, p. 558, § 11.]

§ 4358. Proceeds of Assessments and Bond Sales.

The proceeds of all assessments paid within the thirty-day period herein provided for, and the proceeds of the sale of all refunding bonds, shall be paid into a proper fund to be established in the county treasury, and shall be applied to the payment of all outstanding bonds then due in the manner in which such bonds are required to be paid by the law under which they were issued, and such bonds shall be called and paid accordingly. The proceeds of all payments of assessments paid after the expiration of thirty days from the first publication of the notice given by the treasurer as herein provided, shall be paid into a fund to be established in the county treasury, to be known as the "refunding bond redemption fund," and shall be applied to the payment of such bonds as provided by chapter VI of this title, and acts amendatory thereof. [L. '17, p. 558, § 12.]

§ 4359. Liquidation of Bonds not Refunded.

The board of county commissioners shall have all the powers possessed by the board of commissioners of any district reorganized under the provisions of this act prior to such reorganization, to levy assessments for the payment of the interest on any other bonds of the district not then payable and refunded under the provisions of this act, and to levy assessments to provide a sinking fund for the liquidation of such bonds at their maturity. Such assessments shall be called and collected in the manner provided by the law under which they were assessed, and such bonds shall be paid as provided by the law under which they were issued. Proper funds shall be established in the county treasury for the proceeds of the payments of such assessments, and such funds shall be applied to the payment of the bonds for the payment of which they were levied. [L. '17, p. 559, § 13.]

§ 4360. Extensions Designed to Repair Inadequate Benefits—Payment.

Whenever in any district reorganized under the provisions of this act, extensions or additions are made to the system of improvements of the district to provide drainage or protection from overflow for lands previously found benefited and assessed for the construction of the original system of improvement which are not receiving benefits therefrom in proportion to the benefits found and the assessments levied against such lands, the costs of such extensions or additions shall be included as a cost of maintenance of the improvements of the district and shall be levied and collected in the manner provided for the levy and collection of such costs. [L. '17, p. 559, § 14.]

CHAPTER IV.

DIKING AND DRAINAGE DISTRICTS IN TWO OR MORE COUNTIES.

Private ditches in two or more counties, see § 4446.

§ 4361. [4182.] Powers—Designation.

Whenever a portion of two or more counties, which contain one hundred or more inhabitants and freeholders therein, require diking, draining, or the erection of flood dams or drift barriers to prevent inundations, such portion of two or more counties may be organized into a district: and the board of commissioners, hereinafter provided for, shall have and possess the powers herein conferred, or that may hereafter be conferred by law upon such district and board of commissioners, and all such powers not in conflict with those herein granted, which now exist under the provision of the laws of the state relating to the establishment, construction and maintenance of dikes and drains; and such districts shall be known and designated as "Diking and Drainage District No. —, in — and — Counties (here insert name of counties), of the state of Washington"; and shall have the right to sue and be sued by, in the name of its board of commissioners herein provided for, and shall have perpetual succession, and shall adopt and use a seal. [L. '09, p. 789, § 1.]

See supra, § 4304, additional powers and extension of district.

§ 4362. [4183.] Formation—Petition, Contents and Requisites of—Cost Bond.

For the purpose of the formation of such diking district, a petition shall be presented to the board of county commissioners of each of the two or more counties in which the portion of said counties are situated; which petition shall set forth the objects for the creation of said district, and shall designate in a general way the boundaries thereof, and set forth therein approximately the number of acres of land to be benefited by the proposed system, and shall also contain a brief description of the proposed system, and approximately the route over which the same is to be constructed, together with the proposed flood dams or drift barriers, if any, and approximately the termini thereof. The petition shall also set forth the further fact that the establishment of the said district and the proposed system will be conducive to the public health, convenience and welfare, and will increase the public revenue, and that the establishment of said district will be of special benefit to the property included in each of the counties in such district. The petition shall be signed by at least one hundred of the freeholders in the proposed district, or by a majority of the freeholders in said district in each of the counties, in case there are less than two hundred freeholders in the proposed district. Said petition shall ask that a district be organized under the provisions of this chapter. A duplicate of the petition shall be filed with each of the board of county commissioners in each of the counties in which the proposed district is situated. At the time of filing of the petition, the petitioners shall file a bond with the board of county commissioners, running to the state of Washington, in the penal sum of one thousand dollars, with two or more sureties, to be approved by the board of county commissioners, conditioned

that they will pay all costs in case said district for any reason shall not be established. [L. '09, p. 789, § 2.]

§ 4363. [4184.] Hearing of Petition — Procedure — Boundaries — Certificate.

Immediately thereafter the chairman of each of the respective boards of county commissioners shall notify the commissioner of public lands of the state of Washington that such petition and bond has been filed, praying for the establishment and maintenance of a district as aforesaid, and thereupon the commissioner of public lands shall at once give written notice to the board of county commissioners of each county that the said boards, together with the commissioner of public lands, will hold a joint meeting, at a time and place specified, not less than five or more than twenty days after the mailing of such notice, to consider the petition and to determine upon the matters therein prayed for. At such joint meeting said joint body, including the commissioner of public lands, shall proceed to consider the said petition and determine whether such proposed diking and drainage district shall be established in the locality and vicinity of the proposed system. If such body finds the district should be established, it shall then enter an order upon its minutes creating such district, and defining the boundaries thereof, and the boundaries so established may embrace more or less land than that embraced in the original petition, and the proposed boundaries may be enlarged or diminished as [to] the board may seem proper; such body shall not establish such district, however, unless they find that the proposed system of dikes and drains will be conducive to the public health, welfare and convenience, and will increase the public revenue and be of benefit to the majority of the lands included within the boundaries of the district. Said body shall at this first meeting elect a secretary, and the commissioner of public lands shall act as chairman of the body. If such body after consideration determines that a diking and drainage system shall be established, then the chairman and secretary shall certify to the board of county commissioners of each county a copy of the resolutions of the body creating such district, and a certificate to the same effect shall be made to the commissioner of public lands, and such certificates shall be filed with the board of county commissioners of each county, and in the office of the commissioner of public lands, and shall be recorded in the records and journals of the respective offices; a majority of all the members of said body shall be necessary to establish any diking and drainage system hereunder, and a majority of the body shall constitute a quorum for the transaction of any business. If such district is established the aforesaid body shall at its first meeting also designate the day upon which the first election shall be held under the provisions of this chapter, which shall not be less than thirty nor more than sixty days from the time when the day of election is fixed. [L. '09, p. 790, § 3.]

§ 4364. [4185.] Approval—Election of Commissioners—Ballots—Vacancies—General Elections—Terms of Office.

Upon the establishment of a district as aforesaid, the said body shall give notice of an election to be held in the diking and drainage district

established, as aforesaid, for the purpose of determining whether the same shall be approved and become an organized diking and drainage district, and for the further purpose of choosing at such election five commissioners, who shall be known and designated as "Commissioners for Diking and Drainage District No. — (here insert number), in — and — Counties (here insert name of counties), State of Washington," and such notice shall particularly describe the boundaries as established, and shall state the name of such proposed diking and drainage district, and the same shall be published for at least two weeks prior to such election in two or more weekly newspapers published within the proposed district, and in case no such newspaper be published in such district, then in two or more newspapers of general circulation in such district for two successive issues; and shall be posted for the same period in at least ten public places within the boundaries of such proposed district, which notice shall designate the places within the proposed district where the said election shall be held, and require the voters to cast ballots which shall contain the words "Diking and Drainage District 'yes,'" or "Diking and Drainage District 'no,'" and also the names of the persons voted for as commissioners of such district. The voting places shall be designated by such body; said body shall also appoint two judges, one inspector and two clerks for such election, to act at each polling-place, whose compensation shall be the same as in elections for county and state officers, and which shall be a charge upon such district in case the same be established; in case such district be not established, then all costs and expenses shall be collected from the bond hereinbefore provided for. The election shall be held on the day designated in the notice, and shall be conducted in accordance with the general election laws of the state of Washington, as far as applicable. The returns of all the elections hereunder shall be made by the judges of election to the commissioner of public lands. No person shall be entitled to vote at such election unless he be a qualified elector in the county in which said district is located, and shall have resided within the boundaries of such proposed district for a period of not less than ninety days next preceding the election. The commissioner of public lands shall, within fifteen days next succeeding said election, canvass the vote, and if upon such canvass and count it appears that the majority of votes cast in each of the counties are for "Diking and Drainage District 'yes,'" then the said body shall immediately certify to the board of county commissioners of each county interested and to the commissioner of public lands the result of such election, and shall in such certificate declare the proposed territory duly organized as a drainage and diking district; and that the five persons receiving the highest number of votes are duly elected commissioners of such diking and drainage districts. The commissioners so elected shall hold their position for the period of two years from and after their election and until their successors are elected and qualified. Not more than three commissioners shall be elected from any one county when the district is composed of two counties, and not more than two commissioners shall be elected from any county when the district is composed of three or more counties. All commissioners must be qualified electors of the district. Any vacancies occurring upon said board by failure to qualify, death or resignation, or otherwise, shall be filled by the board of county commissioners of the county in which the vacancy occurs. After the first

election a general election for the election of such board of commissioners for the diking and drainage district shall be held every second year thereafter, on the first Tuesday of October, and the returns thereof shall be canvassed by the commissioner of public lands, who shall certify the result to the respective boards of county commissioners. The commissioner of public lands at the time of certifying any election shall also issue a certificate to each person elected as a member of the board that he has been duly elected as one of the commissioners for Diking and Drainage District No. —, in the counties of — and —, state of Washington. No official ballot shall be required at the first or any subsequent election, and the law known as the "Direct Primary Law" of this state shall have no application to the elections held under this chapter. The ballots shall designate the county from which the commissioners are to be elected, for example:

For commissioners from — county.

For commissioners from — county.

[L. '09, p. 792, § 4.]

§ 4365. [4186.] Commissioners, Oath, Bond of—Assessment of Benefits—Procedure.

The members of such board, before entering upon their duties, shall take and subscribe an oath substantially as follows:

State of Washington, } ss.
County of —, }

I, the undersigned, a member of the board of commissioners of the Diking and Drainage District No. —, in — and — counties, do solemnly swear (or affirm) that I will well and truly discharge my duties as a member of said commission.

The members shall also, before entering upon their duties, give a bond to the state of Washington for the benefit of such diking and drainage district, for the faithful performance of their duties as such board of commissioners, in the penal sum of five thousand dollars, with a company or corporation as surety, authorized to make and execute official bonds under the laws of the state, the district to bear the expense of such bond; and upon the oath and bond being filed with the commissioner of public lands, that officer shall enter an order upon his records that the five persons named as aforesaid have qualified as the board of commissioners for Diking and Drainage District, No. —, in — and — Counties, and that said persons and their successors do and shall constitute a board of commissioners for the aforesaid diking and drainage district; which order when made shall be conclusive of the regularity of the election and qualification of the board of diking and drainage commissioners for the particular district, and the persons named therein shall constitute such board of diking and drainage commissioners.

The said board of diking and drainage commissioners shall thereupon immediately organize and elect one of their number as chairman and another as secretary. The said board shall then proceed to make and cause to be made specifications and details of a system which may be adopted by the board for the improvements to be made, together with an estimate of the total cost thereof; and shall, upon the adoption of a plan

of improvement of the district as aforesaid, proceed to levy an assessment upon the taxable real property within the said district which the board may find to be specially benefited by the proposed improvements; and shall make and levy such assessment upon each piece, lot, parcel and separate tract of real estate in proportion to the particular and special benefits thereto. Upon determining the amount of the assessment against each particular tract of real estate as aforesaid, the commissioners shall make or cause to be made an assessment-roll, in which shall appear the names of the owners of the property assessed, so far as known, and a general description of each lot, block, parcel or tract of land within such district, and the amount assessed against the same, as separate, special or particular benefits. The board shall thereupon make an order setting and fixing a day for hearing any objections to the assessment-roll by anyone affected thereby, which day shall be at least twenty days after the mailing of notices thereof, postage prepaid, as herein provided. The board shall send or cause to be sent by mail to each owner of the premises assessed, whose name and place of residence is known, a notice substantially in the following form, to wit:

To —: Your property (here describe the property) is assessed \$—. A hearing on the assessment-roll will be had before the undersigned at the office of the said board at —, —, on the — day of —, at which time you are notified to be and appear and to make any and all objections which you may have as to the amount of the assessment against your property, or as to whether it should be assessed at all; and to make any and all objections which you may have to the said assessment against your lands, or any part or portion thereof.

The failure to send or cause to be sent such notice shall not be fatal to the proceedings herein described. The secretary of the board on the mailing of said notices shall certify generally that he has mailed such notices to the known address of all owners, and such certificate shall be prima facie evidence of the mailing of all such notices at the date mentioned in the certificate.

The board shall cause at least ten days' notice of the hearing to be given by posting notice in at least ten public places within the boundaries of the district, and by publishing the same at least five successive times in a daily newspaper published in each of the counties affected; and for at least two successive weeks in one or more weekly newspapers within the boundaries of said district, in each county if there be such newspapers published therein, and if there be no such newspaper published, then in one or more weekly newspapers, having a circulation in the district, for two successive weeks, which notice shall be signed by the chairman or secretary of the said board of commissioners, and shall state the date and place of hearing of objections to the assessment-roll and levy, and of all other objections; and that all interested parties will be heard as to any objection to said assessment-roll and the levies as therein made. [L. '09, p. 794, § 5.]

§ 4366. [4187.] Objections to Assessment—Procedure.

Any person interested in any real estate affected by said assessment may, within the time fixed, appear and file objections. As to all parcels,

lots or blocks as to which no objections are filed, within the time as aforesaid, the assessment thereon shall be confirmed and shall be final. On the hearing, each person may offer proof, and proof may also be offered on behalf of the assessment, and the board shall affirm, modify, change and determine the assessment, in such sum as to the board appears just and right. The commissioners may increase the assessment during such hearing upon any particular tract by mailing notice to the owner at his last-known address, to be and appear within a time not less than ten days after the date of the notice, to show cause why his assessment should not be increased. When the assessment is finally equalized and fixed by the board, the secretary thereof shall certify the same to the county treasurer of each county in which the lands are situated, for collection; or if appeal has been taken from any part thereof, then so much thereof as has not been appealed from shall be certified. In case any owner of property appeals to the superior court in relation to the assessment or other matter when the amount of the assessment is determined by the court finally, either upon determination of the superior court, or appeal to the supreme court, then the assessment as finally fixed and determined by the court shall be certified by the clerk of the proper court to the county treasurer of the county in which the lands are situated and shall be spread upon and become a part of the assessment-roll hereinbefore referred to. [L. '09, p. 796, § 6.]

§ 4367. [4188.] Appeal, Procedure on.

Any person who feels aggrieved by the final assessment made against any lot, block or parcel of land owned by him, may appeal therefrom to the superior court of the county in which the land is situated. Such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts. All notice of appeal shall be filed with the said board, and shall be served upon the prosecuting attorney of the county in which the action is brought. The secretary of the board shall, at appellant's expense, certify to the superior court so much of the record as appellant may request, and the cause shall be tried in the superior court de novo.

Any person desiring to appeal from any final order or judgment made by the superior court concerning any assessment authorized by this chapter, may appeal therefrom to the supreme court, in accordance with the laws of this state relative to appeals, except that all such appeals shall be taken within thirty days after the entry of such judgment. [L. '09, p. 797, § 7.]

§ 4368. [4189.] Assessments, Lien of—Notice and Collection of.

The final assessments shall be a lien paramount to all other liens except liens for taxes and other special assessments upon the property assessed, from the time the assessment-roll shall have been finally approved by the said board, and placed in the hands of the county treasurers as collectors. After the roll shall have been delivered to the county treasurers for collection, each treasurer shall proceed to collect the amounts due in the manner that other taxes are collected as to all lands situated within the county of which he is treasurer. Such treas-

urer shall give at least ten days' notice in one or more daily newspapers published in the counties in which the lands are situated for two successive weeks, that such roll has been certified to him for collection, and that unless payment be made within thirty days from the date of the notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten equal annual payments, with interest upon the whole sum so charged, at a rate not to exceed seven per cent per annum. Said interest shall be paid annually. The county treasurer shall proceed to collect the amount due each year upon the publication of notice as hereinafter provided. In such publication notice it shall not be necessary to give a description of each tract, piece or parcel of land, or of the names of the owners thereof.

The treasurer shall also mail a copy of the notice to the owner of the property assessed, when the postoffice address of such owner is known to the treasurer; but the failure to mail such notice shall not be necessary to the validity of the collection of such tax. [L. '09, p. 798, § 8.]

§ 4369. [4190.] Commissioners to Conduct Business, Make Contracts, etc.

The commissioners herein provided for and their successors in office, shall from the time of their election and qualifications aforesaid, have the power, and it shall be their duty, to manage and conduct the business affairs of the district, making and executing all necessary contracts, appoint such agents and employees as may be required, and prescribe their duties, and perform any and all acts which may be necessary, proper or requisite to carry into effect their duties as commissioners, and all such other acts as may be provided in this chapter or in any other act. [L. '09, p. 798, § 9.]

§ 4370. [4191.] Powers—Eminent Domain—Purchase.

The districts organized under the provisions of this chapter, and the commissioners appointed and qualified as such shall have the right of eminent domain with the power by and through the board of commissioners to condemn and cause to be condemned and appropriated private property for the use of said district in the construction and maintenance of the system of dikes, drains, flood dams and drift barriers, and for any other purpose proper, necessary and convenient for the purpose of carrying into effect the powers vested in said district and the commissioners thereof; and the property of private corporations shall be subject to the same rights of eminent domain as private individuals. Said board of commissioners shall also have the power to acquire by purchase, in the name of the district, any and all real property necessary to make the improvements herein provided for. [L. '09, p. 799, § 10.]

§ 4371. [4192.] Construction and Maintenance in Charge of Commissioners.

Said board of commissioners herein provided for shall have the exclusive charge of the construction and maintenance of all dikes and drainage systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said

district by their acts in the performance of their duties as provided by law. [L. '09, p. 799, § 11.]

§ 4372. [4193.] Procedure in Eminent Domain.

In the exercise of the right of eminent domain, all proceedings shall be prosecuted by the board of commissioners for and on behalf of the district, or in the name of the district itself, and such proceedings shall be conducted in the superior court of the county in which the lands sought to be condemned are situated, and shall be in the manner and in accordance with the procedure now provided by law regulating the mode of procedure to appropriate lands, real estate, or property by corporations for corporate purposes. [L. '09, p. 799, § 12.]

§ 4373. [4194.] Improvement of Watercourses—Auxiliary Ditches, etc.

Any district so established as aforesaid through its board of commissioners shall have the right, power and authority to straighten, deepen and improve any and all rivers, watercourses, or streams, whether navigable or otherwise, flowing through or located within the boundaries of said diking or drainage district, whenever necessary or proper in carrying out the objects of the system. The district by and through its board of commissioners shall also have the power to construct all needed auxiliary ditches, canals, flumes, locks, flood barriers, and all necessary artificial appliances in the construction of the system, and which shall be necessary and advisable to protect the land in any such district from overflow or to assist, or which may become necessary in the preservation or maintenance of such system. [L. '09, p. 799, § 13.]

§ 4374. [4195.] Cities may be Included.

Within the limits of said diking or drainage district may be included any incorporated city or town or any part thereof. [L. '09, p. 800, § 14.]

§ 4375. [4196.] State Lands Assessed—Payment.

Any of the state, school, or granted land within the district, shall also be assessed the same as other lands are assessed in proportion to the benefit, but any such lands shall not be sold for delinquencies, but the amount of the assessment shall be paid by the state at the time, in the manner, under the circumstances, and in accordance with the provisions of §§ 4478 to 4482 of this code. [L. '09, p. 800, § 15.]

See notes to § 4336.

See notes to § 4490, partial unconstitutionality of assessment against school lands.

Assessments on state lands, see §§ 4478—4482 and 8125—8136, *infra*.

§ 4376. [4197.] Bonds, Issuance and Disposal of—Sale—Form, Maturity, Interest—Calls for.

Any such district by and through its board of commissioners, may, by resolution of such board, cause to be issued in the name of the district, bonds for the whole estimated cost of the improvement, less such amounts as shall have been paid within the thirty days provided for redemption, as herein specified. Such bonds shall be called Local

Improvement Bonds, Diking and Drainage District No. — in — and — counties, state of Washington, and shall be payable in not more than ten years after date, and shall be subject to annual call by the board, in such manner and amount as there may be cash on hand to pay, in the respective local improvement fund, from which such bonds are payable, interest to be paid at the office of the treasurer of the fund. Such bonds shall be executed and delivered to the contractor for the work from month to month in such amounts as the engineer in charge of the improvement shall certify to be due on account of work performed; however, if the said board resolve so to do, such bonds may be offered for sale after thirty days' public notice by it to be delivered to the highest bidder therefor, but in no case shall said bonds be sold for less than par, the proceeds to be applied in payment for the improvement: Provided, that unless the contractor for the work shall agree to take such bonds in payment of the work, such work shall not be begun until the bonds shall have been sold and the proceeds shall have been paid into the fund, the fund to be called Local Improvement Fund, Diking and Drainage District No. —, in — and — counties, and the holder or holders of such bond shall look only to such fund for the payment of either the principal or interest of such bond. Said bonds shall be issued in the denomination of one hundred dollars each, and shall be substantially in the following form:

Local Improvement Bond, Diking and Drainage District No. — in the counties of — and —, state of Washington. No. —. — dollars. This bond is not a general debt of the counties of — or either of them, and has not been authorized by the voters of said counties, or either of them, as a part of the indebtedness of said counties; it is issued in pursuance of an act of the legislature of the state of Washington, passed the — day of —, 1897, and is a charge against the fund herein specified, and its issuance and sale is authorized by the resolution of the board of commissioners of said district, passed on the — day of —, A. D. —. The Diking and Drainage District No. — in counties —, a municipal corporation of the state of Washington, hereby promises to pay to — or bearer one hundred (\$100) dollars, lawful money of the United States of America, out of the fund established by resolution of the board of commissioners on the — day of —, A. D. —, and known as Local Improvement Fund, Diking and Drainage District No. —, in — and — counties, state of Washington, and not otherwise. This bond is payable ten years after date and is subject to annual call by the treasurer of the board at the expiration of any year before maturity, in such manner and amounts as there may be cash on hand to pay the same in the said fund from which the same is payable, and shall bear interest at — per centum per annum, payable annually, both principal and interest payable at the office of the treasurer of the fund. A coupon is hereby attached for each installment of interest to accrue thereon and said interest shall be paid only on presentation and surrender of such coupon to the treasurer of the fund, but in case this bond is called for payment before maturity, each and every coupon representing interest not accrued at the expiration of the call shall be void. The board of commissioners of said diking

and drainage district has caused this bond to be issued as a bond of said district and the proceeds thereof to be applied in part payment of so much of the cost of said improvement as is to be borne by the owners of property in said district and the said district has been established for such purpose, and the holder or holders of this bond shall look only to said fund for the payment of either the principal or interest of this bond. The call for the payment of this bond or any bond issued on account of said improvement may be made by the board, by publishing the same in a newspaper in each county for ten consecutive issues, beginning not more than twenty days before the expiration of any year from the date hereof, and if such call be made interest on this bond shall cease at the date named in such call. This bond is one of a series of — bonds, aggregating in all the principal sum of — dollars, issued for such district, all of which bonds are subject to the same terms and conditions as herein expressed.

In witness whereof, said board of commissioners of such Diking and Drainage District No. — has caused these presents to be signed by its chairman and countersigned by its secretary and sealed by its corporate seal, this — day of —, A. D. 190—.

The Diking and Drainage District No. — in — and — counties, Washington. By —, chairman of its board of commissioners. Countersigned —, secretary of said board.

There shall be attached to each bond such number of coupons as shall be required to represent the interest thereon, payable, semi-annually for the term of said bonds, which coupons shall be substantially in the following form:

No. —. \$—. On the — day of —, the Diking and Drainage District No. —, in the Counties of — and —, Washington, promise to pay to the bearer, at the office of —, — dollars, being one year's interest due that day on bond No. — of the bonds of the said diking and drainage district. The sum being payable only from the fund of the said district known as Local Improvement Fund thereof, and not otherwise: Provided, that this coupon is subject to all terms and conditions contained in the bond to which it is annexed, and if said bond be called for payment before maturity hereof, then this coupon shall be void.

The Diking and Drainage District No. — in — and — counties, Washington. By —, chairman of the board of commissioners. Countersigned, —, secretary of said board.

The bonds issued for each district shall be in the aggregate for such an amount as authorized by the board of commissioners for the respective district, and each issue of said bonds shall be numbered consecutively, beginning with number "one." The board of commissioners shall keep a register of all such bonds, in which shall be entered the local improvement districts for which the same were issued and the number and total amount of each bond, with terms of payment. [L. '09, p. 800, § 16.]

§ 4377. [4198.] Removal of Lien by Payment—Bonds, Interest on, and Calls for.

The owner of any lot or parcel of land charged with any assessment, as hereinbefore provided, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty days after notice to him of such assessment, as herein provided, or may redeem same any time after the bonds above specified shall have been issued by paying the full amount of all the principal and interest to the end of the interest year then expiring or next to expire. The board shall pay the interest on the bonds authorized to be issued under this act out of the respective local improvement funds, from which they are payable, and whenever there shall be sufficient money in any of such fund against which bonds have been issued under provisions of this act, over and above the amount necessary for the payment of interest on all unpaid bonds, and sufficient to pay the principal of one or more bonds, the board shall call in and pay such bonds: Provided, said bonds shall be called in and paid in their numerical order: Provided further, that such call shall be made by publication in one or more newspapers on the day following the delinquencies of the installment of the assessment, or as soon thereafter as practicable and shall state that bonds Nos. —— (giving serial number and numbers of the bonds called) will be paid on the day the interest coupons on such bonds shall become due, and interest upon such bonds shall cease upon such date. [L. '09, p. 804, § 17.]

§ 4378. [4199.] Road Districts Assessed for Benefits—Payment by County.

Whenever any highways, roads, or bridges, are maintained by either county in which a diking and drainage district may be established, as herein provided, and it shall appear that the construction and maintenance of such diking and drainage system will be beneficial to such highways, roads, and bridges, or which will be beneficial to such highways, roads and bridges as may thereafter be constructed or maintained by the county, in which any part of the system of dikes and drains is situated, then the board of county commissioners of such county may, and it shall be the duty of such board to appropriate to such diking and drainage district an amount of money sufficient to pay the proportionate share of such county in accordance with the benefits received or to be received; and whenever it may appear to the board of county commissioners of any county that any improvements made or to be made in any diking or drainage district under the provisions of this act, shall on account of the health of the people of the county be beneficial in respect thereto, the board of county commissioners may make an appropriation of money to such diking and drainage district in such an amount [as] to such board may seem proper. [L. '09, p. 804, § 18.]

Compare §§ 4314, 4315, supra.

§ 4379. [4200.] Payment by Cities—Levy for.

Whenever it shall appear to the city council of any incorporated city or town not included or not wholly included within the limits of

any diking or drainage district established hereunder, which incorporated city or town may be within a county in which a portion of such district is located that the construction and maintenance of such diking and drainage system will be beneficial to the health of the inhabitants of said incorporated city and to the general welfare of the said city, then the city council of said city is hereby empowered and authorized to appropriate such amount of money out of the general funds of the city as may to the city council seem proper and just to such diking and drainage system, or the city council may for such purpose levy an assessment upon all the property in said city subject to taxation by said city, which shall not exceed one-half mill for each dollar of property. [L. '09, p. 805, § 19.]

§ 4380. [4201.] District may Condemn Right of Way.

In the construction and maintenance of the improvements herein provided for, the said district may acquire by purchase or otherwise, and by the exercise of the right of eminent domain, any right of way through, over and across any property situated without said district which may be necessary or proper to the completion of the system of improvements. [L. '09, p. 805, § 20.]

§ 4381. [4202.] Duties of Officers of Board—Quorum.

The chairman of the board shall preside at all meetings and shall have the right to vote upon all questions the same as other members, and shall perform such duties in addition to those in this act prescribed as may be fixed by the board. The secretary of the board shall perform the duties in this act prescribed, and such other duties as may be fixed by the board. A majority of the board shall constitute a quorum for the transaction of business, but it shall require a majority of the entire board to authorize any action by the board. [L. '09, p. 806, § 21.]

§ 4382. [4203.] County Treasurer to Collect Assessments—Disbursements.

The treasurer of each county shall collect the taxes levied and assessed hereunder upon all that portion of the property situated within the county for which the treasurer is acting. The treasurer of the county in which the smaller or minor portion of the taxes are to be collected shall forward the amount collected by him quarterly each year on the first Monday in January, April, July and October, to the treasurer of the county in which the larger or major portion of the taxes are to be collected. The treasurer of the county in which the larger portion of the taxes have been levied and assessed shall be the disbursing officer of such diking and drainage district, and shall pay out the funds of such district upon orders drawn by the chairman and secretary of the board acting under authority of the board, and shall be the treasurer of the fund. [L. '09, p. 806, § 22.]

§ 4383. [4204.] Sale for Assessments—Procedure—Notice, Deed, Report, etc.—Purchaser's Rights.

If any of the installment of taxes are not paid as herein provided, the county treasurer shall sell all lots or parcels of land on which taxes

have been levied and assessed, whether in the name of the designated owner or the name of an unknown owner, to satisfy all delinquent and unpaid assessments, interests, penalties and costs. The treasurer must commence the sale of property upon which taxes are delinquent within sixty days after the same become delinquent, and continue such sale from day to day thereafter until all the lots and parcels of land upon which taxes have not been paid are sold. Such sales shall take place at the front door of the courthouse. The proper treasurer shall give notice of such sales by publishing a notice thereof once a week for two successive weeks in two or more newspapers published within the district, or if no such newspaper is published, within the district, then within any two or more newspapers having a general circulation in such district; such notice shall contain a list of all lots and parcels of land upon which such assessments are delinquent, with the amount of interest, penalty and cost at the date of sale, including costs of advertising had upon each of such lots, pieces or parcels of land, together with the names of the owners thereof, if known to the treasurer, or the word "unknown" if unknown to the treasurer, and shall specify the time and place of sale, and that the several lots or parcels of land therein described, or so much as may be necessary, will be sold to satisfy the assessment, interest, penalty and cost due upon each. All such sales shall be made between the hours of 10 o'clock A. M. and 3 o'clock P. M. Such sales shall be made in the manner now prescribed by the general laws of this state for the sale of property for delinquent taxes, and certificates and deeds shall be made to the purchasers and redemptions made as is now prescribed by the general laws of this state in the manner and upon the terms therein specified: Provided, that no tax deeds shall be made until after the expiration of one year after the issuance of the certificate, and during such year any person interested may redeem. A certificate of purchase shall be issued to the district for all lots and parcels of land not sold. Certificates issued to the district shall be delivered to the board of commissioners of the district. The board of commissioners of the district may sell and transfer any such certificate to any person who is willing to pay to the district the amount for which the lot or parcel of land therein described was stricken off to the district, with the interest subsequently accrued thereon. Within ten days after the completion of sale of all lots, pieces and parcels of land authorized to be sold as aforesaid, the treasurer must make a return to the board of commissioners with a statement of the doings thereon, showing all lots and parcels of land sold by him, to whom sold and the sum paid therefor. The purchaser at improvement sales acquires a lien on the lot, piece or parcel of land sold for the amount paid by him at such sales for all delinquent taxes and assessments, and all costs and charges thereon, whether levied previously or subsequently to such sale, subsequently paid by him on the lot or parcel of land, and shall be entitled to interest thereon at the rate of ten per cent per annum from the date of such payment. [L. '09, p. 806, § 23.]

§ 4384. [4205. Disposal of Lands Bid in by District.

The board of commissioners of the district shall have the power to sell, lease and dispose of any and all lands which may be acquired by

it by virtue of deeds issued to it by the treasurer for lands not redeemed from sale, and the funds derived from any disposition of such land shall become the fund of the district to be used for the benefit of the district under the direction of its board of commissioners. [L. '09, p. 808, § 24.]

§ 4385. [4206.] Cancellation of Lien on Part of Land.

When a piece, lot, or tract of land has been assessed in one body, if the same is subsequently subdivided by the owner, or there should be purchasers of different portions of such tract, then the owner or purchaser may pay the taxes upon such piece or tract of land, paying the proportion which is proper upon such separate piece or tract. [L. '09, p. 808, § 25.]

§ 4386. [4207.] Improvement of Watercourses, etc.

The board shall have power and authority to straighten, widen, deepen and improve any and all rivers, watercourses or streams, whether navigable or otherwise, flowing through or located within the boundaries of such district; and the beds of any streams or rivers which may be changed, shall become the property of the district, and the board shall have the power to sell and dispose of the same, or exchange the same or any portion thereof for other lands. [L. '09, p. 808, § 26.]

§ 4387. [4208.] Condemnation of State and Municipal Lands.

Any district created hereunder is hereby granted the right to exercise the power of eminent domain against any lands or other property belonging to the state of Washington or any municipality thereof, and such power of eminent domain shall be exercised under and by the same procedure as is now, or may hereafter be, provided by the laws of this state for the exercise of the right of eminent domain by ordinary railroad corporations. [L. '09, p. 808, § 27.]

See *infra*, §§ 4478—4482 and 8125—8136, assessments on state lands.

§ 4388. [4209.] Adjournments.

The board of commissioners shall have power to adjourn any and all proceedings before them from time to time. [L. '09, p. 809, § 28.]

§ 4389. [4210.] Notice to Agent.

When any notice is required to be given to the owner under any of the provisions of this chapter, such notice shall be given to the agent instead of the owner, in case the owner prior to the giving of the notice required by the board or proper officer has filed with the board or proper officer the name of the agent with his postoffice address. [L. '09, p. 809, § 29.]

§ 4390. [4211.] Reassessments.

If because of a substantial reduction of the amount of the assessment upon any lands, the result would be to leave the amount of the assessment upon other lands insufficient, or if for any cause the assessment should be held invalid or become inoperative, then the board shall

have power to make a reassessment of all lands to the same extent as the original assessment. [L. '09, p. 809, § 30.]

§ 4391. [4212.] Annual Tax Levy for Maintenance.

It shall be the duty of the board to levy an annual tax upon all property within the district, for the purpose of maintaining such diking and drainage system. Such levy shall be made and the taxes collected in the manner now provided by law for the levying and collection of school district taxes. [L. '09, p. 809, § 31.]

§ 4392. [4213.] Rules and Regulations.

The board shall have power and authority to make rules and regulations for the purpose of carrying into effect any of the provisions of this chapter. [L. '09, p. 809, § 32.]

§ 4393. [4214.] Compensation of Commissioners—Vouchers for Expenses.

The members of the board shall receive as compensation the sum of five dollars per day for each day while engaged in the actual performance of their duties, and in addition thereto their actual incurred expenses in the performance of their duties: Provided, that the board may fix a different salary for the secretary thereof in lieu of the per diem. The salary and expenses shall be paid by the treasurer of the fund, upon orders made by the board. Each member of the board must before being paid for expenses, take vouchers therefor from the person or persons to whom the particular amount was paid, and must also make affidavit that the amounts were necessarily incurred and expended in the performance of his duties. [L. '09, p. 809, § 33.]

CHAPTER V.

PRIVATE DITCHES.

§ 4394. [4215.] Private Parties Authorized to Establish Ditches.

The owner or owners of any land which requires drainage and which is so situated that it is necessary to the proper drainage of the same to construct ditches or drains across the lands of others, may obtain the location and establishment of such ditch or drain across such lands, in the manner provided in this act. [L. '99, p. 239, § 1.]

“Act,” in this section, refers to §§ 4394—4404.

§ 4395. [4216.] Petition, Contents of.

The person or persons desiring the location and establishment of such ditch or drain may file in the superior court of the county in which the lands sought to be appropriated are situated, a petition showing the name of the petitioner or petitioners; a description of the lands to [be] benefited, and of those over which the ditch would pass, and setting forth the name of every owner, encumbrancer, or other person or party interested in the lands over which said ditch would pass, or any part thereof, so far as the same can be ascertained from the public records of the county. Such petition shall also show the object for which the lands are sought to be appropriated, the necessity for the appropria-

tion and the length, width and depth of the ditch on the lands of each separate owner, with a description of said ditch, as nearly as practicable; and shall also set out the estimated damage to the lands of each owner to be crossed by such ditch. [L. '99, p. 239, § 2.]

§ 4396. [4217.] Petitioner must File Cost Bond.

The petitioner, or someone in his behalf, shall enter into a bond in the penal sum of one hundred dollars, with two or more sureties, to be approved by the clerk of said court, payable to the state of Washington, conditioned that the petitioner or petitioners will pay all costs and expenses incurred in the proceeding; which said bond shall be filed with the petition. [L. '99, p. 240, § 3.]

§ 4397. [4218.] Viewers—Appointment and Duties.

Upon the filing of said petition the court shall appoint three viewers, two of whom shall be resident freeholders of said county, and not interested in the result of the proceeding, and the other the county surveyor of the county in which the lands are situated (unless said county surveyor shall be a party in interest, in which case some other competent surveyor shall be appointed in his place who shall receive the same compensation as is allowed by law to county surveyors) who shall, upon a day to be fixed by the court, in the order appointing them, view the lands of the petitioner and the lands which said proposed ditch or drain is to cross, for the purpose of determining: First, whether there is a necessity for the establishment of a ditch; and, second, the most practicable route for said ditch to run, if the same be necessary. The clerk of said court shall furnish to said viewers a certified copy of the order appointing them, which shall warrant them entering upon the lands described in the petition for the purpose of viewing the same. [L. '99, p. 240, § 4.]

§ 4398. [4219.] Report of Viewers and Plat to be Filed.

When said viewers shall have made said examination they shall, within ten days after the day appointed by the court for such examination, report to the court, in writing, (filing the same with the clerk of said court) their decision as to the necessity for said ditch and if they deem such ditch necessary, then the county surveyor shall file with such report an accurate description and plat of the proposed ditch, showing the course thereof as recommended by the viewers. The viewers shall also estimate the amount of damage which each separate owner would suffer by reason of the construction thereof. [L. '99, p. 241, § 5.]

§ 4399. [4220.] Summons to Land Owners—Contents and Form.

Upon the filing of the report of the viewers aforesaid, a summons shall be issued in the same manner as summonses are issued in civil action, and served upon each person owning or interested in any lands over which the proposed ditch or drain will pass. Said summons must inform the person to whom it is directed of the appointment and report of the viewers; a description of the land over which said ditch will pass of which such person is the owner, or in which he has an interest; the

width and depth of said proposed ditch, and the distance which it traverses said land, also an accurate description of the course thereof. It must also show the amount of damages to said land as estimated by said viewers; and that unless the person so summoned appears and files objections to the report of the viewers, within twenty days after the service of said summons upon him, exclusive of the day of service, the same will be approved by the court, which summons may be in the following form:

In the Superior Court of the State of Washington, for — County.

In the Matter of the Application of — for a Private Ditch.
The State of Washington to —.

Whereas, on the — day of —, 19—, — filed his petition in the above-entitled court praying that a private ditch or drain be established across the following described lands, to wit: — for the purpose of draining certain lands belonging to said —, and whereas, on the — day of —, 19—, Messrs. — and — with — county surveyor of — county, were appointed to view said premises in the manner provided by law, and said viewers having, on the — day of —, 19—, filed their report in this court, finding in favor of said ditch and locating the same upon the following course: — for a distance of — upon said land, and of a width of — feet and a depth of — feet; and they further find that said land will be damaged by the establishing and construction of said ditch in the sum of \$—: Now therefore, you are hereby summoned to appear within twenty days after the service of this summons, exclusive of the day of service, and file your objections to said petition and the report of said viewers, with this court; and in case of your failure so to do, said report will be approved and said petition granted.

— —,
Plaintiff's Attorney.
P. O. Address, —.

[L. '99, p. 241, § 6.]

§ 4400. [4221.] Service by Publication.

In case any person interested in any of the lands to be crossed by such ditch, as aforesaid, does not reside in the county, or cannot be found therein, or conceals himself so that personal service cannot be had upon him, upon proof thereof being made satisfactorily to appear to said court, said summons may be served by publication, in the same manner and with like effect as is done in civil actions: Provided, that no other or different form of summons shall be required for publication than is required for personal service. [L. '99, p. 242, § 7.]

§ 4401. [4222.] Hearing—Procedure.

Upon the expiration of the time within which exceptions may be filed to the report of the viewers aforesaid, the court shall set a day upon which the petition and the report of the viewers shall be heard and considered by the court. In case exceptions have been filed by any party or parties, which exceptions must have been served upon the peti-

tioner or petitioners prior to the hearing, the court shall hear evidence in regard thereto, and without a jury, pass upon the questions of the necessity for said ditch and the location thereof. If the court finds that such ditch is necessary, and the route selected is the best and most practicable, and that the compensation allowed by the viewers is just and reasonable, then the court shall file his findings to this effect and cause an order to be entered approving the petition and report of the viewers. If, within twenty days from the filing of the findings of facts aforesaid, the petitioner or petitioners shall pay into court all the costs and sums awarded to the owner or owners of the land over which said ditch shall pass, a decree shall be entered establishing the same: Provided, if any party shall except to the amount of damages found by the viewers, then the amount of such damages shall be tried by jury, unless a jury trial be waived by the parties, in which case trial thereof may be had by the court. Such trial shall be at a regular term of said court, at which a jury shall be present, and shall be conducted and verdict rendered in the same manner as in civil actions: Provided further, that it shall not be incumbent on the petitioner to pay into court the amount of the award or awards of said jury, until within twenty days after said verdict shall have been rendered and entered. [L. '99, p. 242, § 8.]

§ 4402. [4223.] Appeal.

No appeal shall be taken from the finding of the court as to the necessity of such ditch or as to the route thereof until after final judgment or decree is entered: Provided, that exceptions shall be taken and allowed to such orders at the time that they are made and appeal from such orders and from the award of damages shall be taken at the same time. All the provisions of the law in regard to appeals in civil actions shall apply to the proceedings provided for in this act. [L. '99, p. 243, § 9.]

"Act," in this section, refers to §§ 4394—4404.

§ 4403. [4224.] Compensation of Viewers—Costs.

The viewers appointed under the provisions of this act shall receive the sum of two dollars per day for their services, and the county surveyor shall receive such compensation as is allowed by law for like services, the same to be taxed as costs and paid by the petitioner. All other costs shall be the same as in civil actions in the superior court. [L. '99, p. 243, § 10.]

"Act," in this section refers to §§ 4394—4404.

§ 4404. [4225.] Report Rejected—New Viewers Appointed.

In case the court should not for any reason adopt the report of the viewers, or the same should be deemed insufficient for any reason, the court may appoint other viewers whose duties shall be the same as the duties of the viewers first appointed. [L. '99, p. 243, § 11.]

CHAPTER VI.

DRAINAGE AND DIKING IMPROVEMENT SYSTEMS.

§ 4405. [4226-1.*] Private Drainage Systems—Parties Entitled.

Whenever one or more persons whose land will be benefited thereby shall desire to have improvements constructed for the drainage or protection from overflow, or both, of any continuous body of lands situated in the same county, whether wholly or partly within the limits of any incorporated city or town, proceedings for the construction of such improvements may be had as provided in this act. [L. '21, p. 646, § 1. Cf. L. '13, p. 611, § 1; L. '17, p. 521, § 12. Former act: L. '01, p. 106.]

"Act" in this section refers to §§ 4405 to 4448.

Cited in 82 Wash. 440—442; 88 Wash. 255; 94 Wash. 580; 99 Wash. 224; 103 Wash. 481; 107 Wash. 265; 109 Wash. 511.

A county is liable for damages caused by its negligence in the construction of a drainage ditch pursuant to this chapter: *Linn v. Walla Walla County*, 99 Wash. 224, 169 Pac. 323.

This act is not indefinite and uncertain in failing to provide in terms for the making of a final order establishing the district, inasmuch as the district is established not later than when the county commissioners decide, after a hearing, upon the nature and extent of the pro-

posed improvement: *Foster v. Commissioners of Cowlitz County*, 100 Wash. 502, 171 Pac. 539.

A diking district organized under this act is not an "association, company or corporation" within Constitution, Article VIII, section 7, forbidding a county to loan money or credit thereto; and hence that act requiring county commissioners to exercise certain powers and perform certain duties with reference to diking districts does not violate such constitutional provision: *Foster v. County Commissioners of Cowlitz County*, 100 Wash. 502, 171 Pac. 539.

§ 4406. [4226-2.*] Definition of Terms Used.

"System," "improvement," and "system of improvement," as used in this act, shall be held to include a dike, ditch, drain or water course, and any side, lateral, spur or branch dike, ditch, drain or water course, or other structure, necessary to secure the object of the improvement. Any number of dikes, ditches, drains or water courses, with their laterals, spurs, and branches, with separate outlets, may constitute one system for the protection or reclamation of the land included in any district. But no system shall be established or constructed unless sufficient outlet or outlets are provided for any drainage of such district. Such outlet or outlets may be either within or without the boundaries of the improvement district hereinafter provided for. Any natural water course may be improved in accordance with the provisions of this act.

"Damages," as used in this act, shall be held to include the value of property taken and injury to property not taken, or either, as the case may be. "Property benefited" and "property damaged," as used in this act, shall be held to include land, platted or unplatted, whether subject to or exempt from general taxation, and roads other than public roads. "Public roads," as used in this act, shall be held to include state and county roads, streets, alleys and other public places; and "other roads," as used in this act, shall be held to include railroads, street railroads, interurban railroads, logging roads, tramways and private roads, and the rights of way, roadbeds and tracks thereof.

"Public utilities," as used in this act, shall be held to include irrigation, power and other canals, flumes, conduits and ditches, telegraph,

telephone and electric transmission and pole lines, and oil, gas and other pipe lines. "County engineer," as used in this act, shall be held to include any engineer specially employed by the board of county commissioners or the board of supervisors to report upon and prepare plans for or to superintend the construction of a system or the maintenance thereof under the provisions of this act. "Prosecuting attorney," as used in this act, shall be held to include any attorney specially employed by the board of county commissioners in connection with the carrying out of the provisions of this act to advise or carry on proceedings in court with reference to a system of improvement initiated and constructed under the provisions of this act. [L. '17, p. 521, § 13; L. '13, p. 612, § 2.]

"Act" refers to this chapter, to and including § 4448.

§ 4407. [4226-3.*] Petition for System—Bond to Secure Expenses.

Application for any such improvement shall be made by petition to the board of county commissioners of the county in which such proposed system of improvement is located signed by one or more of the owners of property which will be benefited thereby. The petition shall be filed with the clerk of the board of county commissioners, and shall set forth the necessity for the improvement, and shall describe with reasonable certainty the location, route and termini thereof; and there shall be filed therewith a bond payable to the county, with good and sufficient surety, to be approved by the board of county commissioners, in a sum of not less than two hundred dollars (\$200), conditioned for the payment of all expenses which may have been incurred in the proceedings, in case the prayer of the petition be not granted or the petition be dismissed for any cause. If at any time it shall appear to the board of county commissioners that the bond filed with the petition is not sufficient in amount to cover the expenses which will be necessarily incurred in the proceedings, the board may order an additional bond in such an amount as it shall direct to be given. [L. '17, p. 522, § 14; L. '13, p. 613, § 3.]

Cited in 100 Wash. 503.

§ 4408. [4226-4.*] Report by County Engineer—Notice of Hearing—Duties of County Board and State Reclamation Board.

Upon the filing of the petition and the approval of the bond, the clerk of the board shall deliver a copy of said petition to the county engineer, who shall at once proceed to view the line and location of the proposed improvement and the property to be affected thereby and determine whether the improvement is in his opinion necessary or will be conducive to public health, convenience or welfare and whether in his opinion the location and route described are the best for the proposed improvement, what, if any, part of the proposed system of improvement mentioned in the petition should in his judgment be omitted, and what, if any, additions should be added thereto or changes made therein, and shall report to and file his findings in writing with the board of county commissioners: Provided, that if the lands to be benefited by said improvement are described in said petition and comprise three thousand (3,000) acres or more, the board of county commission-

ers, may, in its discretion, after a hearing previously had, as hereinafter provided, if it is so requested in said petition, dispense with the investigation by the county engineer and ask the state reclamation board to make such surveys and investigation of the lands involved in the proposed improvement as said reclamation board may deem advisable for the purpose of determining the feasibility of said improvement and the best means of accomplishing the same, and said reclamation board shall have the power in its discretion to make such survey and investigation and to report to and file its findings in writing with the board of county commissioners, which report shall contain at least all the findings of the county engineer, aforesaid, and shall have the same effect. In the event that said survey, investigation and report are made by or under the supervision of the state reclamation board the petitioners shall not be required to furnish the bond provided for in section 4407.

(a) Upon receipt of said petition the county board shall send a copy of the same to the state reclamation board and ask for an estimate of the total cost of such survey, investigation and report, which the state board shall in its discretion make out and file with the county board. The county board shall thereupon by resolution fix a time and place for a hearing on same and shall cause a thirty (30) day notice of said hearing to be given, by posting a copy of the same in a conspicuous public place in each voting precinct or fraction thereof included in the area of lands to be benefited by said improvement and by publishing the same in a newspaper of general circulation in the proposed district in three successive weekly issues of said paper, the date of the first publication being at least thirty (30) days before the day of hearing. Said notice shall contain a copy of the petition and of the estimate of expense, shall name the time and place of hearing, shall state that the expense of the survey and investigation contemplated in the petition will be charged against the lands described therein and shall require everyone interested to appear at said time and place and show cause in writing, if any he has, why the prayer of the petition should not be granted.

(b) Upon the hearing of such petition the board shall determine whether such survey and investigation should be made and whether any or all the lands described in said petition, or any additional ones, should bear their proportional expense of said survey and investigation and may adjourn such hearing from time to time not exceeding ninety (90) days in all: Provided, that no additional lands shall be made to bear their proportional expense of said survey and investigation without first giving the notice to all parties interested, as hereinabove provided: Provided, that in no event shall the total cost of such survey, investigation and report exceed the amount stated in the estimate of the state reclamation board more than fifty (50) per cent and any obligations contracted in excess of such maximum shall be void. The determination of the board shall be by resolution and shall be final and conclusive upon all persons except for fraud or lack of jurisdiction.

(c). If the board of county commissioners shall determine in favor of said survey and examination, it shall enter into a contract with the state reclamation board to do such work, which shall be done at actual cost, from any moneys in the state reclamation revolving fund. As a part of

its report said reclamation board shall include an itemized statement under oath of the expenses that have been incurred in the making of said investigation, surveys and report aforesaid and the board of county commissioners shall thereupon cause a copy of such statement of expense together with a notice naming a time and place when and where said statement will be brought before the board for hearing and determination, to be published in a newspaper of general circulation published in the county two successive weeks prior to the date of said hearing. At the time of such hearing or at such other time, not exceeding thirty (30) days in all, to which the same may be continued or adjourned by said county commissioners, the board shall proceed to examine said statement, hear testimony, if offered, and shall make and enter an order upon the minutes of said meeting approving said statement or so much thereof as shall be deemed correct.

(d) Upon the approval of said statement of expense, the board of county commissioners shall by resolution apportion the same among the lands included in proportion to acreage, each acre, or fraction thereof, of the owners, bearing the same amount, and assess, levy and distribute such apportioned expense as a tax against said lands to be paid as a part of the general county and state tax against said lands at the same times, with the same penalties attached for delinquencies, and to be collected by the same agencies, as said general taxes. The county treasurer shall credit all collections of the same to the current expense fund of the county: Provided, that in no event shall the county board have power to apportion, assess, levy and distribute the expenses of any survey, investigation and report as taxes under the provisions of this section unless said survey, investigation and report has been made or shall have been made by or under the supervision of the state reclamation board.

(e) At the time of the approval of said statement of expenses, the board of county commissioners shall direct the auditor to issue a warrant against the county current expense fund payable to the state reclamation board for the amount of said expenses, which warrant shall be issued forthwith. All such sums so paid on account of such expenses shall be credited to the state reclamation revolving fund.

(f) If the report of the state reclamation board is in favor of said improvement, the board of county commissioners shall proceed as directed in section 4411 and following sections: Provided, that nothing herein contained shall be construed as preventing the county commissioners, or the improvement district so organized, as the case may be, from making such further agreement, as it may determine, with the state reclamation board for the construction or supervision of said contemplated improvement, under the provisions of the state reclamation act. [L. '21, p. 647, § 2; L. '17, p. 523, § 15; L. '13, p. 613, § 4.]

Cited in 100 Wash. 503.

"And following sections," refers to the act of 1917, practically all of the balance of this chapter.

§ 4409. Ditches Along Highway, etc.

That drainage ditches of any drainage improvement district heretofore or hereafter created may be constructed and maintained along any public

highway, street, alley or road within the limits of any drainage district. [L. '21, p. 651, § 3.]

§ 4410. [4226-5.] Adverse Report.

If the report of the county engineer shall be against the improvement, the board of county commissioners shall dismiss the petition at the cost of the petitioners, and shall cause an itemized bill of all the costs to be made up by the clerk for its examination and approval, including the per diem of the county engineer, and all other costs necessarily incurred except the fees of the clerk and the compensation of the county commissioners, and if such costs are not paid by the petitioners on demand they shall be recovered in an action on the bond. [L. '13, p. 614, § 5.]

§ 4411. [4226-6.*] Favorable Report—Survey and Plat.

If the report of the county engineer shall be in favor of said improvement, the board of county commissioners shall give the improvement district a number, being its serial number in the order of time of its formation among the improvement districts of the county formed under this act, beginning with the next number following the last serial number of any drainage or diking district organized and existing in said county, if any, and thereafter such district shall be designated as Drainage (or Diking) Improvement District Number — of — county, and the board shall cause to be entered on its journal an order directing the county engineer to go upon the lines described in the petition, or as changed by him in his report, and survey, and take levels on the same and set a stake at every hundred feet, numbering the same consecutively, and note the intersection of property lines and boundaries, township, city and county lines, and road crossings, and make such other investigations as he may deem necessary, and make a report, profile and plat of the same; also to make an estimate of the cost of construction of such system itemized so as to be reasonably specific as to the various parts thereof: Provided, that such estimate of the cost shall be held to be preliminary only and shall not be binding as a limit on the amount that may be expended in constructing such system. The clerk of the board shall prepare and keep a special index in which he shall note all proceedings had and all papers filed in connection with such improvement district. [L. '17, p. 523, § 16; L. '13, p. 614, § 6.]

Cited in 100 Wash. 504.

§ 4412. [4226-7.*] Schedule of Property Damaged and Benefited.

The board shall also by order entered on the journal, direct the county engineer to make and return a schedule and estimate of all property that will be damaged, or both damaged and benefited by the proposed improvement, and to estimate and report the total number of acres that will be benefited by the proposed improvement and to specify the manner in which the proposed improvement is to be made and the number, kind, location and dimensions of all waterways, ditches, dikes, outlets, flood-gates, and all other artificial appliances, bridges and crossings. Schedules of property to be damaged or damaged and benefited shall be arranged in parallel columns, with appropriate headings, and shall show the de-

scription of the property, and if land, give the legal subdivision, section, township and range, and number of acres; and if platted, the name of the plat and lot and block number; the name of the owner or owners or reputed owner or owners; the estimated gross damages that will be sustained by reason of the proposed improvement; the estimated gross benefits that will accrue; and the right-hand column of the schedule shall be sufficiently wide for the signature of the owner, and shall bear the heading: "I, the undersigned owner of the property opposite which I have signed my name, accept and agree to the estimated amount of benefits and damages that will accrue to my property by reason of the proposed improvement." [L. '17, p. 524, § 17; L. '13, p. 615, § 7.]

Cited in 100 Wash. 504.

§ 4413. [4226-8.*] Plats and Profile to Show Details—Costs.

The plat provided for in section 4411 shall be drawn upon a scale sufficiently large to show all the meanderings of the proposed improvement, and shall distinctly show the boundaries of each lot or tract of land and the location of each public or other road and sewer system to be benefited thereby, and so far as known, the name of the owner of each lot or tract of land, and each public or other road and sewer system affected, the distance in feet through each tract or parcel of land crossed by the proposed improvement, together with such other matters as the county engineer shall deem material, and the profile shall show the surface, and grade lines and the gradient fixed. The county engineer shall make and file with his report an itemized bill of costs incurred in the proper discharge of his duties under this act and the preceding sections, and shall report the same to the clerk of the board of county commissioners within ten days after the completion of the survey. [L. '17, p. 525, § 18; L. '13, p. 615, § 8.]

§ 4414. [4226-9.*] Hearing on Engineer's Report—Notice.

Upon the filing of the report of the county engineer, the board of county commissioners shall immediately fix a date for a hearing on such report, and the clerk of the board shall give notice thereof by publication for at least once a week for three successive weeks, in the official newspaper of the county, and also, if so directed by the board, in one other newspaper to be designated by the board, published in or near the proposed improvement district and of general circulation therein. Said notice shall fix the time and place for said hearing and shall specify the territory to be included in the proposed improvement district, both by boundaries and also by sections or fractions thereof. Such notice shall also designate with reasonable certainty the location, route and termini of the proposed improvement, and shall state that the plat, report and schedule on file in the office of the board of county commissioners show the property to be taken or damaged, and the amount of damages proposed to be allowed therefor. The last publication of such notice shall be not less than seven nor more than fourteen days before the date of said hearing. Said hearing, and also the hearing hereinafter provided, for fixing the apportionment of the cost of said improvement, may either or both of them be held at a place other than the county seat, and more convenient to the lands

affected, if the board of county commissioners shall so order. The county engineer shall attend and have at such hearing his plats, plans, reports and schedules in relation to the proposed improvement, and the clerk of the board of county commissioners shall also attend and have at such hearing all petitions, claims, objections and other papers and documents relating to said improvement on file in his office. [L. '17, p. 525, § 19; L. '13, p. 616, § 9.]

Cited in 100 Wash. 505.

§ 4415. [4226-10.*] Hearing—Change of Plans, Estimates and District.

On the date set for said hearing the board of county commissioners shall meet at the place designated in the notice, and if it appear that due notice of such hearing has been given, shall proceed with the hearing on the report of the county engineer, and any objections thereto, and may adjourn said hearing from time to time and from place to place. At said hearing the board shall hear all pertinent evidence, including any evidence offered concerning the probable cost of the system and the probable benefits to accrue therefrom, and may change, add to or modify the plans for such system of improvement and the boundaries of the improvement district, and change the estimate of damages and benefits in any case, and may review, change and modify any of the findings and estimates of the county engineer, and may, in its discretion, employ another engineer to make separate findings on any or all of the matters hereinbefore required to be included in the report of the county engineer, and may adjourn said hearing and await such report; or may discontinue proceedings in regard to the proposed improvement, at the cost of the petitioners therefor, if the board shall determine that the construction of the proposed improvement is not warranted by the benefits to be derived therefrom. In case the board shall determine to enlarge the boundaries of the district, a date shall be fixed for a new hearing and notice therefor shall be given and such hearing shall be held as provided for the hearing on the report of the county engineer. In case any change in the plans of the proposed improvement is made at said hearing, and such change will cause additional damage to any property, or will damage any property not damaged under the original plans, the county engineer shall prepare and file a schedule, showing the estimated damages and benefits under such changed plans, and notice of the filing of such schedule shall be served upon the owners of the properties affected, and settlements made as hereinafter provided. The board of county commissioners may at said meeting appoint the board of appraisers provided for in section 4430. [L. '17, p. 526, § 20; L. '13, p. 617, § 10.]

Cited in 100 Wash. 505, 513, 514; 109 Wash. 514.

The county commissioners cannot charge the costs of engineer's expense which was not incurred in connection with the plans substantially as recommended or which were incurred in a plan which was a substantial abandonment of that originally planned and petitioned for; but the district finally formed may be charged with such part of the costs as was necessarily incurred in the preparation of the

district finally adopted: *Shoultes v. Quast*, 109 Wash. 510, 187 Pac. 356.

In the establishment of a drainage district it is proper to allow a reasonable attorney's fee for special attorneys employed whose services were beneficial to the district as finally created: *Id.*

Where in the establishment of a drainage district, two ditches were more feasible than one, as originally planned, it is proper to allow the cost of ditch number two: *Id.*

This section does not authorize changes in the boundaries or plans so as to require a new notice to the owners: Foster v.

Commissioners of Cowlitz County, 130 Wash. 502, 171 Pac. 539.

§ 4416. [4226-11.] Deeds to be Executed—Consideration.

In case any owner of property to be damaged by the proposed improvement shall agree to accept the damages estimated by the engineer, or as fixed by the board of county commissioners, the board shall direct and the clerk of the board shall prepare a deed to be approved by the county engineer and the prosecuting attorney, conveying to the county for the benefit of the proposed district the property to be taken, and the right to damage property not taken. If the damages agreed upon are equaled or exceeded by the agreed estimated benefits, the grantors in the deed shall execute and deliver the same without consideration other than the right to have the damages offset against the benefits in the apportionment of the cost of the improvement as hereinafter provided. If the damages agreed upon are damages to property not benefited, or if such damages exceed the agreed benefits, the grantors in the deed shall execute and deliver the same upon the receipt of a warrant drawn by the county auditor under the direction of the board of county commissioners upon the current expense fund of the county, for the amount of damages or the amount of excess of damages over benefits, as the case may be. No such deed shall be accepted, either with or without consideration, until the title conveyed thereby has been approved by the prosecuting attorney. [L. '13, p. 618, § 11.]

§ 4417. [4226-12.] Agent to Secure Deeds.

If at the conclusion of the hearing provided for in section 4415 it shall appear to the board of county commissioners that the owner of any property to be damaged by the proposed improvements has not accepted and agreed to the damages estimated by the engineer or fixed by the board, the board may, in its discretion, appoint an agent to secure acceptances and deeds from such owners and shall, within a reasonable time, direct the prosecuting attorney of the county to institute proceedings in the superior court of the county in which the property affected is located, for the determination of the damages to be sustained and the condemnation of any property the title to which or the right to damage which has not been acquired, and shall direct the clerk of the board to furnish the attorney with a certified copy of such proceedings of the board as he shall require. [L. '13, p. 618, § 12.]

§ 4418. [4226-13.*] Eminent Domain by County—Consolidation of Actions.

For the purpose of taking or damaging property for the purposes of this act, counties shall have and exercise the power of eminent domain in behalf of the proposed improvement district, and the mode of procedure therefor shall be as provided by law for the condemnation of lands by counties for public highways: Provided, that the county, at its option, pursuant to resolution to that end duly passed by the board of county commissioners, may unite in a single action, proceedings for the acquisition and condemnation of different tracts of land required for rights of

way which are held by separate owners. The court may, on motion of any party, consolidate into a single action separate suits for the condemnation of different tracts of land held by separate owners whenever from motives of economy or the expediting of business it appears advisable to do so. In such cases the jury shall render separate verdicts for the different tracts of land. [L. '17, p. 527, § 21. Cf. L. '13, p. 619, § 13.]

Cited in 82 Wash. 440—442.

§ 4419. [4226-14.] Benefits Offset.

The jury in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: Provided, that the jury, in determining the amount of damages, shall take into consideration the benefits, if any, that will accrue to the property damaged by reason of the proposed improvement, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of benefits that will accrue. If it shall appear by the verdict of the jury that the gross damages exceed the gross benefits, judgment shall be entered against the county, and in favor of the owner or owners of the property damaged, in the amount of the excess damages over the benefits, and for costs of the proceedings, and upon payment of the judgment into the registry of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. If it shall appear by the verdict that the gross benefits as found by the jury equal or exceed the gross damages, judgment shall be entered against the county and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. The verdict and findings of the jury as to damages and benefits shall be binding upon the board appointed to apportion the cost of the improvement upon the property benefited as hereinafter provided. [L. '13, p. 619, § 14.]

Cited in 82 Wash. 440—442.

The words "for the benefit of the improvement district" mean no more than that the county takes the title to be used for ditches of the irrigation district, and it is proper to offset the benefits accruing to the property owners: *Pierce County v. Thompson*, 82 Wash. 440, 144 Pac. 704.

The measure of damages in condemnation of a right of way for a drainage ditch is the value of the property taken, with all damages to the remainder: *Yakima County v. Olson*, 94 Wash. 579, 162 Pac. 987.

§ 4420. [4226-15.] Warrant for Damages.

Upon the settlement of the claims for damages as provided in section 4416. or upon the entry of judgment as provided in section 4419, the county auditor shall, under the direction of the board of county commissioners, draw his warrant upon the county treasurer for the payment of the amount of damages agreed to or the amount of the judgment, as the case may be, to be paid out of the current expense fund of the county. [L. '13, p. 620, § 15.]

§ 4421. [4226-16.*] Construction of System Authorized.

When the board of county commissioners shall have finally determined and fixed the route and plans for the proposed system of improvement and the boundaries of the improvement district, and when it shall appear that the damages for property to be taken or damaged have been settled in the manner hereinabove provided, or when it shall appear that such damages have been settled as to a particular portion of the proposed improvement, and that construction of such portion of such proposed improvement is feasible, thereupon such system of improvement or such portion thereof, as the case may be, shall be constructed in the manner hereinafter provided. [L. '17, p. 528, § 22; L. '13, p. 620, § 16.]

§ 4422. [4226-17.*] Assessment of Benefits—Payment in Bonds or Warrants—Installments—Call for Bonds.

The cost of improvement shall be paid by assessment upon the property benefited, said assessment to be levied and apportioned as hereinafter prescribed. At the hearing provided for in section 4415, the board of county commissioners shall determine in what manner and within how many years said assessment shall be paid, and shall also at such hearing determine whether the evidence of indebtedness for the cost of said improvement shall be bonds or warrants. If bonds, it shall fix either ten or fifteen annual installments for the payment of said assessment. If warrants, it shall fix not to exceed five annual installments for the payment of said assessment. In case bonds are to be issued and the board shall determine on ten annual installments for the payment of said assessment, the installments thereof shall become due and collectible as follows:

For the 1st year.....	5%
For the 2d year.....	5%
For the 3d year.....	5%
For the 4th year.....	10%
For the 5th year.....	10%
For the 6th year.....	10%
For the 7th year.....	10%
For the 8th year.....	15%
For the 9th year.....	15%
For the 10th year.....	15%

In case bonds are to be issued and the board shall determine on fifteen annual installments for the payment of said assessment, the installments thereof shall become due and collectible as follows:

For the 1st year.....	3%
For the 2d year.....	3%
For the 3d year.....	3%
For the 4th year.....	3%
For the 5th year.....	3%
For the 6th year.....	5%
For the 7th year.....	5%
For the 8th year.....	5%
For each succeeding year.....	10%

In case warrants are to be issued, no annual installment shall be less than one-tenth nor more than one-half of the entire assessment.

In the event that the entire assessment upon any single tract or parcel of land, or contiguous tracts or groups of tracts belonging to the same owner is twenty-five dollars (\$25.00) or less, such assessment shall become due and payable at the time of the first general taxes next after the date of the levy shall become due, and the terms of this act relating to the payment of assessments in installments shall not apply to such assessments. The bonds shall be of such denomination, not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), as the county commissioners shall by resolution prescribe. The interest thereon shall be payable semi-annually and the bonds shall be numbered consecutively, be coupon in form, and shall recite that they are secured to be paid by assessments upon the property of drainage (or diking) improvement district number — of — county, and that they are not a general obligation of such county. They shall be payable in their serial order, on any semi-annual coupon date, on the call of the treasurer whenever there shall be sufficient money in the bond redemption fund of the district against which they are issued, over and above that necessary for the payment of interest on all outstanding bonds, to pay the principal of one or more bonds at the next coupon date: Provided, that the proportionate amount of the entire issue of bonds called in the respective years shall not be in excess of the following bond redemption schedules:

First, in case the assessment is payable in ten annual installments:

For the 1st year.....	10%
For the 2d year.....	10%
For the 3d year.....	10%
For the 4th year.....	10%
For the 5th year.....	10%
For the 6th year.....	10%
For the 7th year.....	10%
For the 8th year.....	15%
For the 9th year.....	15%

Second, in case the assessment is payable in fifteen annual installments:

For the 1st year.....	10%
For the 2d year.....	5%
For the 3d year.....	5%
For the 4th year.....	5%
For the 5th year.....	5%
For the 6th year.....	5%
For the 7th year.....	5%
For the 8th year.....	5%
For the 9th year.....	10%
For the 10th year.....	10%
For the 11th year.....	10%
For the 12th year.....	10%
For the 13th year.....	10%
For the 14th year.....	5%

The treasurer shall give notice of such call by publication in the county official newspaper once each week for two consecutive weeks, the

first publication of which notice shall be at least fifteen days prior to the next coupon date, stating that bonds No. — (giving their serial number or numbers) will be paid on the date the next interest coupons on said bonds shall become due, and interest upon such bonds shall thereupon cease upon such date. Each warrant and bond shall bear the date of its issuance and recite that it is payable on or before the first day of January of the third year after the last installment of the assessment upon which it is based shall become due. Each bond, shall state on its face that bonds of the district cannot be called for payment at an earlier maturity than in accordance with the schedule therefor applicable thereto as herein provided, which schedule shall be printed on the face of the bonds. Each warrant and bond shall be signed by a majority of the board of county commissioners and attested by the county auditor under his seal, and each coupon shall have printed thereon a facsimile of the signature of such officers. Interest coupon No. 1 on such bonds shall be for the amount of interest due from the date of the issuance of said bonds to the first day of July in the year in which the first installment of the assessment becomes due and payable. The county treasurer shall register said bonds and warrants before the issuance thereof in a book kept for that purpose, and shall certify on each thereof under his seal that it has been so registered, and that the signatures thereon are the genuine signatures of said county commissioners and the county auditor, and that the seal attached is the seal of the county auditor. Neither bonds nor warrants shall be issued until after the expiration of the thirty days from the first publication of the notice given by the treasurer as provided in section 4435 and shall not be issued in any amount in excess of that portion of the assessment remaining unpaid after the expiration of such thirty-day period. [L. '17, p. 528, § 23; L. '13, p. 620, § 17.]

Cited in 100 Wash. 506.

§ 4423. [4226-18.*] Sale of Bonds and Warrants.

The board of county commissioners shall offer for sale the warrants and bonds or any part thereof, issued under the provisions of this act, and pay the proceeds thereof into the construction fund. Such sale shall be at public offering and under such rules and regulations and on such notice as they may determine, and the commissioners may accept the highest and best bid for such bonds or warrants received at such offering, or may reject any or all bids received. Any warrants or bonds issued under the provisions of this act or such portions thereof as shall remain unsold or undisposed of may be issued to the contractor constructing the improvement or any part thereof in payment therefor, and in case the improvement or any part thereof shall be constructed by the board of supervisors as in this act provided, may be issued in payment for work, labor and material performed and furnished therefor. [L. '17, p. 532, § 24; L. '13, p. 622, § 18.]

§ 4424. [4226-19.*] Elections—Notice.

Upon the determination by the board of county commissioners to proceed with the work of construction, said board shall order an election to be held in some place within the district to be designated by the

board, and shall appoint an election board to consist of one inspector and two judges, who shall qualify in like manner and receive like compensation as election officers at general elections. Notice of said election shall be given by the clerk of the board of county commissioners by publication once a week for two consecutive weeks in a newspaper to be designated by the board and of general circulation in the district, the last of which publications shall be not less than seven nor more than fourteen days prior to the date of said election, and such notice shall also be posted by the sheriff of the county not less than fourteen days prior to the date of said election, in three of the most public places in the district. At such election the polls shall be open from 1 o'clock P. M. until 7 o'clock P. M. All electors of the state owning land in the district shall be entitled to vote at said election and at the annual elections hereinafter provided for. At such election the election officers may require any person offering to vote to take an oath that he is qualified to vote as in this act provided. An officer or agent of any corporation, organized under the laws of this state owning land in the district, duly authorized thereto in writing, may, upon filing with the election officers such written instrument of authority, cast a vote on behalf of such corporation. [L. '17, p. 532, § 25; L. '13, p. 622, § 19.]

Cited in 100 Wash. 507.

§ 4425. [4226-20.*] Board of Supervisors, Election, Powers and Duties.

At the election provided for in the preceding section, two qualified electors of the county owning land in the district shall be elected, who, with the county engineer, shall constitute the first board of supervisors of said district. The board of supervisors shall have charge of the construction and maintenance of the systems of improvement of the district, subject to the limitations hereinafter set forth, and may employ a superintendent of construction and maintenance, who may be one of the two elected supervisors. The elected supervisors may themselves labor or be employed upon the work of construction or maintenance, receiving for such labor the same compensation as other labor of like character shall receive. The engineer shall receive compensation for his services as supervisor in the maintenance of the system at the per diem rate allowed him for other work; and if he be a salaried officer such compensation shall be a charge against the district in favor of the engineer's office. The supervisor receiving the highest number of votes shall hold office until one year after the first annual election of the district and until his successor is elected and qualified, and the other supervisor shall hold office until his successor is elected at the first annual election and shall have qualified. The terms of the supervisors elected at the first election in any drainage or diking improvement district shall begin immediately upon the qualification of such officials. The terms of the supervisors elected at the annual election in such districts shall begin on the second Tuesday of January following their election; if any such official shall have failed to qualify by the 1st of February following his election his title to said office shall lapse and be forfeited and his place be subject to be filled by appointment by the county commissioners as hereinafter provided. Each elected supervisor shall qualify by taking

the usual oath of office of county and precinct officers and by giving a bond in an amount to be fixed and with surety to be approved by the board of county commissioners. The cost of furnishing such bond shall constitute a part of the cost of maintenance of such district. On the second Tuesday of December in the year following the election hereinabove provided for and annually thereafter, there shall be elected one supervisor of such district, who shall hold office for the term of two years and until his successor is elected and qualified. Such annual election shall be held upon the same notice and under the same regulations and in the same manner as the first election hereinabove provided for: Provided, that in any districts established under this act, or heretofore established under chapter LXVI of the Laws of 1901, not including any city or town and not more than two thousand acres in extent including all additions thereto, notice of annual elections of supervisors shall be given by posting only. In case a vacancy occur in said board from any cause, such vacancy shall be filled by appointment by the board of county commissioners of some qualified elector owning land in the district.

Whenever any district organized under the provisions of this act contains not more than five hundred acres, or whenever a petition shall be presented to the county commissioners signed by the owners of fifty per cent of the acreage of such district praying for such action, the county engineer shall act as supervisor of the district and thereafter no board of supervisors shall be elected for such district; and in such case the allowance of all claims against the district shall be by the county commissioners. [L. '21, p. 627, § 4. Cf. L. '17, p. 533, § 26; L. '13, p. 623, § 20.]

Cited in 100 Wash. 507.

§ 4426. [4226-21.] Elections in Districts Heretofore Organized.

In all drainage districts heretofore organized and now existing under the provisions of sections 4226 to 4250 of Remington and Ballinger's Annotated Codes and Statutes of Washington, in which an improvement or extension of the existing drainage system is initiated under the provisions of this act during the year 1913, an election of supervisors shall be held in the manner provided for the first election in drainage improvement districts organized under the provisions of this act, and in such districts in which no improvements are initiated during the year 1913, the first election shall be held on the second Tuesday in December, 1913. The supervisors of such districts now in office shall, unless sooner removed as provided by the act of 1901, hold office until their successors elected under this act shall have qualified. [L. '13, p. 624, § 21.]

The act referred to has been repealed.

§ 4427. [4226-22.*] Board to Make Improvement.

The said board of supervisors shall, immediately upon their election and qualification, begin the construction of such system of improvement and shall proceed with the construction thereof in accordance with the plans adopted therefor. In the construction of any system of drainage, construction shall be begun at the outlet or outlets thereof and at such other points as may be deemed advisable from time to time. In the

construction of any system of improvement the board of supervisors with the approval of the board of county commissioners may modify, curtail, enlarge or add to the original plans wherever the same may be found necessary or advisable in the course of actual construction. But such changes shall not in the aggregate increase the estimated cost of the entire system by more than one-fifth, and all additional or different rights of way required shall be obtained as hereinbefore prescribed. The board of county commissioners may in its discretion let the construction of said system or any portion thereof by contract, in the manner provided for letting contracts for the construction of county roads and bridges. The board of county commissioners may, upon such terms as may be agreed upon by the United States acting in pursuance of the National Reclamation Act approved June 17, 1902 (32 Statutes at Large 388), and the acts amendatory thereof and supplemental thereto, or in pursuance to any other act of congress appropriate to the purpose, contract for the construction of the system of improvement or any part thereof, by the United States, or in co-operation with the United States therein. In such case, no bond shall be required, and the work shall be done under the supervision and control of the proper officers of the United States.

Unless the work of construction is let by contract as hereinbefore provided, or for such part of such work as is not covered by contract, the board of supervisors shall employ such number of men as shall be necessary to successfully carry on the work of such construction, and shall give preference in such employment to persons owning land to be benefited by the improvement.

The provisions of this section shall not be construed as denying to the supervisors, in case the construction work is left in their hands, the power to enter into an agreement with any contractor to furnish labor, material, equipment and skilled supervision, the contractor to be compensated upon the basis of a specific sum, or upon a percentage of the cost of the work, the services of the contractor to cover the use of equipment and the value of skilled supervision: Provided, however, that there is retained in the said board by the contract the right of termination thereof at any time, on reasonable notice, and fixing in the said contract, or reserving in said board, the right to fix the rates of wages to be paid to the men employed in said work. The board of supervisors may also let contracts in such manner and on such notice as they deem advisable for items of construction not exceeding one thousand dollars in amount of expenditures. [L. '21, p. 629, § 5. Cf. L. '17, p. 534, § 27; L. '13, p. 624, § 22.]

§ 4428. [4226-23.*] Compensation of Board — Payment by Warrants — Priority.

The compensation of the board of supervisors, superintendent of construction, the board of appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the board of county commissioners in connection with the improvement, the maximum wages to be paid, and the maximum price of materials to be used, shall be fixed by the board of county commissioners. Each county commissioner,

except in counties of the first class, shall receive pay at the rate of four dollars (\$4.00) per day for the number of days he is engaged in the performance of any duty under this act, which sum shall be additional to his salary in case he receive an annual salary; and none of the statutory provisions limiting the number of days that a county commissioner shall draw pay for or limiting the number of sessions for attendance upon which he shall be entitled to mileage shall apply to any proceedings under this act. All officers and members of boards performing duties under this act shall receive in addition to their fees or salaries their actual necessary expenses incurred in the performance of their duties hereinunder. All costs of construction or maintenance done under the direction of the board of supervisors shall be paid upon vouchers or pay-rolls verified by two of the said supervisors. All costs of construction and all other expenses, fees and charges on account of such improvement shall be paid by warrants drawn by the county auditor upon the county treasurer upon the proper fund, and shall draw interest at such rate not to exceed eight per cent per annum as the board of county commissioners shall fix, until paid or called by the county treasurer as warrants of the county are called.

If at the hearing provided for in section 4415 the county commissioners shall determine that bonds shall be issued to pay the costs of the improvement or warrants sold to procure funds with which to pay such cost, as therein provided, temporary warrants may be issued for any part or all of such costs, expenses, fees, and charges, and shall be paid in cash upon the issuance and sale of such bonds, or shall be exchanged for an equal amount par value of such bonds. All such temporary warrants shall recite that they are temporary warrants and that they draw interest until called to be paid in cash or to be exchanged for bonds. All warrants issued under the provisions of this act and sold by the commissioners, or issued to any contractor and by him sold or hypothecated for a valuable consideration, shall be claims and liens against the fund against which they are drawn, prior and superior to any right, lien or claim of any surety upon any bond or bonds given to secure the performance of the contract or to secure the payment of persons who have performed work thereon, furnished materials therefor or provisions and supplies for the carrying on of the work. [L. '17, p. 536, § 28; L. '13, p. 625, § 23.]

§ 4429. [4226-24.*] Crossing Roads or Public Utilities—Adjustment of Costs.

Whenever in the progress of the construction of the system of improvement it shall become necessary to construct a portion of such system across any public or other road or public utility, the board of supervisors, or in case the work is being done by contract the board of county commissioners, shall serve notice in writing upon the public officers, corporation or person having charge of, or controlling or owning such road or public utility, as the case may be, of the present necessity of such crossing, giving the location, kind, dimensions and requirement thereof, for the purpose of the system of improvement, and stating a reasonable time, to be fixed by the county engineer, within which plans for such crossing must be filed for approval in case the public officers, corporation

or person controlling or owning such road or public utility desire to construct such crossing. As soon as convenient, within the time fixed in the notice, the public officers, corporation or person shall, if they desire to construct such crossing, prepare and submit to the county engineer for approval duplicate detailed plans and specifications for such crossing. Upon submission of such plans, the county engineer shall examine and may modify the same to meet the requirements of the system of improvement, and when such plans or modified plans are satisfactory to the county engineer he shall approve the same and return one thereof to the public officers, corporation or person submitting the same, and file the duplicate in his office, and shall notify such public officers, corporation or person of the time within which said crossing must be constructed. Upon the return of such approved plans, the public officers, corporation or person controlling such road or public utility shall, within the time fixed by the county engineer, construct such crossing in accordance with the approved plans, and shall thereafter maintain the same. In case such public officers, corporation or person controlling or owning such road or public utility shall fail to file plans for such crossing within the time prescribed in the notice, the board of supervisors or of county commissioners, as the case may be, shall proceed with the construction of such crossing in such manner as will cause no unnecessary injury to or interference with such road or public utility. The cost of construction and maintenance of only such crossings or such portion of such cost as would not have been necessary but for the construction of the system of improvement shall be a proper charge against the improvement district, and only so much of such cost as the board of county commissioners shall deem reasonable shall be allowed as a charge against the district in the case of crossings constructed by others than the district. The amount of costs of construction allowed as a charge against the district by the board of county commissioners shall be credited on the assessments against the property on which the crossing is constructed, and any excess over such assessment shall be paid out of the funds of the district. [L. '17, p. 537, § 29; L. '13, p. 626, § 24.]

§ 4430. [4226-25.*] Cost of Improvement—Apportionment.

When the improvement is fully completed and accepted by the county engineer, the clerk of the board shall compile and file with the board of county commissioners an itemized statement of the total cost of construction, including engineering and election expenses, the cost of publishing and posting notices, damages and costs allowed or awarded for property taken or damaged, including compensation of attorneys, including the costs of crossings constructed by the district and the cost of crossings constructed by others and allowed by the board of county commissioners, and including the sum paid or to be paid to the United States, and the discount, if any, on the bonds and warrants sold and including all other costs and expenses, including fees, per diem and necessary expenses of nonsalaried officers incurred in connection with the improvement, together with interest on such costs and expenses from the time when incurred at the rate of interest borne by the warrants issued for the costs of construction. There shall also be included in said statement, in case the county engineer is a salaried officer, a statement of

the services performed by him in connection with said improvement at a per diem of five dollars (\$5.00) per day and his necessary expenses, and a reasonable sum to be fixed by the board of county commissioners on account of the services rendered by the prosecuting attorney. Upon the filing of such statement of costs and expenses the board of county commissioners shall revise and correct the same if necessary and add thereto a reasonable sum which shall be not less than five per cent nor more than ten per cent of the total thereof in drainage improvement districts, and not less than ten per cent nor more than fifteen per cent of the total thereof in diking improvement districts, to cover possible errors in the statement or the apportionment hereinafter provided for, and the cost of such apportionment and other subsequent expenses, and interest on the costs of construction from the date of the statement until fifty days after the filing of the assessment-roll with the treasurer; and unless the same have been previously appointed, shall appoint a board of appraisers consisting of the county engineer and two other competent persons, to apportion the grand total as contained in said statement as hereinafter provided. Each member of said board of appraisers shall take, subscribe and file with the board of county commissioners an oath to faithfully and impartially perform his duties to the best of his ability in making said apportionment, and said board of appraisers shall proceed to carefully examine the system and the public and private property within the district and fairly, justly and equitably apportion the grand total cost of the improvement against the property and the county or counties, cities and towns within the district, in proportion to the benefits accruing thereto. [L. '17, p. 538, § 30; L. '13, p. 628, § 25.]

§ 4431. [4226-26.*] Apportionment Against Cities, Towns and Counties Benefited.

Whenever any system of improvement constructed under the provisions of this act will drain, protect or otherwise improve the whole or any part of any public road, roadbed or track thereof, or where any such system of improvement will furnish an outlet for or facilitate the construction or maintenance of any sewer system in any city or town, there shall be apportioned against the county in which any such state or county road outside of any incorporated city or town is located or against the city or town in which any such public road is located, or against any such other road or part thereof so drained, protected or otherwise improved, or against the city or town for which an outlet for sewage will be furnished or wherein the construction or maintenance of a sewer system will be facilitated, the proper amount of the total sum to be apportioned. The board of county commissioners may pay such portion as they deem proper of the amount assessed against the county on account of the drainage, protection or improvement of the roads, out of the funds of the road district in which such drainage, protection or improvement is made. [L. '17, p. 540, § 31. Cf. L. '13, p. 629, § 26.]

§ 4432. [4226-27.] Irrigation System Benefited.

In the plans for and in the construction of a drainage system in an irrigated region, under the provisions of this act, provision may be made

for the prevention of, or affording an outlet for drains to prevent, injury to land from seepage of or saturation by irrigation water, and for the carrying off of necessary waste water from irrigation, and benefits resulting from such provision shall be considered in making the apportionment of the cost of such system. [L. '13, p. 629, § 27.]

§ 4433. [4226-28.] State Lands.

There shall be apportioned against all state school, granted, and other lands, in the district the proper amount of the total sum to be apportioned in proportion to the benefits accruing thereto. [L. '13, p. 630, § 28.]

See note to § 4490, partial unconstitutionality of assessment against school lands.

§ 4434. [4226-29.] Apportionment Certified to Municipality.

Upon the completion of the apportionment the board of appraisers shall prepare upon suitable blanks, to be prescribed by the bureau of inspection and supervision of public officers, sign and file with the clerk of the board of county commissioners a schedule giving the name of each county, city and town and the description of each piece of property found to be benefited by the improvement in the following order: First, counties, cities and towns and the respective amounts apportioned thereto for benefits accruing to public roads and sewer systems therein; second, other roads (a) railroads, (b) street railroads, (c) interurban railroads, (d) logging roads, and (e) tramways, giving the location of the particular portion or portions of each road benefited and the respective amounts apportioned thereto; third, unplatted lands giving a description of each tract arranged in the numerical order of the townships, ranges and sections, and giving the legal subdivisions and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each tract; fourth, platted lands arranged by cities and towns and platted acreage in alphabetical order, giving under each the names of the plats in alphabetical order and the numbers of blocks and lots, and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each plat, block, lot, or other description, as the case may be. [L. '13, p. 630, § 29.]

Cited in 107 Wash. 270.

§ 4435. [4226-30.*] Notice of Hearing on Apportionment—Approval or Modification—Interest—Liens.

Upon the filing of the schedule of apportionment, the board of county commissioners shall fix the time and place for a hearing thereon which time shall be not more than sixty days from the date of the filing thereof and notice of such hearing shall be given in the manner provided for giving notice of hearing in section 4414. Said notice shall fix the time and place of hearing on said roll, and shall state that the schedule of apportionment showing the amount of the cost of the improvement apportioned to each county, city, town and piece of property benefited

by the improvement is on file in the office of the board of county commissioners and open to public inspection, and shall notify all persons who may desire to object thereto that they may make such objections in writing and file the same with the clerk of the board of county commissioners at or prior to the date fixed for such hearing; and that at the time and place fixed and at such other times and places as the hearing may be continued to, the board of county commissioners will sit as a board of equalization for the purpose of considering such schedule and at such hearing or hearings will also consider any objections made thereto, or any part thereof, and will correct, revise, raise, lower, change or modify such schedule, or any part thereof, or set aside such schedule and order that such apportionment be made de novo as to such body shall appear just and equitable, and that at said hearing the board will confirm said schedule as finally approved by them and will levy an assessment against the property described thereon for the amounts as fixed by them. The board of county commissioners shall serve by mail, at least ten days before such hearing, upon the commissioner of public lands of the state of Washington a like notice, in duplicate, showing the amount of the cost of the improvements apportioned against all state, school, granted, or other lands owned by the state of Washington in such district. Upon receipt of such notice the commissioner of public lands shall indorse thereon a statement either that he elects to accept or that he elects to contest such apportionment, and shall return the same, so indorsed, to the board of county commissioners. At or prior to such hearing any person interested may file with the clerk of the board written objections to any item or items of said apportionment. At such hearing, which may be adjourned from time to time and from place to place, until finally completed, the board of county commissioners shall carefully examine and consider said schedule and any objections filed or made thereto and shall correct, revise, raise, lower, change or modify such schedule or any part thereof, or strike therefrom any property not benefited, or set aside such schedule and order that such apportionment be made de novo, as to such body shall appear equitable and just. The board shall cause the clerk of the board to enter on such schedule all such additions, cancellations, changes, modifications and reapportionments, all credits for damages allowed or awarded to the owner of any piece of property benefited, but not paid, as provided in section 4419; also a credit in favor of the county on any apportionment against the county, of all sums paid on account of said improvement, as provided in section 4420; and all sums allowed the county on account of services rendered by the county engineer or prosecuting attorney, as provided in section 4430; and all credits allowed to property owners constructing crossings as provided in section 4429. When the board of county commissioners shall have finally determined that the apportionment as filed or as changed and modified by the board is a fair, just and equitable apportionment, and that the proper credits have been entered thereon, the members of the board approving the same shall sign the schedule and cause the clerk of the board to attest their signature under his seal, and shall enter an order on the journal approving the final apportionment and all proceedings leading thereto and in connection

therewith, and shall levy the amounts so apportioned against the property benefited, and the determination by the board of county commissioners in fixing and approving such apportionment and making such levy shall be final and conclusive.

The board of county commissioners shall also at said hearing, levy, in the manner hereinafter provided for the levy of maintenance assessments, such assessment as they shall deem necessary to provide funds for the maintenance of the system of improvement until the first annual assessment for maintenance shall fall due. Upon the approval of said roll the county auditor shall immediately prepare a completed assessment-roll which shall contain, first, a map of the district showing each separate description of property assessed; second, an index of the schedule of apportionments; third, an index of the record of the proceedings had in connection with the improvement; fourth, a copy of the resolution of the board of county commissioners fixing the method of payment of assessments; fifth, the warrant of the auditor authorizing the county treasurer to collect assessments; and sixth, the approved schedule of apportionments of assessments; and shall charge the county treasurer with the total amount of the assessment and turn the roll over to the treasurer, for collection in accordance with the resolution of the board of county commissioners fixing the method of payment of assessments. As soon as the assessment-roll has been turned over to the treasurer for collection, he shall publish a notice in the official newspaper of the county for once a week for at least two consecutive weeks, that the said roll is in his hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time on or before a date stated in such notice, which date shall be thirty days after the date of the first publication, without interest, and the treasurer shall accept such payment as in said notice provided. Upon the expiration of such thirty-day period the county treasurer shall certify to the county auditor the total amount of assessments so collected by him and the total amount of assessments remaining unpaid upon said roll. After the expiration of said thirty-day period, payment of assessments in full, with interest to the next coupon date which is more than thirty days from the date of such payment, may be made at any time: Provided, that the aggregate amount of such advance payments in any year, together with the total amount of the assessments due at the beginning of said year shall not exceed the total amount of the bonds which may be called in that year according to the applicable bond redemption schedule. The treasurer shall accept payments of assessments in advance, in the order tendered, until the limit herein set forth has been reached.

The assessments contained in the assessment-roll shall bear interest from the expiration of the thirty-day period at the rate of eight per cent per annum and interest upon the entire assessment then unpaid shall be due and payable at the time each of said installments becomes due and payable as a part thereof: Provided, that if the bonds or warrants be sold at a lower rate of interest than eight per cent then said assessments shall bear interest at the same rate borne by such bonds or warrants.

The assessments contained in said assessment-roll shall be liens upon the property assessed, such lien shall be of equal rank with other liens assessed against the property for local improvements and paramount to all other liens except the lien of general taxes, and shall relate back to and take effect as of the date when the board of county commissioners determined to proceed with the construction of the improvement as provided in section 4421. [L. '17, p. 540, § 32; L. '13, p. 630, § 30.]

Cited in 100 Wash. 507.

Board of County Commissioners, 107 Wash. 264, 181 Pac. 868.

When there was no appeal under this section, from the decision of the county commissioners apportioning assessments upon the property in a drainage district benefited by the construction of a drainage ditch, the decision being final, there was a stronger presumption supporting the apportionment of benefits than in the cases of city local improvement assessments from which appeal may be taken to the courts: Northern Pac. R. Co. v.

An assessment for a drainage ditch against a railroad right of way is not upon a fundamentally wrong basis and arbitrarily excessive although it averages \$235 per acre, while bordering farm lands were assessed at \$15 per acre and county highways at about \$90 per acre: Northern Pac. R. Co. v. Board of County Commissioners, 107 Wash. 264, 181 Pac. 868.

§ 4436. Appeal from Apportionment.

The decision of the board of county commissioners upon any objections made within the time and in the manner prescribed in section 4435, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the clerk of such board and with the clerk of the superior court of the county in which such drainage or diking improvement district is situated, or in case of joint drainage or diking improvement districts with the clerk of the court of the county in which the greater length of such drainage or diking improvement system lies, within ten days after the order confirming such assessment-roll shall have become effective, and such notice shall describe the property and set forth the objections of such appellant to such assessment; and, within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court a transcript consisting of the assessment-roll and his objections thereto, together with the order confirming such assessment-roll, and the record of the board of county commissioners with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such clerk of the board of county commissioners, and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court, the appellant shall execute and file with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with good and sufficient surety, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the county or the drainage or diking improvement district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require; within three days after such transcript is filed in the superior

court as aforesaid, the appellant shall give written notice to the prosecuting attorney of the county, and to the clerk of the board of county commissioners that such transcript is filed. Said notice shall state a time (not less than three days from the service thereof) when the appellant will call up the said cause for hearing; and the superior court of said county shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury. The judgment of the court shall confirm, correct, modify or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment-roll, and he shall modify and correct such assessment-roll in accordance with such decision. An appeal shall lie to the supreme court from the judgment of the superior court as in other cases: Provided, however, that such appeal must be taken within fifteen days after the date of the entry of the judgment of such superior court; and the record and opening brief of the appellant in said cause shall be filed in the supreme court within sixty days after the appeal shall have been taken by notice as provided in this act. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. And the supreme court, on such appeal, may correct, change, modify, confirm or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the order of the supreme court upon such appeal shall be filed with the officer having custody of such assessment-roll, who shall thereupon modify and correct such assessment-roll in accordance with such decision. [L. '21, p. 623, § 1.]

§ 4437. Regularity and Validity of Proceedings Conclusive.

Whenever any schedule of apportionment of any drainage or diking improvement district shall have been confirmed, and the assessment therefor shall have been levied, by the board of county commissioners, as provided by section 4435, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the board of county commissioners upon such assessment-roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in section 4435, and not appealing from the action of the board of county commissioners in confirming such assessment-roll in the manner and within the time in this act provided. No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: Provided, that this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds:

1. That the property about to be sold does not appear upon the assessment-roll, or

2. That said assessment has been paid. [L. '21, p. 625, § 2.]

§ 4438. District Liable for Judgments Against County.

Any judgment that heretofore has been obtained or that hereafter may be obtained against a county on account of any contract lawfully made by its officials for or on behalf of any drainage or diking improvement district, or on account of the construction or maintenance of any drainage or diking system of a drainage or diking improvement district shall be collected and reimbursed to the county from said improvement district, and the amount of such judgment shall be included in the construction costs of said district: Provided, that if such judgment be recovered after the assessment to pay the construction costs shall have been levied, then the county commissioners are hereby empowered and they shall make a supplemental levy upon the lands of the district, and from the funds collected under such levy, said reimbursements shall be made. [L. '21, p. 626, § 3.]

§ 4439. [4226-31.*] Construction Fund—Redemption Fund—Maintenance Fund—Collection—Application—Reassessments.

There shall be established in the county treasury of any county in which any drainage or diking improvement is established under the provisions of this act, appropriate funds as follows:

(1) The construction fund, into which shall be paid the proceeds of all bonds or warrants sold and the proceeds of all assessments paid prior to the sale of bonds or warrants. In case no bonds have been issued or warrants have been sold, the proceeds of all assessments levied to pay the cost of construction shall be paid into such fund. All warrants, including temporary warrants, issued in payment of cost of construction shall be paid out of such fund.

(2) A fund for the redemption of all bonds issued or warrants sold, to be known as the redemption fund, into which shall be paid all proceeds derived from assessments levied to pay cost of construction which shall not have been paid prior to the sale of bonds or warrants, in case bonds have been issued or warrants sold, and also all moneys, if any, remaining in the construction fund after the payment of all warrants drawn against it as above provided. The redemption fund shall be applied, first, to the payment of the interest due upon all such outstanding bonds issued or warrants sold and, second, to the payment of the principal thereof. After the payment of the principal and interest of all such bonds or warrants, the balance, if any, remaining in such fund shall be applied to the payment of any warrants outstanding, including temporary warrants, which may have been issued in payment of cost of construction which for any reason may remain unpaid. Any balance, if any, thereafter remaining shall be paid into the maintenance fund.

(3) The maintenance fund, into which shall be paid the proceeds of all assessments for maintenance, and all other funds received by the district which are not required by the provisions of this act to be paid into the construction fund or the redemption fund.

The respective installments of assessments for construction or maintenance of improvements made under the provisions of this act, shall be collected in the same manner and shall become delinquent at the same time as general taxes, and shall bear interest after delinquency at

the rate of ten per cent per annum, and the lien thereof shall be enforced by foreclosure and sale of the property assessed, as in the case of general taxes. The purchaser, upon the foreclosure of any certificate of delinquency for any assessment or installment thereof, shall acquire title to such property subject to the installments of the assessment not yet due, and the complaint, decree of foreclosure, order of sale, sale, certificate of sale and deed shall so state.

The holder of any certificate of delinquency for general taxes may, before commencing any action to foreclose the lien of such certificate, pay in full all drainage or diking improvement district assessments or installments thereof outstanding against the whole or any portion of the property included in such certificate of delinquency, or, if he elect to foreclose such certificate without paying such assessments in full, the purchaser at such foreclosure sale shall acquire title to such property subject to all drainage or diking improvement district assessments a lien thereon, in which case the complaint, decree of foreclosure, order of sale, sale, certificate of sale and deed shall so state. If such holder shall pay such drainage or diking improvement district assessments, he shall be entitled to ten per cent interest per annum on the amount of the delinquent assessments or delinquent installments thereof so paid, from date of payment.

In any case where any property shall be struck off to or bid in by county at any sale for general taxes, and such property shall subsequently be sold by the county, the proceeds of such sale shall first be applied to discharge in full the lien or liens for general taxes for which the same was sold, and the remainder, or such portion thereof as may be necessary, shall be paid to the district to discharge all drainage or diking improvement district assessment liens upon such property, and the surplus, if any, shall be distributed among the proper county funds.

Whenever any improvement, any extension or betterment thereof shall have been constructed in whole or in part, either heretofore in a district established or attempted to be established under and by virtue of chapter 66 of the Laws of 1901, or in a district heretofore or hereafter established or attempted to be established under this act, and the assessment therefor or any part thereof shall be invalid by reason of any omission, irregularity or defect in any proceeding whatever, a reassessment shall be made upon the property benefited by the improvement to provide a fund for the payment of the costs thereof, and any bonds or warrants issued therefor in the following manner:

The board of county commissioners shall by order cause the clerk of the board to compile and file with the board an itemized statement of the total cost of the improvement in the manner prescribed by section 4430. Upon the filing of such statement the same proceedings shall be had assessing the costs of said improvement against the lands benefited thereby and the counties, cities and towns within the district, as are prescribed by section 4430 and subsequent sections of this act. In case no bonds have been issued or warrant sold to pay the costs of said improvement, the same may be issued and sold and disposed of as hereinbefore provided. In case an assessment for such improvement shall have been theretofore made or attempted, and any payment has been made

thereon, proper credit for the amount of such payment shall be made upon the reassessment.

If upon the foreclosure of the assessment upon any property the same shall not sell for enough to pay the assessment against it, or if any property assessed was not subject to assessment, or if any assessment made shall have been eliminated by foreclosure of a tax lien or made void in any other manner, the board of county commissioners shall cause a supplemental assessment to be made on the property benefited by the improvement and against the county, cities and towns chargeable therewith in the manner provided for the original assessment, to cover the deficiency so caused in the original assessment.

If by inadvertence or for any cause the assessment levied shall be found to be insufficient to meet the entire cost of construction, a supplemental assessment shall be made by the board of county commissioners upon the lands of the district in the same proportion as the original assessment is levied, same being spread over not to exceed three years as the commissioners may determine.

Duplicate assessments or other errors that may by inadvertence be found to have been incorporated in the assessment-roll may be corrected by order of the county commissioners upon same being certified to them by the treasurer and the engineer. [L. '17, p. 544, § 33; L. '13, p. 632, § 31.]

Cited in 100 Wash. 508.

§ 4440. [4226-32.*] Annual Maintenance Estimate—Levy of Assessment—Hearing.

On or before the first Monday in September in each year the board of supervisors of each district organized under the provisions of this act shall make and file with the board of county commissioners of the county containing such district, a statement and estimate in writing of the amount required for maintenance of the system of improvement of said district for the ensuing fiscal year, and the board of county commissioners shall, on or before the first Monday in October next ensuing, levy an assessment for the amount of said estimate, or such amount as it shall deem advisable, upon the property within the district and against the county, cities and towns chargeable therewith in the same proportion as the assessment to pay the original cost of construction of said system of improvement was levied. Such levy shall be certified by the county auditor to the county treasurer, who shall extend the same upon the assessment-roll. The maintenance assessments on all tracts of land of not more than one-half acre in area shall accumulate from year to year and every fifth year such accumulated levy shall be extended on the rolls and collected. Upon petition filed by two or more assessed property owners of a district the county commissioners may, in their discretion, hold a hearing at the county seat for the purpose of reapportioning the maintenance charges in such district, to be held at the time of the equalization of the real property assessment in the even numbered calendar years. Preliminary to such hearing the county commissioners shall appoint a board of three appraisers, of whom the county engineer shall be one, who shall qualify and proceed as the board of appraisers ap-

pointed to apportion the original cost of the system, and shall report to and file with the board of county commissioners their recommendations in such matter not less than twenty days prior to the date of such hearing. Notice of the filing of such report and that such hearing will be held shall be given by publication in the official county newspaper and in such other newspaper published in or near such district as the county commissioners may in their discretion direct in two successive publications, the last of which shall not be less than seven or more than fourteen days prior to the date of said hearing. And at such hearing the commissioners may make such change in the basis of the apportionment of the levies for the maintenance of such system of improvement as may seem just and equitable. In maintaining the system of improvement of their district the board of supervisors may, with the approval of the board of county commissioners, make expenditures in excess of the annual maintenance fund herein provided for, which excess amount shall in such event be included in the maintenance levy for the succeeding year: Provided, that when, owing to floods or other causes an unusually high maintenance levy or expenditure in excess of the current levy shall be necessary the board of county commissioners may provide that such levy or the levy to meet such excess expenditure be spread over a term of years and warrants or bonds issued to meet the same as herein provided for the original construction cost of a system of improvement. [L. '17, p. 548, § 34; L. '13, p. 633, § 32.]

§ 4441. [4226-33.*] Assessments Against Cities, Towns and Counties — Payment.

The amount of the costs of construction or maintenance of any system of improvement assessed against any city, town or county may be met by levies to be paid in similar installments and extending over a like period of time as the assessments against property benefited are spread; or such amounts may be met by the issue and sale of the bonds of such city, town or county in the manner in which bonds to meet general indebtedness of such city, town or county are issued. The proper authorities of such city, town or county shall make the necessary levies to meet such amounts thus apportioned thereto as a general levy on all property therein. [L. '17, p. 549, § 35; L. '13, p. 634, § 33.]

§ 4442. [4226-34.*] Abandonment or Enlargement of System—Subdistricts.

Upon a petition and bond being filed by one or more land owners, either within or without the boundaries of a district, and like proceedings being had as in the case of the original establishment and construction of a system of improvement, the county commissioners may declare any system of improvement or any part thereof, abandoned or may strike from the district lands no longer benefited or served thereby, or they may cause any system of improvement to be altered, reduced, enlarged, added to or in any other manner bettered or improved, either within or without the district, and to effect such subsequent improvements, may exercise any of the powers which are in this act, or may be hereafter conferred upon such districts. But the striking of any lands from a district shall not in any way affect any assessment theretofore

levied against such lands. When such improvements shall have been completed the costs thereof shall be apportioned and assessed against the lands benefited thereby in the manner hereinbefore provided for such apportionment and assessment in the case of original proceedings. New lands assessed for any such improvement shall become a part of such district. The construction and maintenance of any such new improvement, unless let by contract by the board of county commissioners, shall be under the direction of the board of supervisors of the district in which they are made or to which said improvement is added. The lands assessed for such new improvements, of less than the entire district, shall be designated, alphabetically, "subdistrict — of — improvement district No. —." [L. '17, p. 550, § 36; L. '13, p. 635, § 34.]

§ 4443. [4226–35.*] Extension of Existing System — Apportionment of Costs.

When any extension of or addition to any existing system of improvement shall be thus constructed, the cost thereof shall be assessed to all the property, counties, cities and towns in the enlarged district benefited thereby in proportion to the benefits received therefrom. Any new lands thus brought into the district shall be assessed in addition a proper and equitable share of the then value of the original system of improvement in proportion to the benefits which such new lands derive therefrom. In determining the value to be so assessed the board of appraisers shall take in consideration the amount, if any, which the property to be assessed has already paid toward the construction of the original system and all other matters that may be pertinent. If at any time it shall appear to the board of supervisors of any drainage or diking improvement district that any lands without the boundaries of such district are being benefited by the improvements of the district and are not being assessed for the benefits received, they shall file a petition with the board of county commissioners praying the benefits received by such lands be determined and an assessment made upon such lands for the benefits so received. Thereupon, the board of county commissioners shall appoint a board of appraisers as provided in section 4430 for the apportionment of the cost of construction of the original system of improvement, and an apportionment of the then value of the improvements of the district shall be made to such lands in proportion to the benefits received therefrom as nearly as may be in the manner provided for the apportionment of the cost of the original system of improvement. In determining what share of the value of the improvements of the district shall be apportioned to such lands the board of appraisers shall take into consideration the benefits already received by such lands and all other matters that may be pertinent. The amount of the value of the original system assessed upon any new property brought within the district shall be rebated pro rata upon the assessments, if any, outstanding against the lands of the district on account of the construction of such original system. If the assessment against any land has been paid in full, or if the assessment remaining outstanding against such land is less than the rebate apportioned to such land, the amount so rebated or excess of rebate over assessment shall be paid into the maintenance fund of the district and a proper credit on any existing or

future assessment for maintenance shall be entered in favor of the land entitled thereto. The lands in the original district shall remain bound for the whole of the original unpaid assessment thereon for the payment of any outstanding unpaid warrants or bonds secured to be paid by such assessments. [L. '17, p. 550, § 37; L. '13, p. 635, § 35.]

§ 4444. [4226-36.] Prosecuting Attorney to Prepare Blanks.

It shall be the duty of the prosecuting attorney of each county to prepare suitable blanks for the use of the board of county commissioners under this act, not otherwise provided for, and to advise the board of county commissioners and other officers of the county and the boards provided for by this act in regard to the proceedings and in the performance of their duties under this act, and perform such other duties as in this act provided and required. [L. '13, p. 636, § 36.]

§ 4445. [4226-37.*] Drainage System to be Kept Efficient.

The board of supervisors of each district shall make reasonable rules and regulations whereby any owner of land in the district may make connection for drainage purposes, with any drainage system thereof. They shall also maintain and keep efficient the system of improvement of the district. [L. '17, p. 552, § 38; L. '13, p. 636, § 37.]

§ 4446. [4226-38.*] District in Two or More Counties.

When a drainage or diking system is proposed which will require a location, or the assessment of lands, in more than one county, application therefor shall be made to the board of county commissioners in each of said counties, and the county engineers shall make preliminary reports for their respective counties. The lines of such proposed improvement shall be examined by the county engineers of the counties wherein said improvements will lie, jointly. The hearings in regard to such improvement, provided for by sections 4414 and 4435 shall be had by the boards of county commissioners of the two counties in joint sessions, and all other matters required to be done by the county commissioners in regard to such improvement and the improvement district shall be had and done by the boards of county commissioners of the counties wherein such system of improvements shall lie, either in joint session at such place as the said boards shall order, or by concurrent order entered into by the said boards at their respective offices. Notice of the hearings shall be given by the auditors of both counties jointly by publication in the official paper of each of said counties. The county engineer of the county wherein the greatest length of the drainage or diking system will lie, shall have charge of the engineering work and be ex officio a member of the boards in this act provided for.

The schedule of apportionment shall be prepared in separate parts for the land in the respective counties; and that part of said roll containing the assessments upon the lands in each respective county shall be transmitted to the treasurer thereof, and the treasurer of said county shall give notice of said assessments as provided in section 4435, and shall collect the assessment therein contained and shall also extend and collect the annual maintenance levies of said district upon the lands of said district lying in his county. The auditor of the county in which the greater

length of the drainage or diking system shall lie shall act as clerk of the joint sessions of the boards of county commissioners, and shall issue the warrants of the improvement district, and shall attest the signatures of the two boards of county commissioners on the bonds. He shall furnish to the auditor of the other county duplicate copies of the records of proceedings of such joint sessions. Duplicate records of all proceedings had and papers filed in connection with such improvement shall be kept, one with the auditor of each county. Protests or other papers filed with the auditor who is not clerk of the joint sessions shall be forwarded forthwith by him to the auditor who acts as clerk of such joint sessions. The treasurer of the said county shall register and certify and pay the warrants and the bonds, and shall have charge of the funds of the district; and to him, the treasurer of the county in which the lesser portion of such system of improvements lie, shall remit semi-annually, in time for the semi-annual warrant and bond calls, all such collections made in such other county. A drainage or diking improvement district lying in more than one county shall be designated "Joint Drainage (or Diking) Improvement District No. — of — and — Counties." All proceedings in regard to joint drainage or diking improvement districts, which have heretofore been had and done substantially in accordance with the amendatory provisions of this act are hereby approved and declared to be valid. [L. '21, p. 630, § 6; L. '13, p. 637, § 38.]

See Laws '13, p. 637, § 39, for savings clause as to ditches begun or maintained under that act.

§ 4447. Inapplicability of Act to Prior Laws.

Nothing in this act contained shall be construed as in anywise modifying or repealing any of the provisions of chapter I or of chapter II of this title, or the acts amendatory thereof or supplemental thereto, or affecting any proceedings heretofore or that may hereafter be had under the provisions of said acts. [L. '17, p. 552, § 39.]

"Act" refers to the foregoing sections of this chapter, and § 4448.

§ 4448. [4226-41.] Validity.

An adjudication that any section, paragraph, or portion of this act, or any provision thereof, or proceeding provided for therein, is unconstitutional or invalid shall not affect or determine the constitutionality, or validity, of this act as a whole or of any other portion or provisions thereof, and all provisions of this act not adjudicated to be unconstitutional shall be and remain in full force and effect and shall be operative until specifically adjudicated to be unconstitutional or invalid. [L. '13, p. 639, § 41.]

§ 4449. Consolidation of Districts.

Whenever it shall appear to the board of county commissioners that the consolidation of two or more diking or drainage improvement districts established under the provisions of this chapter will result in economy of the maintenance of such districts, they shall by resolution declare their intention to order such consolidation, and shall fix a time and place for hearing objections to such consolidation. The time so fixed

shall be not less than thirty nor more than sixty days from the date of adoption of such resolution, and the place fixed may be the county seat or other place more convenient to the districts which it is proposed to consolidate. [L. '17, p. 517, § 1.]

"This act" refers to the foregoing sections of this chapter.

Cited in 109 Wash. 513.

§ 4450. Notice of Hearing.

Notice of the hearing shall be given by publication in the newspaper doing the county printing once a week for two successive weeks, the last publication to be not less than seven nor more than fourteen days prior to the date of said hearing. The notice shall be posted for the same period in three public places in each of the districts proposed to be consolidated. [L. '17, p. 517, § 2.]

§ 4451. Order for Consolidation.

The board of county commissioners shall meet at the time and place fixed in such notice, and may adjourn such meeting from time to time and from place to place. If objections are offered to the proposed consolidation, they shall hear and consider the same and may refuse to proceed further with the consolidation, or may enter an order declaring any two or more of such districts consolidated, and that the territory included in such districts shall thereafter constitute and be known as "Consolidated Drainage or Diking Improvement District No. — of — County," giving to such consolidated district its consecutive number in the order of the establishment of such districts in the county. [L. '17, p. 518, § 3.]

§ 4452. Board of Supervisors.

Until the expiration of the terms of the elected supervisors having the shortest term to serve in each of the districts so consolidated, the two elected supervisors of each district, together with the county engineer, shall form the board of supervisors of such consolidated district.

At the annual election following the entry of the order of consolidation, one supervisor shall be elected in the consolidated district and shall serve for two years and until his successor is elected and qualified, and together with the supervisor of each district included in the consolidation whose term of office has not expired and the county engineer, shall constitute the board of supervisors of the consolidated district until the next annual election.

At the next annual election and at each succeeding annual election, one supervisor shall be elected in the consolidated district for a term of two years. [L. '17, p. 518, § 4.]

§ 4453. Rights and Powers of Consolidated District—Levy of Assessment.

From the time of the entry of the order of consolidation, such consolidated district and its board of supervisors shall have all the rights and powers of, and be subject to all laws applicable to a district established under the provisions of this chapter, and the several districts included in the consolidated district shall thereby be dissolved without any further proceedings. Notwithstanding such consolidation and dissolution, none of the outstanding bonds, warrants or other indebtedness of any

district included in the consolidated district shall be affected thereby; and all lands liable to be assessed to pay any of such bonds, warrants or other indebtedness shall remain liable to the same extent as if such consolidation had not been made; and any and all assessments theretofore levied or made against any such lands shall be and remain unimpaired, and shall be collected in the same manner as if no such consolidation had been made. The board of supervisors of the consolidated district shall have all the powers possessed at the time of the consolidation by the boards of supervisors of the several districts included in the consolidation to levy, assess and cause to be collected any and all assessments or charges against any of the lands within the several districts that may be necessary or required to provide for the payment of all the bonds, warrants and other indebtedness thereof. Until such assessments shall have been collected and all indebtedness of the district paid, separate funds shall be maintained for each district as were maintained prior to the consolidation. [L. '17, p. 518, § 5.]

"This chapter." See notes to § 4449.

§ 4454. Governing Statutes.

Whenever two or more districts have been consolidated all the provisions of law applicable to such district prior to the consolidation shall apply to the consolidated district. [L. '17, p. 519, § 6.]

§ 4455. Use of Waters Developed—Effect of Appropriation by Others.

The use of any waters developed by the drainage system of any drainage improvement district shall be subject to the control of the drainage improvement district and such district shall have the right to dispose of and contract for the use of such waters for irrigation or other uses, as hereinafter provided: Provided, that the waters developed by any existing drainage system, and the waters developed by any drainage system hereinafter [hereafter] constructed which shall remain undisposed of for three years after the completion of the improvement and the levy of the assessment to pay the cost thereof, shall not be subject to disposal by such district where such waters shall have been appropriated by any person at a point below the outlet of the drainage system of such district. The term "waters developed" as used in this act shall not be held to include surface waste waters from irrigation. [L. '17, p. 519, § 7.]

§ 4456. Contracts for Use or Sale of Water.

The board of supervisors may enter into any contract for the use, sale or disposal of such waters that in their judgment shall be for the best interests of the district; but no such sale, contract or disposition shall be made except by the unanimous vote of the board. The district shall not guarantee nor warrant the amount or flow of, nor the title to, such waters; and no use, sale or disposition of such waters shall be lawful that will interfere with the efficiency of said drainage system. [L. '17, p. 520, § 8.]

§ 4457. Applications for Use of Water.

Any person or corporation desiring to acquire and use the waters developed by any drainage system, may make application therefor in

writing to the board of supervisors of the district, accompanying such application with a bond to be approved by the board, conditioned that the applicant will pay the costs of the investigation and hearing in case no disposal of said waters be made thereat. Successive applications and proceedings may be made and had as long as there is any water remaining undisposed of in said drainage system. [L. '17, p. 520, § 9.]

§ 4458. Notice of Hearings.

When any such application shall be filed, the board of supervisors of the district shall cause to be published in the county official paper, once a week for three successive weeks prior to the date of the hearing hereinafter referred to, a notice fixing the time and place within the district when the board will hear and consider such applications. All applications shall be in writing and contain a statement of the proposed use to be made of the water, specifying the time, place and manner of such proposed use; and in entering into any such contract, the board of supervisors of the district may require such security as they may deem reasonable for the proper construction and installation of works of diversion and for the use of said water by the party proposing to use the same. [L. '17, p. 520, § 10.]

§ 4459. Penalty for Willful Injury to Improvements.

Every person who shall willfully damage or interfere with the operation of any dikes, drains, ditches or other improvements of any diking or drainage improvement district shall be guilty of a misdemeanor. [L. '17, p. 521, § 11.]

CHAPTER VII.

EXCESS COSTS, REFUNDING BONDS, REASSESSMENTS AND ABANDONED DITCHES.

§ 4460. Costs in Excess of Estimate Authorized—Warrants for Added Costs.

Whenever any drainage district has been organized, established and created since January 1, 1911, and extending to January 1, 1921, in the manner provided by law, and the board of commissioners of such district have been authorized to proceed with the work of constructing a system of drainage for such district in the manner provided by law and have begun such work and expended the whole, or the major portion of the estimated cost of such improvement, and it shall have appeared to such board of commissioners that such improvement could not be completed within the estimated cost thereof so as to produce the benefits to the lands of the district found by the jury to be benefited by the proposed improvement without expending a greater sum than the estimated cost of such improvement and that the benefits which would actually accrue to the lands of the district would be sufficient to warrant the increased expenditure necessary to complete the improvement, and such board of commissioners shall have incurred indebtedness in the name of the district to such an amount as would complete the authorized system of drainage for the benefit of the lands of the district found by the jury to be benefited by the proposed improvement, and issued the warrants of the district to

cover the additional cost of completing such improvement all warrants heretofore issued for such purposes are hereby declared to be valid and legal obligations of the district so issuing the same. [L. '21, p. 749, § 1.]

§ 4461. Determination of Damages and Benefits.

Whenever the board of commissioners of any drainage district shall have heretofore issued any warrants of the district for the purpose of completing a system of drainage for such district so as to produce the benefits to the lands of the district found by the jury to be benefited by the proposed improvement as provided in the preceding section, and the total estimated maximum benefits found by the jury that would accrue to the lands of the district by reason of such proposed improvement are not sufficient to cover the actual cost of such improvement, including the cost of completing the same as hereinabove provided, the board of commissioners of such district shall file a petition in the superior court in the original proceeding for the determination of the damages and benefits to accrue from the proposed improvement, setting forth the facts, describing the lands that have been, in the judgment of the commissioners, actually benefited by the completed improvement, stating the estimated amount of benefits per acre that have accrued to each tract of land respectively, giving the name of the owner or reputed owner of such tract of land, and praying that the original proceedings be opened for further proceedings for the purpose of determining the benefits which have accrued to each tract of land actually benefited by the completed improvement. If the said board of commissioners fail or refuse to file such petition within sixty days after receipt of a written request so to do, signed by any warrant-holder, then the said warrant-holder shall have the right to file same. [L. '21, p. 750, § 2.]

§ 4462. Procedure.

Upon the filing of the petition provided for in the preceding section, summons shall issue thereon and be served on the owners of all lands described in the petition as having been benefited, in the same manner as summons is issued and served in the original proceedings for the determination of damages and benefits by reason of a proposed drainage improvement, as near as may be. No answer to any such petition shall be required unless the party served with summons desires to offset damages claimed to have been actually sustained by reason of the completed improvement in addition to the damages found by the jury in the original proceeding, and no default judgment shall be taken for failure to answer any such petition. [L. '21, p. 750, § 3.]

§ 4463. Hearing.

Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons issued as provided in the preceding section, the court shall empanel a jury to hear and determine the matters in issue, and if the jury shall find that the matters set forth in the petition are true and that any of the lands of the district have been benefited by the completed improvement, after offsetting any additional damages found to have been sustained by reason thereof, it shall determine and assess the benefits which have actually accrued, and

shall specify in its verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. [L. '21, p. 751, § 4.]

§ 4464. Judgment.

Upon the return of the verdict of the jury as provided in the preceding section, it shall appear to the court that the total benefits found by the jury to have accrued to the lands of the district is equal to or exceeds the actual cost of the improvement including the increased cost of completing the same, the court shall enter its judgment in accordance therewith, as supplemental to and in lieu of the original decree fixing the benefits to the respective tracts of land, and thereafter the assessment and levy for the original cost of the construction of the improvement, including the indebtedness incurred for completing the improvement together with interest at the legal rate on the warrants issued therefor, and all assessments and levies if any, for the future maintenance of the drainage system described in the judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in the judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal therefrom to the supreme court within thirty days after the entry thereof, and such appeal shall bring before the supreme court the propriety and justness of the verdict of the jury in respect to the parties to the appeal. [L. '21, p. 751, § 5.]

§ 4465. Refunding Bonds for Drainage Improvement Districts.

Whenever in any drainage improvement district a drainage system has been constructed pursuant to the provisions of chapter 66 of the Laws of 1901, and the costs of construction thereof have been paid entirely by the issuance of warrants, or partly by the issuance of bonds of the district pursuant to the provisions of this chapter, and partly by the issuance of warrants, refunding bonds of the district may be issued to procure funds with which to pay such outstanding bonds and warrants or to exchange for such outstanding bonds and warrants, as herein provided. [L. '17, p. 560, § 1.]

§ 4466. Issuance and Mode of Payment—Apportionment.

The board of county commissioners shall determine in the manner provided by section 4422, the term for which bonds shall be issued and the installments in which the assessments shall be paid, and shall determine the total amount of all such outstanding bonds and warrants, including any warrants issued for any costs of construction which for any reason may not have been included in the costs apportioned and assessed against the lands of the district either in the original apportionment and assessment or in any attempted supplemental apportionment and assessment; and they shall add thereto a reasonable sum, not to exceed five per cent of the total amount of all such outstanding bonds and warrants, to cover the costs of the proceedings and the issuance of the refunding bonds. With the advice and assistance of the county engineer, the county commissioners shall apportion the aggregate amount against the lands of the district in the following manner: (1) All unpaid assess-

ments or any part thereof, legally levied in the original apportionment and assessments for costs of construction, shall be apportioned against the counties, cities, lands and other property against which they were theretofore assessed; (2) All costs of construction omitted for any cause from the original apportionment and assessment, and all costs not legally assessed in the original apportionment and assessment shall be apportioned to the lands and other property of the district and to the counties, cities and towns benefited thereby in proportion to the benefits derived from the drainage system of the district. Thereupon the county commissioners shall prepare a reassessment-roll, showing the total amounts so apportioned and reapportioned, and giving proper credit for all payments theretofore made on assessments for costs not legally assessed in the original proceedings or in any attempted supplemental proceedings. [L. '17, p. 560, § 2.]

§ 4467. Notice of Hearing—Assessments—Equalization—Levy.

Upon the completion of the reassessment-roll, the board of county commissioners shall fix a day for a hearing thereon, which hearing may be either at the commissioners' office or at some place in the district; and shall cause notice thereof to be given in the manner provided for the giving of notice of a hearing on a schedule of apportionment in drainage improvement districts. Such notice shall describe the boundaries of the district and the sections and lesser subdivisions of land contained therein, and shall state that the reassessment-roll of said drainage improvement district is on file in the office of the clerk of the board of county commissioners and open to public inspection; and that at or prior to the hearing, any person interested may file written objections to the amount of said reassessment-roll or any item thereof. At the hearing, the board may equalize and apportion according to the benefits received therefrom, all costs apportioned in the original or any supplemental proceedings which they may find to have been illegally apportioned and assessed and all costs which were not apportioned and assessed either in the original or in any attempted supplemental proceedings, but they shall not change the apportionment and assessment of any costs which they shall find to have been legally made in the original proceedings. Upon the completion of the equalization and apportionment of the reassessment-roll the board shall enter an order approving the same, and shall levy the assessments therein contained against the lands and the property and against the cities, towns and counties therein described, and shall turn the roll over to the treasurer for collection in accordance with the resolution of the board of county commissioners fixing the method of payment of the assessments therein contained. [L. '17, p. 561, § 3.]

§ 4468. Collection of Assessments.

Thereupon the treasurer shall give notice that the roll is in his hands and that assessments may be paid thereon, as provided for similar notice in drainage improvement districts; and all the provisions of this chapter, and acts amendatory thereof, shall govern the adoption, extension and transmission of the reassessment-roll, and the collection of the assessments therein contained, and the form, denomination, and manner of issuance and manner of payment of the refunding bonds, and shall also govern all

other matters and procedure herein provided for, so far as the same shall be applicable: Provided, that the additional sum required by section 4465 to be levied to cover the cost of the reassessment and other expenses, shall not be collected on any assessments paid in full before the issuance of refunding bonds. [L. '17, p. 562, § 4.]

§ 4469. Sale of Refunding Bonds—Exchange.

After the expiration of thirty days from the first publication of the notice given by the treasurer, that the assessment-roll is in his hands for collection, the county commissioners may issue and sell refunding bonds of the district, as determined by them in their resolution, to the amount of the total assessments remaining unpaid upon the reassessment-roll at the expiration of the thirty days above mentioned; or they may issue and exchange such refunding bonds at par value for any bonds or warrants outstanding against the district. [L. '17, p. 563, § 5.]

§ 4470. Refunding Bond Redemption Fund.

The proceeds of the sale of any refunding bonds and of all payments of assessments levied in the original assessment-roll or in any attempted supplemental roll, or in the reassessment-roll, within the thirty-day period above mentioned, and any balance remaining in the fund for the payment of the outstanding bonds and warrants of the district, after such bonds and warrants shall have been paid, shall be paid into a fund to be designated the "Refunding Bond Redemption Fund," and shall be applied: (1) To the payment of the interest on all outstanding refunding bonds, and (2) to the payment of the principal of such bonds in the order of their issuance. [L. '17, p. 563, § 6.]

§ 4471. Reassessment not to Affect Prior Maintenance Levies.

Upon the entry of the order confirming the reassessment-roll, and the levy of the assessments contained therein, the reassessment-roll herein provided for shall govern the collection of all assessments against the lands of the district. No assessments for maintenance levied against the lands of the district shall be affected by the reassessment herein provided for, but such assessments shall be collected as if no reassessment proceedings had been had. [L. '17, p. 563, § 7.]

§ 4472. [4267-1.] Abandoned Ditches.

Where a ditch or drain shall have been in part constructed in compliance with the provisions of Remington & Ballinger's Annotated Codes and Statutes of Washington, sections 4226—4250, 4256—4267, and the work of constructing said ditch or drain shall have ceased before the completion thereof or for any reason, the county commissioners shall declare said ditch or drain abandoned. [L. '11, p. 439, § 1.]

Mode of Assessment: See Remington's Digest, Drains, § 17; Espy Estate Co. v. Pacific County, 40 Wash. 67, 82 Pac. 129.

§ 4473. [4267-2.] Apportionment of Cost.

When any such drainage proceedings shall have been abandoned by the county commissioners they shall, unless a petition shall have been filed within ninety days after such abandonment, as hereinafter provided, order

the county engineer to apportion the costs of improvement, so far as constructed, against the lands benefited and like proceedings shall be had for the apportionment and collection of the costs and expenses of constructing said ditch or drain so far as the same shall have been constructed as are provided for the apportionment and collection of costs and expenses when such ditch or drain shall have been completed in accordance with the provisions of the said act. [L. '11, p. 439, § 2.]

§ 4474. [4267-3.] Petition—Contents.

When any ditch or drain shall have been in part constructed pursuant to the provisions of the said act, and the same shall have been abandoned as provided herein, a petition may be filed as provided in section 4299, and like proceedings shall be had thereon as are provided by sections 4298 to 4340 of this code. Said petition shall include only such lots or tracts of land and public or corporate roads or railroads as were included in the schedule filed by the county surveyor in the original proceedings pursuant to said sections 4226—4250, 4256—4267 of Remington & Ballinger's Annotated Codes and Statutes of Washington: Provided, that the boundaries of such proposed drainage district may be extended by the board of county commissioners in like manner as is provided for the extending of boundaries in section 4300 of this code. [L. '11, p. 439, § 3.]

§ 4475. [4267-4.] Rights and Powers Conferred.

When a petition for the establishment and organization of a drainage district shall have been filed as provided herein the same shall be governed by all the provisions of sections 4298—4340, so far as the same are applicable and all rights and powers conferred upon drainage districts established and organized in compliance with said act shall be and are hereby conferred upon drainage districts organized and established in accordance herewith. [L. '11, p. 440, § 4.]

§ 4476. [4267-5.] Construction.

When any drainage district shall be established and organized as provided in this act it shall be lawful for such drainage district to use so much of the original ditch or drain as shall have been constructed and to construct such additional ditches or drains as shall be petitioned for and ordered by the board in the course of said proceedings. Upon the completion of said original ditch or drain, the cost of such new ditches or drains, if any, as shall be constructed and expense thereof, together with all costs and expenses lawfully incurred in the partial construction of said original ditch or drain, shall be apportioned against the land in the district established and an assessment made for the payment of the entire sum in accordance with the provisions of sections 4298—4340. [L. '11, p. 440, § 5.]

§ 4477. [4267-6.] Concurrent Act.

Nothing in this act shall be construed so as to amend, change or repeal any of the existing laws relating to dikes and drains but concurrent therewith. [L. '11, p. 440, § 6.]

CHAPTER VIII.

ASSESSMENTS ON STATE LANDS.

§ 4478. [4251.] Assessments on State Lands Certified to Land Commissioner.

The several county treasurers of this state shall, in each year, within thirty days after the tax-rolls have been received and filed by them, make up and certify to the commissioner of public lands a list of all state, school and granted lands upon said rolls against which special assessments have been levied under the laws of this state for the construction or maintenance of any diking system or any drainage system constructed and maintained under the laws of this state. Said certificate shall contain (1) a description of the state, school or granted lands by legal subdivisions, (2) the amount of the assessment against each legal subdivision separately stated. [L. '07, p. 125, § 1.]

See notes to § 4490, partial constitutionality of assessment against school lands.

See, also, supra, §§ 4289, 4336, 4375, 4433, 4478, assessments against public lands.

See infra, §§ 8125—8136, later enactment on this subject.

§ 4479. [4252.] Land Commissioner to Certify to State Auditor.

As soon as the said assessments shall become due and payable the commissioner of public lands shall certify to the state auditor a list of all lands certified to him by the county treasurer, which have not been sold by the state, and his certificate shall contain the same facts as to the land certified by him that the certificate of the county treasurer shall contain as provided for in the next preceding section. [L. '07, p. 125, § 2.]

See note to § 4478.

§ 4480. [4253.] Assessment Added to Appraised Value of Land.

Upon issuing his certificate to the state auditor as provided for in the next preceding section, the commissioner of public lands shall make a minute upon his records showing the amount paid and charge it to the tract of land against which it was assessed. The valuation of the tract of land benefited by the diking or drainage improvement shall not be raised by or on account thereof, but when any of said land is offered for sale there shall be added to the appraised value of such lands as provided for by law the amount of such payments made by the state out of the general fund, which amount so added shall be paid by the purchaser in cash at the time of the sale of said land, and such additional sum shall be turned over to the state treasurer and placed to the general fund. [L. '07, p. 125, § 3.]

See note to § 4478.

§ 4481. [4254.] Payment by State Auditor.

Upon receipt of the certificate of the commissioner of public lands herein provided for the state auditor shall draw his warrants in favor of the several county treasurers upon the general fund for the payment of such assessments; and when he transmits his warrants he shall certify to the several county treasurers a description of the lands upon which he

pays the assessment, the amount paid on each legal subdivision of land. [L. '07, p. 126, § 4.]

See note to § 4478.

§ 4482. [4255.] Estimate of Money Required.

It shall be the duty of the state auditor to include in his estimate of the amount of money necessary to be appropriated for the purposes of this act a statement of the amount necessary to pay the assessments certified to him. [L. '07, p. 126, § 5.]

See note to § 4478.

"Act," in this section, refers to §§ 4478—4482.

CHAPTER IX.

PAYMENT OF EXPENSES HERETOFORE INCURRED IN CONSTRUCTION OF DITCHES, ETC.

§ 4483. [4268.] Purchase or Condemnation of Lands—Under Act of 1890.

Where any ditch or drain or any portion thereof has been constructed in compliance with the provisions of an act of the legislature of the state of Washington entitled "An act to provide for the construction, repairing and protection of drains and ditches for agricultural, sanitary and domestic purposes, and to provide for the organization of drainage districts, and declaring an emergency," approved March 19, 1890, it shall be the duty of the board of county commissioners of any county in which the same is located, to purchase the lands occupied by or necessary to said drain or ditch, or any culverts, bridges or approaches thereto, or appurtenances to said drain or ditch, or acquire the same by condemnation proceedings, wherever title to such lands has not already been obtained, and to that end are hereby authorized to institute and maintain in the name of the county the proceedings provided in sections 921–936, *supra*. [L. '95, p. 142, § 1.]

Cited in 19 Wash. 201; 20 Wash. 85, 92; 28 Wash. 40; 30 Wash. 631; 31 Wash. 358; 40 Wash. 68; 45 Wash. 424; 47 Wash. 415, 416; 48 Wash. 231.

This act is general, and not special, legislation: *Lewis County v. Gordon*, 20 Wash. 80, 54 Pac. 779.

This act is not subject to the objection that it deprives the land owner of property without due process of law, because no provision is made in the act in positive terms for contesting the assessments imposed by the county commissioners, since the act itself provides that in a suit to enforce the lien the property owner might set up any matter respecting the amount or legality of the assessment, and in addition an ample remedy for reviewing the proceedings of the board of commissioners is provided by writ of certiorari under the general laws of the state: *State ex rel. Latimer v. Henry*, 28 Wash. 38, 68 Pac. 368.

This act makes no provision in regard to dikes, and cannot be held as authoriz-

ing a reassessment to cover the expenses of dikes and dams constructed under a void statute: *Franklin Sav. Bank v. Moran*, 19 Wash. 200, 52 Pac. 858.

The title of this act is sufficiently comprehensive to cover the subject of assessments according to benefits upon lands drained in order to pay for right of way through same: *Lewis County v. Gordon*, 20 Wash. 80, 54 Pac. 779.

An assessment for the maintenance of a drainage district is void where part of the assessment was stated to be intended for another purpose than that permitted by the statute, and the assessment was in excess of the amount required for any lawful purpose: *McDougall v. Bridges*, 52 Wash. 396, 100 Pac. 835.

Reassessment or Additional Assessment: See *Remington's Digest*, Drains, § 20; *Franklin Sav. Bank v. Moran*, 19 Wash. 200, 52 Pac. 858; *State ex rel. Espy Estate Co. v. Board of Commrs. of Pacific County*, 48 Wash. 230, 93 Pac. 326; *Pool-*

man v. Langdon, 94 Wash. 448, 162 Pac. 578.

It is within the power of the legislature to enact a statute authorizing the making

of an assessment to cover the cost of work done on a public improvement under a void law: State ex rel. Latimer v. Henry, 28 Wash. 38, 68 Pac. 368.

§ 4484. [4269.] Ditch Fund Established.

Said board of county commissioners shall establish a ditch fund named after such ditch or drain, and whenever there is not sufficient money to make the payments required under the provisions of the last section, they shall borrow money wholly on the faith of, and to be repaid wholly from, the moneys in such fund by issuing bonds payable out of said funds in denominations of not to exceed twenty dollars each, due on or before five years from date, and drawing not to exceed seven per cent interest per annum, in order to make such payments required pursuant to the last section. Where said ditch or drain is uncompleted, or completed only in part, said board shall proceed to finish said ditch according to the survey and report of said improvement made in accordance with the provisions of said act of March 19, 1890, and pay for the same by warrants duly issued on said ditch fund, and the total cost of said improvement, including expenses heretofore incurred and warrants heretofore issued for the location, right of way and construction of said ditch, shall be paid as hereinafter provided. [L. '95, p. 142, § 2.]

§ 4485. [4270.] Apportionment According to Benefit—Notices.

Said board of county commissioners shall, upon obtaining title to lands as provided in section 4483, file the survey and report of said improvement, if any has been made, in accordance with the provisions of said act of March 19, 1890, and shall ascertain the aggregate cost of said ditch, and shall apportion the said cost to each lot, tract of land, road or railroad, according to the benefit which will result to each from said improvement, not exceeding the amount of such benefit, and shall fix a day for the hearing of said apportionment. The county auditor shall prepare a notice in writing directed to the resident lot or land owners, or to the municipal or private corporations affected by the improvement, setting forth a general description of the improvement, together with a tabular statement of the apportionment of the cost as hereinbefore provided for, which notice shall be served upon each lot or land owner and upon each member of any public board of authority and upon an officer or agent of such private corporation, in the manner provided for the service of a summons, at least eight days before the day set for the hearing, and return of service shall be made in the mode provided for the return of service of a summons in a civil action, and the notice and return shall be filed with the county auditor on or before the day of hearing, and the county auditor shall at the same time give like notice to each nonresident lot or land owner, either in the mode above prescribed or by publication in a newspaper printed and of general circulation in the county for at least two consecutive weeks before the day set for the hearing, proof of which service shall be by affidavit of the publication of said notice during said time by the printer of such paper or other person knowing the fact, which proof shall be filed with the county auditor on or before said day of hearing. [L. '95, p. 143, § 3.]

§ 4486. [4271.] Commissioners to Examine Apportionment.

The county commissioners shall meet at their regular place of meeting on the day fixed for the hearing, and shall first determine whether the required notice has been given. If they find that due notice has not been given they shall continue the hearing to a day to be fixed by them, and order the notice to be served as hereinbefore provided, and when they find due notice has been given they shall examine said apportionment, and if it is in all respects fair and just according to benefits they shall approve and confirm the same. [L. '95, p. 144, § 4.]

§ 4487. [4272.] Unjust Apportionment.

If the commissioners find that the apportionment is unfair and unjust, and ought not to be confirmed, they shall so order and amend it as to make it fair and just in proportion to benefits, and if necessary, in their opinion, they may adjourn the further hearing not exceeding twenty days to a day to be fixed by them, and go upon the premises and by actual view apportion the entire cost of location and construction, or any part thereof, according to benefits, as may seem just and proper, and on the day so fixed by them they shall again meet and determine the apportionment. [L. '95, p. 144, § 5.]

§ 4488. [4273.] Exceptions Filed.

Any person or corporation party to the proceedings may file exceptions to the apportionment at any time before the time set for the final hearing of the report and apportionment. The commissioners may hear testimony and examine all witnesses upon questions made by the exceptions, and for that purpose may compel the attendance of the witnesses by subpoena, which the clerk of the superior court shall issue on demand, and their decision on the exceptions shall be entered upon the journal, and if they sustain the exceptions the cost of hearing thereon shall be paid out of the county treasury, and if they overrule the same such costs shall be taxed against such person or corporation filing the exceptions. L. '95, p. 144, § 6.]

§ 4489. [4274.] Assessments, When Made—Collections, How Made.

When the cost of said ditch shall have been approved as hereinbefore provided the commissioners shall determine at what time and in what number of assessments, not to exceed four, they will require the same to be paid, and order that the assessments as made by them be placed upon the tax-roll accordingly against the lots or lands assessed. When the commissioners make an assessment they shall cause an entry to be made directing the clerk of the board of county commissioners to make and furnish to the treasurer of the county a special tax-roll with the assessment arranged thereon, as required by their order, and the clerk of the board of county commissioners shall retain a copy thereof in his office, and all assessments shall be liens on the property against which they are assessed, and shall be collected and accounted for by the treasurer as taxes: Provided, that the treasurer shall accept in payment of assessments the bonds issued under the provisions of section 4484, and said treasurer shall place the assessment so collected in said ditch

fund. The list thus prepared must remain in the office of the treasurer for thirty days, or longer if ordered by the board of trustees; and during the time it so remains any person may pay the amount of the charges against any tract to the treasurer without costs; or, if so ordered by the board of county commissioners, said payments may be by installments; and if, at the end of thirty days, or the longer period fixed by the said commissioners, any of the charges, or any of the installments ordered by them already due, has not been paid, the treasurer must transmit the list to the county attorney, who must at once proceed, by civil action, to collect such charges and foreclose the liens therefor. All moneys in said ditch fund shall be applied to the payment of any bonds issued by the county commissioners, on the faith of said ditch fund, and to the payment of warrants issued for the construction of said ditch or drain and appurtenances and right of way, in the order of their issue. Wherever any assessments heretofore levied for said ditch have been paid, due credit for such payments shall be allowed, and the receipt given for such payments shall be received in lieu of a payment of a sum of money equal to the sum receipted for in the receipt. [L. '95, p. 144, § 7.]

Cited in 30 Wash. 631.

Collection and Enforcement—Actions:

See Remington's Digest, Drains, § 22; State ex rel. Ames v. Lewis County, 45 Wash. 423, 88 Pac. 760; State ex rel. Seymour v. Slater, 53 Wash. 608, 102 Pac. 651.

The fact that county commissioners are to disburse moneys in a ditch fund under their control in the way pointed out by law, on the happening of certain events determined by them judicially, would raise no presumption that they would not be an impartial tribunal: State ex rel. Latimer v. Henry, 28 Wash. 38, 68 Pac. 368.

Under this section and under Laws of

1893, page 76, which provides that all warrants shall draw interest from date of presentation and nonpayment thereof, the holder of warrants against a ditch fund is entitled to their payment, with accrued interest, in the order of issuance, even if the payment of interest on such warrants prevents payment of subsequent warrants in the hands of other holders: State ex rel. Rush v. St. John, 30 Wash. 630, 70 Pac. 192.

The holder of warrants of a drainage district is not guilty of laches in enforcing an assessment where he commenced suit within six months after the abandonment of the project by the county: Espy Estate Co v. Pacific County, 40 Wash. 67, 82 Pac. 129.

§ 4490. [4275.] Railroads to Pay for Benefits.

When the improvement drains or benefits the whole or a part of any public or corporate road or railroad, there shall be apportioned to the county, if the road is a state, county or free turnpike road, or to the corporation, if a corporate road or railroad, a share of the costs and expense thereof proportionate to the benefits to said road or railroad. All lands of the state, or any county, school district or other municipal corporation, shall be subject to the provisions of this act. [And when any assessment shall be apportioned against any school lands of the state, the county shall pay the same out of its general fund and have a lien on the proceeds of the sale of such lands, from which it shall be reimbursed.] [L. '95, p. 146, § 8.]

"Act" refers to the foregoing sections of this chapter.

The portion in brackets is unconstitutional.

Cited in 28 Wash. 46.

That part of this section in brackets is unconstitutional on the ground that

funds raised by taxation for general county purposes cannot be applied to the payment of assessments for local improve-

ments, and on the further ground that the proceeds of the sales of school lands cannot be diverted from the permanent and irreducible common school fund: State ex rel. Latimer v. Henry, 28 Wash. 38, 68 Pac. 368.

§ 4491. [4276.] Assessment Inadequate—Proportionate Payment of Expenses.

Whenever assessments have been made or shall hereafter be made, under the provisions of sections 4483-4490, supra, and the assessments realized are inadequate and insufficient, after deducting therefrom the amount of bonds issued for damages for rights of way to pay said warrants heretofore issued under the act of March 19, 1890, the same shall be paid in the proportion which the whole number of warrants issued under said act of March 19, 1890, bears to the assessments realized and available for the payment of said warrants, regardless of the number, or order of issue. [L. '03, p. 390, § 2.]

§ 4492. [4277.] Payment of Expenses Incurred Under Act of 1895.

When any drainage district has been or shall be established and created under the provisions of Chapter II of this title, and when the drainage commissioners of such district have employed surveyors or draftsmen or legal assistance as provided in section 4308, and have incurred expenses for the compensation of such surveyors, draftsmen and legal assistance, and have issued to such surveyors, draftsmen or person rendering said legal assistance any warrants, orders, vouchers or other evidence of indebtedness for said expenses so incurred, and when such warrants, orders, vouchers or other evidences of indebtedness remain outstanding and unpaid, and when from any cause no further proceedings are had as provided for in said Chapter II, within a reasonable time, it shall be the duty of the county commissioners of the county in which such drainage district is located to assess in accordance with the provisions of this act the lands constituting and embraced within such drainage district for the purpose of paying such outstanding warrants, orders, vouchers, or other evidences of indebtedness, together with interest thereon. [L. '03, p. 87, § 1.]

"This act," refers to §§ 4492-4500.

In proceedings to assess property for benefits accruing by reason of the construction of a drainage district, the county commissioners have no power to assess property in excess of the benefits received; and in the absence of fraud, they cannot be compelled by mandamus to increase their assessment for benefits so as to cover the total cost of the work and interest: State ex rel. Espy Estate Co. v. Board of Commissioners of Pacific County, 48 Wash. 230, 93 Pac. 326.

Where the proceedings for the assessment of property for a drainage district were void, and the legislature, recognizing the moral obligation of the lands benefited, provided a method for making the cost a lien thereon, the county commissioners in making a new assessment are not bound by the acts of the former

board, but must determine the amount of benefits to be assessed: Id.

This act does not violate Constitution, Article II, § 37, providing that no act shall be revised or amended without setting out the same in full, since the same is a complete law of procedure within itself: Northern Pac. R. Co. v. Pierce County, 51 Wash. 12, 92 Pac. 1099, 23 L. R. A. (N. S.) 286.

The power of the legislature to authorize the levy of a tax upon a drainage district to pay the preliminary expense of ascertaining whether the improvement shall be made does not depend upon whether the district is a municipal corporation, and the tax cannot be objected to where the burden was voluntarily assumed by a vote of the people of the district: Id.

§ 4493. [4278.] Claims—Notice, Registration—Failure to Present.

The county auditor of any county in which such drainage district is located upon the written request of any holder or owner of any such warrant, order, voucher or other evidence of indebtedness, mentioned in the preceding section, shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in some newspaper of general circulation in the county, a notice directing any and all holders or owners of any such warrants, orders, vouchers, or other evidences of indebtedness, to present the same to him, at his office, for registration within ninety days from the date of the first publication of such notice; and such notice shall be published once a week for six consecutive weeks. Said notice shall be directed to all holders and owners of warrants, orders, vouchers or other evidences of indebtedness issued by the drainage commissioners of the particular district giving its name and number, and shall designate the character of the warrants, orders, vouchers, or other evidences of indebtedness, the registration of which is called for by said notice. Upon the presentation to him of such warrants, orders, vouchers or other evidences of indebtedness, the county auditor shall register the same in a separate [separate] book to be kept for that purpose, showing the date of registration, the date of issue, the purpose of issue when the same is shown upon the face, the name of the person by whom presented, and the face value thereof. Any such warrants, orders, vouchers, or other evidences of indebtedness, not presented within the time prescribed in such notice, shall not share in the benefits of this act, and no assessment or reassessment shall thereafter be made for the purpose of paying the same. [L. '03, p. 87, § 2.]

"This act," refers to §§ 4492—4500

Cited in 51 Wash. 17.

§ 4494. [4279.] Petition to Court to Order Assessment—Contents.

At any time after the expiration of the time within which warrants, orders, vouchers or other evidences of indebtedness, may be registered as provided in the preceding section, the holder or owner of any such registered warrant, order, voucher or other evidence of indebtedness, may for himself and in behalf of all other holders or owners of such registered warrants, orders, vouchers, or other evidences of indebtedness, file a petition in the superior court of the county in which such drainage district is located praying for an order directing the publication and posting of the notice hereinafter provided for, and for a hearing upon said petition, and for an order directing the board of county commissioners to assess the lands embraced within said drainage district for the purpose of paying such registered warrants, orders, vouchers or other evidences of indebtedness and the costs of the proceedings provided for in this act. Said petition shall set fourth [forth]:

1. That said drainage district was duly established and created, giving the time.

2. The facts in connection with the expenses incurred by the drainage commissioners in the employment of surveyors, draftsmen, or legal

assistance and the issuance of such registered warrants, orders, vouchers or other evidences of indebtedness.

3. The facts in connection with the compliance with the provisions of this act.

4. A list of such registered warrants, orders, vouchers or other evidences of indebtedness showing the names of owners or holders, the amounts, the date of issuance, the purpose for which issued, when shown upon the face thereof, and the date of presentation for payment, respectively. [L. '03, p. 88, § 3.]

"This act," refers to §§ 4492—4500.

§ 4495. [4280.] Hearing After Sixty Days.

Upon the filing of such petition it shall be the duty of the judge of the said superior court to fix a time for a hearing of said petition, which time shall be not less than sixty days from the time of the filing of said petition, and to enter an order directed to the sheriff of the said county ordering said sheriff to cause to be published and posted the notice as provided for in the next succeeding section. [L. '03, p. 89, § 4.]

§ 4496. [4281.] Notice—Contents, Publication, etc.

Upon the issuance of the order as provided for in the next preceding section it shall be the duty of the sheriff of said county to post, at the courthouse of said county and at three public places in said drainage district, and to cause to be published in a newspaper of general circulation in said county a notice of the time and place fixed by said order of court for the hearing of said petition. Said notice shall contain a statement that said petition has been filed as above provided for, that the said court has fixed a time and place for the hearing of said petition, which time and place shall be stated in said notice, a brief statement of the object of said proceeding upon said petition, a statement of the issuance of the said order of court directing the posting and publishing of said notice, a statement that all persons having any interest in any land in such drainage district, describing the same by its corporate name, may at or before the time fixed for said hearing appear and file objections or exceptions to the granting of the prayer of said petition: A statement that upon the hearing of said petition in case no objections or exceptions have been filed in said proceeding, or in case any objections or exceptions filed be not sustained, and that the allegations of said petition are proven to the satisfaction of the court an order will be entered in accordance with the prayer of said petition. Said notice shall be signed by the sheriff of said county. [L. '03, p. 89, § 5.]

§ 4497. [4282.] Hearing—Objections, Findings, etc.—Tax Levy.

At the time and place fixed in said order for the hearing of said petition, or at such time to which the court may continue said hearing, the court shall proceed to a hearing upon said petition and upon any objections or exceptions which have been filed thereto. And upon it appearing to the satisfaction of the court from the proofs offered in support thereof that the allegations of said petition are true, the said court

shall ascertain the total amount of said registered warrants, orders, vouchers or other evidences of indebtedness with the accrued interest and the costs of said proceedings, and thereupon the said court shall enter an order directing the board of county commissioners to levy a tax upon all the real estate within said drainage district exclusive of improvements, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said outstanding registered warrants, orders, vouchers or other evidences of indebtedness with interest as aforesaid and the costs of said proceeding, and the cost of levying said tax, and further directing the county auditor to issue a warrant on the county treasurer to the petitioner for the costs advanced by him in such proceeding, which shall be paid in the same manner as the said registered warrants, orders, vouchers or other evidences of indebtedness. [L. '03, p. 90, § 6.]

Cited in 51 Wash. 14.

§ 4498. [4283.] Tax Levy—Extension on Tax-rolls—Collection.

The clerk of said superior court shall certify the said order to the board of county commissioners, and to the county auditor and upon receipt of said order by said board it shall proceed forthwith to execute said order, and upon said levy being made it shall be extended upon the tax-rolls, certified and collected at the same time, in the same manner as other special district taxes. [L. '03, p. 90, § 7.]

§ 4499. [4284.] Dismissal of Petition, When.

If upon said hearing the court shall find that the petitioner is not entitled to an order granting the prayer of said petition the court shall enter an order dismissing said petition and taxing the costs against said petitioner. [L. '03, p. 90, § 8.]

§ 4500. [4285.] Appeals.

From any final order entered by the said superior court as above provided for, any party to said proceeding feeling himself aggrieved thereby may take an appeal to the supreme court of the state of Washington, as provided by the general appeal law of this state. [L. '03, p. 91, § 9.]

§ 4501. [4286.] Payment of Expenses Incurred Under Act of 1888.

Where any dike, or any portion thereof, has been constructed and maintained in compliance with the provisions of an act of the legislative assembly of the territory of Washington, entitled, "An act to provide for the construction and maintenance of dikes and dams in certain cases," approved February 2, 1888, or any acts amendatory thereof, and where any warrants or orders, issued in connection with the expense of the construction and maintenance thereof, remain outstanding and unpaid, it shall be the duty of the board of county commissioners of the county in which the same are located to assess the lands benefited thereby for the purpose of paying said outstanding warrants, or orders together with interest thereon from the date of their issuance until paid, at the rate of six per cent per annum: Provided, that

no such assessment shall be made, nor shall any proceeding under this act be had, unless such dike or system of dikes shall have been so constructed and maintained and be at the time of the initiation of such assessment proceeding in such a condition as to constitute an actual substantial benefit to the land included within the limits of said diking district, by so protecting said lands from overflow as to render them suitable for cultivation. [L. '05, p. 282, § 1.]

"This act," refers to §§ 4501—4516.

§ 4502. [4287.] Notice to Present Warrants—Failure to Register.

The county auditor of any county in which such dike or dam is located upon the written request of any holder or owner of any such warrant or order, shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in some newspaper of general circulation in the county, a notice directing any and all holders or owners of any such warrants or orders to present the same to him, at his office for registration within ninety days from the date of the first publication of such notice; and such notice shall be published once a week for six consecutive weeks. Upon the presentation to him of such warrants or orders, the county auditor shall register the same in a separate book to be kept for that purpose, showing the date of registration, the date of issuance, the name of the person by whom presented and the face value thereof; Provided, however, that warrants or orders on the several diking districts organized under said act or any act amendatory thereof, shall be registered separately. Any such warrant or order not presented within the time prescribed in such notice, shall not share in the benefits of this act, and no assessment or reassessment shall thereafter be made for the purpose of paying the same. [L. '05, p. 283, § 2.]

§ 4503. [4288.] Acquisition of Necessary Lands—Purchase—Condemnation.

Where the land included within the boundaries of any diking district established in accordance with the said act approved February 2, 1888, or of any acts amendatory thereof, are included within the boundaries of any diking district or districts organized in accordance with the provisions of Chapter I of this title, no condemnation proceedings for the purpose of acquiring title to the lands upon which such dikes or dams are located shall be necessary. But where the lands included within the boundaries of any diking district organized under said act approved February 2, 1888, or any acts amendatory thereof, are not included within the boundaries of any diking district or districts organized under said Chapter I, it shall be the duty of the board of county commissioners of any county in which said dike or dams are located to purchase the lands occupied by, or necessary to said dikes or dams, and of any spurs, offshoots or appurtenances thereto, or acquire the same by condemnation proceedings, whether title to such land has not already been acquired, and to that end are hereby authorized to institute and maintain, in the name of the county, the proceedings provided by sections 921—936 of this code. [L. '05, p. 283, § 3.]

§ 4504. [4289.] Assessment—Procedure—Completion of Work.

Where the lands [are] within the boundaries of any diking district or districts organized under said Chapter I of this title, the board of county commissioners at the end of ninety days after the date of the first publication of the notice provided for in section 4502, supra, shall forthwith proceed to levy an assessment against such lands for the purpose of paying such outstanding warrants or orders, with interest thereon as referred to in section 4501, supra. And where such lands are not so included, the board of county commissioners shall forthwith proceed to acquire by purchase or condemnation proceedings the necessary lands as provided for in section 4503, supra. Said board of county commissioners shall establish a fund for each diking district organized under said act approved February 2, 1888, or acts amendatory thereof, to be called, "Old Diking Fund No. —," (here insert No. of diking district established under said act approved February 2, 1888, or any acts amendatory thereof) and for the purpose of paying for the lands to be acquired as provided in section 4503, supra, shall borrow money wholly on the faith of and to be repaid wholly from the money in said fund by issuing bonds payable out of said fund in denominations of not to exceed twenty dollars each due on or before five years from date and drawing not to exceed six per cent interest per annum. Where any such dike or dam is uncompleted and the lands for the benefit of which the same was constructed, are not included within the boundaries of any diking district or districts organized under said Chapter I, said board shall proceed to finish said dike or dam according to the survey and report of said improvement made in accordance with the provisions of said act of February 2, 1888, or of any act amendatory thereof, and to pay for the same by warrants duly issued on said dike fund and the total cost of said improvement, including the expenses heretofore issued for the location of right of way and construction or maintenance of said dike or dam shall be paid as hereinafter provided. [L. '05, p. 284, § 4.]

§ 4505. [4290.] Reassessment—Procedure—Notice, Objections, etc.

For the purpose of paying outstanding warrants or orders together with interest thereon, issued in connection with the expense of constructing or maintaining any dike or dam of any diking district organized under said act approved February 2, 1888, or any acts amendatory thereof, and also for the purpose of paying for acquiring the title to lands as provided for in section 4503, supra, and for the completion of any dike or dam as provided for in section 4504, supra, where the acquiring of such title, or the completion of such dike or dam is required under the provisions of this act, the board of county commissioners shall determine the aggregate cost of such dikes or dams and shall apportion the same to each lot or tract of land, road or railroad, according to the benefit which has resulted, or will result to each from said improvement, not exceeding the amount of such benefits: Provided, that such new assessment shall be for an amount which shall not exceed the actual cost and value of the improvement, together with interest thereon as provided for in this act, and costs, and that such amount shall be equitably apportioned upon the

property benefited thereby, according to the provisions of the laws in force at the time such reassessment is made notwithstanding the proceedings of the county commissioners or of any of the officers of the county in which such improvement may be located may be found irregular or defected [defective], whether jurisdictional or otherwise. When such reassessment is completed all sums paid on the former attempted assessments shall be credited to the property on account of which the same was paid. The board of county commissioners shall cause the clerk of the board to make out a list of the lands benefited, giving a description of each tract or lot separately, and showing the sum apportioned to each of such tracts or lots, but said list need not contain the names of the owners of said tracts or lots. Said list shall be filed with the county auditor, and upon the filing thereof he shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in such newspaper as he may select, a notice that said list is on file in his office and is open to inspection. Said notice shall give the number of the diking district organized under said act approved February 2, 1888, or any act amendatory thereof, state the total face value of warrants or orders registered in compliance with section 5402, supra, and contain a description by sections, townships and range, and by blocks where land has been platted, of the land claimed to be benefited. Where an entire section or block is not benefited a description of the part of such section or block claimed to be benefited shall be given. Said notice shall direct any and all persons or corporations interested, who desire to do so, to file with the county auditor exceptions to the apportionment made to lands claimed to be benefited, or to warrants or orders registered, the exceptions, if any, to the latter, to be on the ground that the same were not issued in connection with the expense of the construction or maintenance of dikes or dams, or where fraudulently issued, and all exceptions herein provided shall be filed within sixty days after the date of the first publication of said notice. Said notice shall also give the date on which the board of county commissioners will meet to hear and pass upon such exceptions, which shall be on the sixtieth day after the date of the first publication of said notice; said notice shall be published once a week for six consecutive weeks. [L. '05, p. 285, § 5.]

"This act" refers to §§ 4501—4516.

§ 4506. [4291.] Hearing on Exceptions—Amendments, etc.—Costs.

Upon the day stated in said notice the board of county commissioners shall meet at their regular place of meeting and proceed to hear and pass upon exceptions filed with the county auditor as provided in section 4505, supra. If they find that the apportionment is unfair and unjust, and ought not to be confirmed, they shall so order and amend it to make it fair and just in proportion to benefits, and if necessary, in their opinion, they may adjourn the further hearing not to exceed twenty days, to a day to be fixed by them, and go upon the premises and by actual view apportion the entire cost of location and construction or maintenance, or any part thereof, according to benefits as may seem just and proper, and on the day so fixed by them they shall again meet and determine the apportionment. The cost of the publication of the notice

in this act provided for shall be considered as a part of the costs to be apportioned to said lands. The commissioners may hear testimony and examine all witnesses upon questions made by the exceptions, and for that purpose may compel the attendance of witnesses, by subpoena, which the clerk of the superior court shall issue or demand, and their decision on the exceptions shall be entered on the journal, and if they sustain the exceptions the cost of the hearing thereof shall be paid out of the county treasury, and if they overrule the same such costs shall be taxed against the person or corporation filing the exceptions: Provided, however, that if exceptions to warrants or orders registered with the auditor are sustained the costs of the hearing thereof shall be taxed against the owner of such warrants or orders. Where costs are taxed against any person or corporation it shall be the duty of the prosecuting attorney, to institute action in the superior court for the recovery of the same. [L. '05, p. 286, § 6.]

"This act" refers to §§ 4501—4516.

§ 4507. [4292.] Exceptions to Warrants—Hearing on.

Where exceptions are filed to warrants or orders registered with the auditor of the board of county commissioners, on the day of their meeting provided for in section 4506, supra, shall set the same down for hearing at a day not later than thirty days thereafter and shall direct the auditor to notify the person or corporation who presented said warrants or orders to him for registration of such exceptions, and shall state the time when and place where such exceptions shall be heard; and said notice shall be deposited by the county auditor in the postoffice at the county seat at least twenty days before the day set for such hearing, postage prepaid, and addressed to such person or corporation at his last known address, or at its principal place of business. The affidavit of the auditor shall be proof of such service. [L. '05, p. 287, § 7.]

§ 4508. [4293.] Appeals—Procedure.

Any person or corporation feeling aggrieved by the ruling of the board of county commissioners upon exceptions filed as hereinbefore provided for, may appeal to the superior court. Upon such appeal no bond shall be required and no stay shall be allowed. If the appeal be from the ruling of the board of county commissioners in relation to the apportionment of costs or assessments of benefits to land, such appeal shall bring before the superior court the justness of the amount of benefits in respect to the parties to the appeal. Such appeal shall be made by filing a written notice of appeal with the clerk of the board of county commissioners within ten days after such new assessment or reassessment-roll shall have been approved and confirmed by the board of county commissioners; and said notice shall describe the property and the objections of such appellant to such assessment or reassessment, and such appellant shall also file with the clerk of the superior court aforesaid within twenty days from the approval and confirmation of such roll by the board of county commissioners a copy of said notice, appeal, reassessment-roll and proceeding thereon, certified by the clerk of such board of county commissioners; and the case shall be docketed by the clerk of such court in the name of the person taking such appeal against said

county as "an appeal from assessments." Said cause shall then be at issue, and shall have preference over all civil cases pending in said court, except proceedings under the acts relating to eminent domain by cities and towns, and actions of forcible entry and detainer. Such appeal shall be tried in said court as in the case of equitable causes, except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify, or annul the assessment in so far as the same affects the property of the appellant, from which judgment an appeal shall lie to the supreme court as in other cases. In case the assessment is confirmed, the fees of the clerk of the board of county commissioners for copies of the record shall be taxed against the appellant with other costs. If the appeal be from a ruling of the board of county commissioners in relation to exceptions filed to warrants or orders registered with the county auditor, such appeal shall be taken in the manner provided by law for appeals from the action of the board of county commissioners in other cases. [L. '05, p. 287, § 8.]

§ 4509. [4294.] Apportionment to Highways, Railroads, State Lands, etc.

When the improvement protects or benefits the whole or any part of any public or corporate road or railroad there shall be apportioned to the county, if the road is a state, county or free turnpike road, or to the corporation if a corporate road or railroad, a share of the cost and expenses thereof proportionate to the benefits to said road or railroad. All lands of the state or any county school district or other municipal corporation shall be subject to the provisions of this act. [L. '05, p. 288, § 9.]

"Act" refers to §§ 4501—4516.

§ 4510. [4295.] Time and Manner of Payments—Extension of Tax-roll.

When said apportionment or assessment of benefits shall have been approved as hereinbefore provided, the commissioners shall determine at what time and in what number of assessments, not to exceed four, they will require the same to be paid, and order that the assessments, as made by them, be placed upon the tax-roll accordingly against the lots or lands assessed. When the commissioners make an assessment they shall cause an entry to be made directing the clerk of the board of county commissioners to make and furnish to the treasurer of the county a special tax-roll with the assessment arranged thereon as required by their order, and the clerk of the board of county commissioners shall retain a copy thereof in his office, and all assessments shall be liens upon the property against which they are assessed, and shall be collected and accounted for by the treasurer as taxes: Provided, that the treasurer shall accept in payment of assessments the bonds issued under the provisions of section 4504, supra, and said treasurer shall place the assessment so collected in said dike fund. The list thus prepared must remain in the office of the treasurer for thirty days or longer if ordered by the board of county commissioners, and during the time it so remains any person may pay the amount of charges against any tract to the treasurer without costs, or if so ordered by the board of county commissioners said payments may be by installments, and if at the end of thirty days or the longer period fixed by said commissioners, any of the

charges or any of the installments ordered by them already due have not been paid, the treasurer must transmit a list to the prosecuting attorney, who must at once proceed by civil action to collect such charges and foreclose the liens therefor, and such charges or liens shall draw interest at the same rate as the delinquent taxes for state and county purposes. [L. '05, p. 288, § 10.]

§ 4511. [4296.] Payment of County Costs from Diking Fund.

Where exceptions to the apportionment or assessment are sustained by the county commissioners the costs of the hearing thereof shall be paid out of the county general fund, and where upon any appeal provided for in this act costs are taxed against the county, such costs shall be paid in the same manner, and the county shall be reimbursed therefor out of the first moneys paid into the said diking fund provided for in this act. If by reason of the payment of such costs, or the reduction or annulment of any assessment on appeal, the apportionment or assessment made by the board of county commissioners shall be found insufficient to make the payments required by this act, then said board shall increase such apportionment or assessment in the same proportion as such apportionment or assessment was made: Provided, however, that the total apportionment to and assessment against any tract or lot shall not exceed the benefits derived by the same. [L. '05, p. 289, § 11.]

§ 4512. [4297.] Action Brought in Name of County.

All actions authorized by this act to be brought by the prosecuting attorney shall be brought in the name of the county. [L. '05, p. 290, § 12.]

"Act" refers to §§ 4501—4516.

§ 4513. [4298.] Lists of Prior Assessments, etc., to be Filed.

The county treasurer of any county in which any diking district or districts were organized under said act approved February 2, 1888, or any acts amendatory thereof, shall within ninety days after the date of the first publication of the notice provided for in section 4502, supra, make out and file with the board of county commissioners a list for each of such diking districts; said list to contain a description of each tract or lot of land against which assessments were made under said act approved February 2, 1888, or any acts amendatory thereof, and to show any and all assessments made against the same and what payments were made upon the same. [L. '05, p. 290, § 13.]

§ 4514. [4299.] No Other Costs to be Taxed.

No costs shall be taxed for the work required to be done according to the provisions of this act by the county treasurer or the county auditor or the clerk of the board of county commissioners except as herein otherwise provided. [L. '05, p. 290, § 14.]

§ 4515. [4300.] Outstanding Warrants—Order of Payment—Interest.

Outstanding warrants or orders, together with interest thereon, issued in connection with the expenses of the construction or maintenance of dikes or dams constructed or maintained under the provisions of said act approved February 2, 1888, or of any acts amendatory thereof, shall

be paid first and shall be paid in the order of their issuance; and thereafter indebtedness such as is authorized by this act, incurred by said board of county commissioners, shall be paid in the order of the issuance of the evidence of such indebtedness. Warrants issued by the said board shall draw interest at the rate of six per cent per annum. [L. '05, p. 290, § 15.]

§ 4516. [4301.] Irregularities not to Invalidate.

The fact that a contract has been let, or such improvement shall have been made and completed in whole or in part shall not prevent such assessments being made; nor shall the omission, failure or neglect of any officer or officers to comply with the provisions of law governing such county or county commissioners as to petition, notice, resolution to improve, estimate, survey, diagram, manner of letting the contract or section of work, or any other matter whatsoever connected with the improvement and the first assessment thereof, operate to invalidate or in any way to affect the making of the new assessment or reassessment as provided for herein, charging the property benefited with the expense thereof: Provided, that such new assessment shall be for an amount which shall not exceed the actual cost and value of the improvement, together with the interest and costs as herein provided for, and that such amount be equitably apportioned upon the property benefited thereby according to the provisions of the laws of this state relative to municipal corporations. [L. '05, p. 290, § 16.]

§ 4517. Renting Equipments.

The commissioners of any diking, drainage or commercial waterway district organized under the laws of this state, shall have power and authority to rent any machinery, tools or equipment belonging to such district, to any individual or corporation for hire under such conditions regarding the care and maintenance thereof as the commissioners may determine; and all sums of money received for the rent thereof shall be paid into the county treasury, to the credit of the district. [L. '17, p. 348, § 1.]

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CHAPTER I.

SCHOOL SYSTEMS AND STATE OFFICERS.

§ 4518. [4302.] Uniform School System.

A general and uniform system of public schools shall be maintained throughout the state of Washington, and shall embrace common schools (including high and elementary schools, schools for special help and discipline, schools or departments for special instruction), technical schools, the University of Washington, the State College of Washington, state normal schools, state training schools, schools for defective youth, and such other educational institutions as may be established by law and maintained at public expense. [L. '09, p. 230, § 1. Cf. L. '90, p. 348, § 1; 1 H. C., § 8769; L. '97, p. 356, § 1.]

Former laws cited in 13 Wash. 362, 702; 25 Wash. 124; 29 Wash. 598; 32 Wash. 274, 666; 36 Wash. 409, 422, 432; 43 Wash. 242; 69 Wash. 192; 72 Wash. 455.

For former enactments relating to common schools in Washington Territory, see L. '54, pp. 319—328; L. '55, p. 112; L. '57, pp. 33, 34; L. '58, pp. 19—23; L. '60, p. 297 and pp. 304—318; L. '61, pp. 21—22; L. '62, p. 46; L. '63, pp. 456—473; L. '66, pp. 3—23; L. '67, pp. 23—43; L. '68, pp. 18—88; L. '71, pp. 12—30; L. '73, pp. 419—436; L. '75, p. 113; L. '77, pp. 257—283; L. '83, pp. 1—24; L. '86, pp. 1—31; L. '88, pp. 21—24 and 199—203.

See Const., Art. IX, § 2.

This title embraces the "School Code" of 1909, with some necessary additions. The unusual classification and nomenclature adopted inevitably resulted in many serious errors in reference to various sections of the act. This not only leaves the intent of the legislature to conjecture in each instance of error, but casts some doubt upon all the other references. The greatest care has been exercised in reducing these references to a more practicable system. The sections are cited by reference to page and section number only, and the subject matter reclassified as logically as possible, without disarranging the order of the sections as enacted, except to insert other laws.

Const., Art. IX, § 2, provides: "The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established."

Cited in 84 Wash. 415, 102 Wash. 344.

A common school, within Constitution, Article IX, § 2, means one that is common to all children of proper age and

capacity, free, and subject to, and under the control of the qualified voters of the district: *School District v. Bryan*, 51 Wash. 498, 99 Pac. 28, 20 L. R. A. (N. S.) 1033.

§ 4519. [4303.] Administration.

The administration of the public school system shall be intrusted to a superintendent of public instruction, a state board of education, to regents or trustees for educational institutions, to county superintendents of common schools, to boards of directors and district clerks. [L. '90, p. 348, § 2; 1 H. C., § 770; L. '97, p. 363, § 19; L. '09, p. 230, § 2.]

Cited in 84 Wash. 83.

§ 4520. [4304.] Vacancies.

Whenever any vacancy in the board shall occur, whether by death, removal, resignation or otherwise, the governor shall fill the vacancy by appointment. [L. '90, p. 355, § 9; 1 H. C., § 774; L. '97, p. 367, § 26.]

§ 4521. [4305.] State Superintendent—Term of Office.

A superintendent of public instruction shall be elected by the qualified electors of the state, on the first Tuesday after the first Monday in November of the year in which state officers are elected, and shall hold

his office for the term of four years, and until his successor is elected and qualified. [L. '09, p. 231, § 1. Cf. L. '61, pp. 55, 56; L. '90, p. 348, § 3; L. '91, p. 237, § 1; 1 H. C., § 119; L. '97, p. 363, § 20.]

See Const., Art. III, §§ 1, 3 and § 10980, *infra*, time of election and term of office.
See *infra*, § 10981, oath.

§ 4522. [4306.] Salary.

The superintendent of public instruction shall receive an annual salary of three thousand dollars, payable monthly, upon warrant of the state auditor, drawn upon the state treasurer, in the same manner as other state officers are paid. [L. '09, p. 231, § 2. Cf. L. '97, p. 363, § 21; L. '07, p. 174, § 1.]

See Const., Art. III, § 22.
See *infra*, § 10976.

§ 4523. [4307.] Powers and Duties Enumerated.

The powers and duties of the superintendent of public instruction shall be:

First. To have supervision over all matters pertaining to the public schools of the state.

Second. To report biennially to the governor on or before the first day of November preceding the regular session of the legislature, of which report five thousand copies shall be printed and delivered to the superintendent of public instruction, who shall furnish one copy to be deposited in the state library, one copy to each county superintendent of schools and one copy to each district library. Said report shall contain a statement of the general condition of the public schools of the state, with full statistical tables by counties showing the number of schools and the attendance, the state and county funds apportioned, amount received from special tax and from other sources, amount expended for salaries of teachers, the salaries paid by the several counties to the county superintendents of schools and the amount paid for incidentals and expenses; the amount paid for building and providing schoolhouses with furniture and apparatus, the amount of bonded and other school indebtedness, with the rate of interest paid thereon, the reports of all state educational institutions, or such portions of them as he may think advisable, together with such other facts as he may deem of general interest. He shall also include in his report a statement of plans for the management and improvement of the schools.

Third. To prepare and have printed such blanks, forms, registers, courses of study, rules and regulations for the government of the common schools, questions prepared for the examination of teachers, and such other blanks and books as may be necessary for the discharge of the duties of teachers and officers charged with the administration of the laws relating to the common schools, and to distribute the same to the county superintendents.

Fourth. To travel, without neglecting his other official duties as superintendent of public instruction, for the purpose of attending educational meetings or conventions within this or adjoining states,

of visiting schools, of consulting county superintendents or other school officers.

Fifth. To submit to the state auditor a monthly statement of his expenditures for traveling expenses.

Sixth. To cause to be printed with an appendix of appropriate forms and instructions for carrying into execution the laws relating to public schools, and to distribute to each county superintendent a sufficient number of copies to supply each district officer, and to cause the same to be printed and distributed as often as any change in the laws shall make it of sufficient importance, in his opinion, to justify the same.

Seventh. To act as ex-officio president of the state board of education.

Eighth. To hold, annually, a convention of the county superintendents of the state at such time and place as he may deem convenient, for the discussion of questions pertaining to supervision and the administration of the school laws and such other subjects affecting the welfare and interests of the common schools as may be brought before it. Said convention shall continue in session not less than two days nor more than three days at the option of the superintendent of public instruction. It shall be the duty of every county superintendent in this state to attend said convention during its entire session, and any county superintendent who attends the convention shall receive actual traveling expenses in attending said convention.

Ninth. He shall file all papers, reports and public documents transmitted to him by the school officers of the several counties of the state, each year separately. Copies of all papers filed in his office, and his official acts, may be certified by him and attested by his official seal, and when so certified shall be evidence equally and in like manner as the original paper.

Tenth. To require annually, on or before the fifteenth day of August, of the president, manager, or principal of every educational institution in this state, a report of such facts arranged in such form as he may prescribe, and he shall furnish blanks for such reports; and it is hereby made the duty of every president, manager or principal, to fill up and return such blanks within such time as the superintendent of public instruction shall direct.

Eleventh. To keep in his office a directory of all boards of regents and trustees of state educational institutions, of the faculties of said institutions, and of all teachers receiving certificates to teach in the common schools of this state.

Twelfth. To issue certificates as provided by law.

Thirteenth. To keep in his office at the capital of the state, all books and papers pertaining to the business of his office, and to keep and preserve in his office a complete record of statistics, and all matters pertaining to the educational interests of the state, as well as a record of the meetings of the state board of education.

Fourteenth. To decide all points of law which may be submitted to him in writing by any county superintendent, or that may be submitted to him by any other person, upon appeal from the decision of any county superintendent; and he shall publish his rulings and decisions from time to time for the information of school officers and

teachers; and his decisions shall be final unless set aside by a court of competent jurisdiction.

Fifteenth. To administer oaths and affirmations in the discharge of his official duties.

Sixteenth. To deliver over to his successor, at the expiration of his term of office, all records, books, maps, documents and papers of whatever kind belonging to his office or which may have been received by him for the use of his office.

Seventeenth. To prepare and from time to time to revise a state manual of Washington, which shall be sold at actual cost of publication and distribution, said manual to contain a sketch of the history of the state, an outline of the Constitution of the state, excerpts from the school code, the courses of study and rules for the general government of the common schools, a map of the state, and a map of the topography of the state, and such other matter as the state superintendent or the state board of education from time to time shall determine.

Eighteenth. To make a certified copy of papers filed in his office and of his official acts, attested by his official seal. He shall charge for such certified copy fifteen cents per folio, and all money so received shall be immediately paid to the state treasurer and credited to the general fund of the state.

Nineteenth. To perform such other duties as may be required by law. [L. '09, p. 231, § 3. Cf. L. '90, pp. 348—351, §§ 3, 4; L. '91, pp. 237—240, §§ 1, 2; 1 H. C., §§ 119, 120; L. '97, p. 363, § 22; L. '99, p. 307, § 4; L. '01, p. 41, § 1; L. '01, p. 376, § 6; L. 03, p. 166, § 9; L. '07, p. 604, § 1.]

See *infra*, § 11003, printing of reports.

§ 4524. [4308.] Assistant, Deputy and Stenographer.

The superintendent of public instruction is hereby authorized to appoint one assistant superintendent of public instruction, who shall be the holder of not less than a first grade certificate; a deputy superintendent of public instruction, who shall also act as an inspector of schools, who shall be the holder of not less than a first grade certificate; a stenographer, and also to employ such other assistance as the needs of his office shall require from time to time, and for the payment of whose services appropriations shall have been made by the legislature of this state. [L. '09, p. 234, § 4. Cf. L. '90, p. 351, § 5; 1. H. C., § 121; L. '97, p. 366, § 23; L. '03, p. 169, § 10; L. '05, p. 104, § 1.]

§ 4525. [4309.] State Board of Education—Term of Office.

The state board of education shall consist of the superintendent of public instruction, the president of the University of Washington, the president of the State College of Washington, the principal of one of the state normal schools elected by the principals of the state normal schools, and three persons holding life diplomas issued under the authority of this state and actively engaged in educational work, appointed by the governor, one of whom shall be a superintendent of a district of the first class, one a county superintendent of schools, one a principal of a fully accredited four year high school.

The appointed and elected members of the board shall hold their office for two years from the date of appointment and shall serve until their successors are appointed and qualified. [L. '09, p. 234, § 1. Cf. L. '90, p. 352, § 6; 1 H. C., § 771; L. '97, p. 366, § 24; L. '01, p. 376, § 6; L. '07, p. 608, § 2.]

Vacancies, how filled: See *supra*, § 4520.

Joint board of higher curricula, see *infra*, § 4543.

§ 4526. [4310.] President of Board.

The superintendent of public instruction shall be ex-officio president of the board, and shall furnish all necessary record-books and blanks for its use, and shall represent the board in directing the work of high school inspection. [L. '09, p. 235, § 2.]

§ 4527. [4311.] Secretary of Board.

The deputy superintendent of public instruction shall be ex-officio secretary of said board, but shall not be entitled to a vote in its proceedings. He shall keep a correct record of its proceedings in a good and well-bound book, which shall be kept in the office of the superintendent of public instruction. He shall also, upon request, furnish to the executive head of any or all of the state institutions of higher education a certified copy of such proceedings. [L. '09, p. 235, § 3.]

§ 4528. [4312.] Meetings—Expenses.

The state board of education shall hold an annual meeting at the capital of the state on the third Tuesday of June of each year, and may hold such special meetings as may be deemed necessary for the transaction of public business, such special meetings to be called by the superintendent of public instruction. The persons serving as members of the state board of education shall be reimbursed for the actual expenses incurred in the performance of their duties, which expenses shall be paid by the state treasurer on warrants of the state auditor, out of funds not otherwise appropriated, upon the certificate of the superintendent of public instruction: Provided, that members of the board who are not under salary to whom special committee work is assigned shall be paid for such services five dollars per day. [L. '09, p. 235, § 4. Cf. L. '90, p. 352, § 7; 1 H. C., § 772; L. '97, p. 367, § 25; L. '03, p. 169, § 11.]

§ 4529. [4313.] Powers and Duties of Board.

The state board of education shall have power, and it shall be its duty:

First. To approve the preparatory requirements for entrance to the University of Washington, the State College of Washington, and the state normal schools of Washington.

Second. To approve courses for the state normal schools, for the department of education of the University of Washington, and the State College of Washington, and for all normal training departments of higher institutions within the state of Washington which may be accredited and whose graduates may become entitled to receive teachers' life diplomas or professional certificates.

Third. To investigate the character of the work required to be performed as a condition of entrance to and graduation from normal schools, colleges, universities and other institutions of higher education and to prepare an accredited list of those higher institutions of learning of this and other states whose graduates may be awarded teachers' certificates by the superintendent of public instruction without examination except upon the state manual of Washington: Provided, that the entrance and graduation requirements of all colleges and universities whose diplomas are accredited must be equal to those of the University of Washington; and the requirements for normal schools shall be equal to the advanced course of the state normal schools of this state.

Fourth. To prepare an accredited list of state life certificates and life diplomas issued in other states by examination, upon which certificates may be issued in this state without examination, except in Washington State Manual: Provided, that the requirements to obtain such certificates and diplomas must be equal to the requirements for a life certificate in this state.

Fifth. To examine and accredit secondary schools: Provided, that no private academy shall be placed upon the accredited list so long as secret societies are allowed to exist among its students.

Sixth. When requested by any institution of higher learning situated within the state maintaining a normal training department the board shall send an inspector, qualified for such service, to examine the equipment of such department and to ascertain the extent and character of the courses provided and the preparatory requirements for admission to them, which requirements must include the completion of a high school course or its equivalent, and particularly the qualifications and experience of the instructors and supervisors who are responsible for the work of this department.

The inspector shall make a detailed report, including declaration of his opinion of the adequacy of the department for the work of educating and training teachers, which report shall be placed on file in the office of the superintendent of public instruction.

If any such normal training department is ascertained to be equipped and manned adequately for the education and training of teachers and to be under reliable and responsible management and upon a basis of efficiency equal to that of the normal schools maintained by the state it shall be the duty of the board to accredit such department and to grant life diplomas to graduates who present diplomas certifying that the holders have completed the courses approved by the board when the applicants have complied with the other requirements for life diplomas. It shall be the further duty of the board to inspect all accredited normal training departments each year.

Seventh. To prepare an outline course or courses of study for the primary, grammar and high school departments of the common schools, and to prescribe such rules for the general government of the common schools, as shall secure regularity of attendance, prevent truancy, secure efficiency and promote the true interests of the common schools.

Eighth. To prepare a uniform series of questions to be used by the county superintendents in the examination of teachers, and to determine

rules and regulations for conducting the same, and to prepare questions for the examination of applicants for state elementary certificates, and life diplomas.

Ninth. To prepare answers to all examination questions which are prepared by the board.

Tenth. To prepare uniform questions for use in the examination of the pupils of the schools of the state completing the grammar school course of study, and to prescribe uniform rules and regulations for the conducting of such examinations.

Eleventh. To hear and decide appeals as provided by law. [L. '09, p. 236, § 5. Cf. L. '90, p. 352, § 8; 1 H. C., § 773; L. '95, p. 373, § 1; L. '97, p. 367, § 27; L. '03, p. 170, § 12; L. '07, p. 609, § 3.]

Former laws cited in 36 Wash. 409, 414, 415, 422.

See supra, § 4523, appeals.

State Board and Officers—Powers and Functions in General: See Remington's Digest, Schools, § 15; State v. Womack, 4 Wash. 19, 29 Pac. 939; Rand, McNally & Co. v. Hartranft, 32 Wash. 378, 73 Pac. 401.

Curriculum and Course of Study: See Remington's Digest, Schools, § 55; Wagner v. Royal, 36 Wash. 428, 78 Pac. 1094; Westland Pub. Co. v. Royal, 36 Wash. 399, 78 Pac. 1096; Rand, McNally & Co. v. Royal, 36 Wash. 420, 78 Pac. 1103.

§ 4530. [4314.] Further Duties of Board.

The board shall arrange such courses and adopt and enforce such regulations as will place the state institutions in harmonious relations with the common schools and with each other, and unify the work of the public school system. [L. '09, p. 238, § 6. Cf. L. '97, p. 368, § 29.]

§ 4531. [4315.] Seal.

The state board of education shall adopt a seal, which shall be kept in the office of the superintendent of public instruction. [L. '09, p. 238, § 7.]

CHAPTER II.

COURSES OF INSTRUCTION IN STATE UNIVERSITY, STATE COLLEGE AND NORMAL SCHOOLS.

§ 4532. "Major Line" Defined.

The term "major line," whenever used in this act, shall be held and construed to mean the development of the work or courses of study in certain subjects to their fullest extent, leading to a degree or degrees in that subject. [L. '17, p. 34, § 1.]

§ 4533. Exclusive Courses in State University.

The courses of instruction of the University of Washington shall embrace as exclusive major lines, law, architecture, forestry, commerce, journalism, library economy, marine and aeronautic engineering, and fisheries. [L. '17, p. 34, § 2.]

Power of legislature to prescribe subjects to be taught in public schools. 47 L. R. A. N. S.) 200.

§ 4534. Exclusive Courses in State College.

The courses of instruction of the State College of Washington shall embrace as exclusive major lines, agriculture in all its branches and sub-

divisions, veterinary medicine, and economic science in its application to agriculture and rural life. [L. '17, p. 34, § 3.]

§ 4535. Courses Permitted to University and College Jointly.

The courses of instruction of both the University of Washington and the State College of Washington shall embrace as major lines, liberal arts, pure science, pharmacy, mining, civil engineering, electrical engineering, mechanical engineering, chemical engineering, home economics, and the professional training of high school teachers, school supervisors and school superintendents. These major lines shall be offered and taught at said institutions only. [L. '17, p. 34, § 4.]

§ 4536. Medicine as University Course.

Work and instruction in medicine when introduced or developed shall be offered and taught at the University of Washington exclusively. [L. '17, p. 35, § 5.]

§ 4537. Agricultural Branches in State College.

Work and instruction in agriculture in all its branches and subdivisions shall be offered and taught in the State College of Washington exclusively. [L. '17, p. 35, § 6.]

§ 4538. Graduate Work.

Whenever a course is authorized to be offered and taught by this act, in any of the institutions herein mentioned, as a major line, it shall carry with it the right to offer and teach graduate work in such major lines. [L. '17, p. 35, § 7.]

§ 4539. Elementary Science at State College.

The work of the department of elementary science shall be continued and developed at the State College of Washington. [L. '17, p. 35, § 8.]

§ 4540. Entrance Requirements.

Requirements for entrance to the University of Washington, the State College of Washington, and the state normal schools of Washington, shall not be less than graduation from a four year accredited high school except for persons twenty-one years of age or over and except for students in the elementary science departments of the State College of Washington. This requirement may be waived as to summer school, short courses or extension work. [L. '17, p. 35, § 9.]

See, also, *infra*, § 4553.

§ 4541. Normal School Instruction.

The courses of instruction for the professional training of teachers for the elementary schools shall be offered and taught at the state normal schools only. [L. '17, p. 35, § 10.]

§ 4542. Normal Courses, State Board to Prescribe—Teachers' Certificates.

The state board of education shall prescribe courses of study for the state normal schools as follows:

Elementary courses of one and two years; advance courses of three or of four years; a special advanced course of one year for graduates from colleges and universities: Provided, that the four-year advanced course shall not become operative before the year 1920.

Upon satisfactory completion of any one of these courses a student shall be awarded an appropriate certificate or diploma as follows:

Upon the completion of a one-year elementary course, a normal school elementary certificate may be issued which shall be valid in the elementary schools of the state for a period of two years. Upon the completion of a two-year elementary course a normal school elementary diploma may be issued which shall be valid in the elementary schools of the state for a period of five years, and which may be renewed for a like period or a normal school life diploma issued in its stead: Provided, the holder shows professional growth and furnishes evidence of not less than twenty-four (24) months of successful teaching experience. Upon completion of a three-year advanced course a special normal school diploma may be issued which shall be valid in the common schools of the state for a period of five years, and which may be renewed for a like period or a normal school life diploma issued in its stead: Provided, the holder shows professional growth and furnishes evidence of not less than twenty-four (24) months of successful teaching experience. Upon completion of said four-year advanced course, an advanced special normal school diploma may be issued which shall be valid in the common schools of the state for a period of five years, and which may be renewed for a like period or a normal school life diploma issued in its stead: Provided, the holder shows professional growth and furnishes evidence of not less than twenty-four (24) months of successful teaching experience. Upon completion of a one-year advanced course for college and university graduates, a graduate normal school diploma may be issued which shall be valid in the common schools of this state for a period of five years, and which may be renewed for a like period or a normal school life diploma issued in its stead on a proper showing of professional growth and evidence of not less than twenty-four (24) months of successful teaching experience. [L. '17, p. 35, § 11.]

§ 4543. Joint Board of Higher Curricula.

There is hereby established a joint board of higher curricula composed of seven members, namely, the president of the University of Washington, the president of the State College of Washington, the president of one of the state normal schools to be selected by the presidents of the state normal schools and four citizens of the State of Washington who are in no way connected with the institutions of higher learning, to be appointed by the governor. The selected members of the joint board shall hold office for two years and shall serve until their successors are selected. [L. '21, p. 227, § 1; Cf. L. '17, p. 36, § 12.]

CHAPTER III.

UNIVERSITY OF WASHINGTON.

§ 4544. [4316.] Designation.

The State University, as heretofore located and established in the city of Seattle, county of King, shall be designated and named the University of Washington. [L. '09, p. 238, § 1. Cf. L. '90, p. 395, § 1; 1 H. C., § 934; L. '97, p. 427, § 182.]

Former laws cited in 3 Wash. 129; 74 Wash. 578.

See *infra*, § 5518, etc., University funds.

See *infra*, § 7828, etc., University lands.

See *infra*, § 8243, state board of control to visit.

See *infra*, § 8255, museum of.

§ 4545. [4317.] Purpose—Tuition—Admission of Students.

The aim and the purpose of the University of Washington shall be to provide for students of both sexes, on equal terms, a liberal instruction in the different branches of literature, science, art, law, medicine, military science and such other departments of instruction as may be established therein from time to time by the board of regents. . . . Nonresidents of this state shall be admitted to the state university on such terms as may from time to time be prescribed by the board of regents: Provided, that no student shall be admitted to any department of the university who is under the age of sixteen years. . . . [L. '09, p. 238, § 2. Cf. L. '90, p. 296, § 2; 1 H. C., § 935; L. '93, p. 296, § 6; L. '97, p. 427, § 183.]

Part of this section is omitted, as superseded by §§ 4546 and 4553, *infra*.

Cited in 71 Wash. 216; 90 Wash. 190.

Laws of 1915, p. 239, providing an entrance and tuition fees to be charged to students of the university of Washington, is a valid exercise of legislative authority: *Litchman v. Shannon*, 90 Wash. 186, 155 Pac. 783.

Distinction between "school children" and "students" as found in this section and sections 4568, 4610, 4680, 5072: *State ex rel. Seattle v. Seattle Elec. Co.*, 71 Wash. 213, 128 Pac. 220, 43 L. R. A. (N. S.) 172.

§ 4546. [5049-7.*] Student Fees.

The University of Washington shall charge to and collect from each of the students registering therein the following fees: (a) A general tuition fee of fifteen dollars (\$15.00) per quarter from each person domiciled in this state or the territory of Alaska for the period of one year prior to registration, and fifty dollars (\$50.00) each per quarter from all others. (b) Special tuition fees to include fees for summer session, short courses, marine station work, correspondence or extension courses, individual instruction fees, and such other special tuition fees as may be established by the board of regents of the university from time to time. (c) A library fee of ten dollars (\$10.00) per quarter for law, for each student registered in law, for the law library. (d) Student deposit, disciplinary, laboratory, library, gymnasium, hospital or health fees, and such other fees as may be established by the board of regents from time to time, the fees mentioned in this subdivision to be deposited or paid by each student required to deposit or pay same under rules to be prescribed

by said board. [L. '21, p. 499, § 1. Cf. L. '19, p. 128, § 1; L. '15, p. 239, § 2.]

Right to exact incidental fees from college students. *Ann. Cas.* 1914B, 405.

§ 4547. [5049-8.*] Fees Credited to Building Fund.

All general tuition fees mentioned in subdivision (a) of section 4546 shall, within thirty-five (35) days from the date of collection thereof, be paid into the state treasury and by the state treasurer shall be credited as follows: Ten dollars (\$10.00) from each student to the "University of Washington Building Fund" and the balance to the "University of Washington Fund." The sum so credited to the "University of Washington Building Fund" shall be used exclusively for the purpose of erecting, altering, maintaining, equipping or furnishing buildings constructed under the act of March 15, 1915, being chapter 66 of the Laws of 1915 and the acts mandatory thereto. [L. '21, p. 499, § 2. Cf. L. '19, p. 129, § 2; L. '15, p. 240, § 3.]

§ 4548. [5049-9.*] Fees Credited to Revolving Fund.

Said fees mentioned in subdivisions (b), (c) and (d) of section 4546 shall be held by the said board of regents as a revolving fund and expended for the purposes for which collected, and be accounted for in accordance with the existing law. [L. '21, p. 500, § 3. Cf. L. '19, p. 129, § 3; L. '15, p. 240, § 4.]

§ 4549. [5049-10.*] Refund of Fees.

The fees mentioned in subdivision (a) of section 4546 are not returnable except in case of sickness or causes entirely beyond the control of the student. No portion of the returnable fees shall be returned for voluntary or enforced withdrawal after thirty (30) days from the date of registration of the student. Students withdrawing under discipline forfeit all rights to the return of any portion of the fee. In no case shall more than one-half of the fees be refunded. [L. '21, p. 500, § 4; Cf. L. '19, p. 129, § 40; L. '15, p. 240, § 5.]

Recovery of tuition fee on expulsion
or withdrawal of student. *Ann.*

Cas. 1915D, 313; 51 *L. R. A. (N. S.)* 975.

§ 4550. Exemption from Payment of Fees.

The board of regents may exempt the following classes of persons from the payment of the fees mentioned in subdivisions (a) and (b) of section 4546 except for the individual instruction fees mentioned in said subdivision (b): (1) All honorably discharged service men or women who served in the military or naval service of the United States during the late World War; and all honorably discharged service men who served in the military or naval services of any of the governments associated with the United States during the said war, provided they were citizens of the United States at the time of their enlistment and who are again citizens at the time of their registration in the university. If any such service men have not been domiciled in this state for one year prior to registration said board may exempt them up to one-half of the fee payable by other nondomiciled students. (2) Members of the staff

of the University of Washington. (3) Teachers in the public schools of the state who supervise the cadet teachers from the University of Washington. [L. '21, p. 500, § 5.]

§ 4551. Payment of Fees by Promissory Note.

In case of deserving students domiciled in this state or the territory of Alaska who, after a quarter in residence have shown a marked capacity for the work done by them in school, the board of regents may, in lieu of collecting the fees provided for in subdivision (a) of section 4546, extend credit to said students in the amount of said fees, taking therefor the promissory note of the student, with interest at the rate of four per cent per annum. [L. '21, p. 501, § 6.]

§ 4552. [5049-13.] Voluntary Student Fees.

This act shall not apply to or affect any student fee or charge which the students voluntarily maintain upon themselves for student purposes only. [L. '15, p. 241, § 8.]

§ 4553. Admission of Students—Educational Requirements.

The University of Washington shall begin its courses of study in liberal arts and science at the points where the same are completed in the public high schools of the state, as far as practicable. No student shall be admitted to the University of Washington who shall have less than graduation from a four year accredited high school except persons twenty-one years of age or over, and students registering in extension work, short courses and in the summer sessions. No student shall be admitted except upon examination satisfactory to the university or upon certificates from those public high schools and other educational institutions whose courses of study meet the approval of the said University. [L. '21, p. 653, § 1.]

See *supra*, § 4540, admission.

See *supra*, § 4545, entrance requirements.

§ 4554. [4318.] Regents—Term—Quorum—Vacancy, etc.

The government of the University of Washington shall be vested in the board of regents to consist of seven members, who shall be appointed by the governor of the state, by and with the advice and consent of the senate, and who shall hold their offices respectively for a term of six years from the second Monday in March next succeeding their appointment and until their successors shall be appointed and shall qualify: Provided, that regents now serving upon such board shall continue as such during the terms for which they were respectively appointed. Four members of said board shall constitute a quorum for the transaction of business. Whenever there shall be a vacancy in the said board of regents, from any cause whatever, it shall be the duty of the governor to fill such office by appointment, and the person or persons so appointed shall continue in office until the close of the legislature next thereafter, or until others are appointed and qualified in their stead. Each regent before entering upon the duties of his office must qualify by taking the usual oath of office before some officer authorized by law to administer

the same and file a copy of said oath with the secretary of state. [L. '09, p. 239, § 3. Cf. L. '90, p. 396, §§ 3, 4; 1 H. C., §§ 936, 937; L. '95, p. 193, § 1; L. '97, p. 428, § 184.]

§ 4555. [4319.] Organization of Board—Meetings.

The board shall organize by electing from its membership a president and an executive committee, of which committee the president shall be ex-officio chairman. The board shall hold regular quarterly meetings, and during the interim between such meetings the executive committee may transact business for the whole board: Provided, that the executive committee may call special meetings of the whole board when such action is deemed necessary. [L. '97, p. 428, § 185; L. '09, p. 240, § 4.]

See *infra*, § 5993, president a member of the geological survey board.

§ 4556. [4320.] Secretary and Treasurer, Appointment of—Duties.

The regents shall appoint a secretary, a treasurer and librarian, who shall hold their respective offices during the pleasure of the board. It shall be the duty of the secretary to record all proceedings of the board and carefully preserve the same, and all the books and papers. The treasurer shall keep a true and faithful account of all moneys received and paid out by him, and shall give bonds for the faithful performance of the duties of his office in such amount as the regents may require. [L. '90, p. 396, § 6; 1 H. C., § 939.]

The present force of this section is doubtful.

Cited in 74 Wash. 578.

§ 4557. [4321.] Powers and Duties of Regents Enumerated.

The board of regents may adopt by-laws or rules and regulations for its own government. The powers and duties of the board of regents are as follows:

First. The said board shall have full control of the university and its property of various kinds, and shall employ the president, members of the faculty, assistants and employees of the institution, who shall hold their positions during the pleasure of said board of regents.

Second. It shall be the duty of the board of regents, with the assistance of the faculty of the university, to prescribe the course of study in the various departments of the institution and to publish the annual catalogue.

Third. The said board shall grant to every student, upon graduation, a suitable diploma or degree, such student having been recommended for such honor by the faculty. The board shall also have power, upon recommendation of the faculty, to confer the usual honorary degrees upon other persons than graduates of this university in recognition of their learning or devotion to literature, art or science; but no degree shall ever be conferred in consideration of the payment of money or other valuable thing. The said board is also empowered, upon recommendation of the faculty, to grant normal diplomas which shall entitle the holder to teach in any public school in the state for a period of five years; and to grant university life diplomas to candidates who shall give satisfactory evidence of having taught successfully for twenty-four

months: Provided, that all candidates for the normal diploma and life diploma shall have satisfactorily completed not less than twelve semester hours in the department of education.

Fourth. The board of regents is authorized to receive such bequests and gratuities as may be granted to the said university and to invest or expend the same according to the terms of said bequests or gratuities. The said board shall adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, bequests or gratuities, and shall make full report of the same in the customary biennial report to the governor, or more frequently if required by law.

Fifth. The board of regents is authorized and empowered to give and execute, on behalf of the state of Washington, the bonds and other papers required by the war department for the safekeeping of the arms and equipments loaned by the United States to the University of Washington.

Sixth. The board of regents shall transmit, on the first day of January preceding each regular session of the legislature, to the governor a printed report of all the doings since their last report, not exceeding three hundred in number, giving full information of the receipt and expenditure of money, furnish an estimate of the needs of the institution, and give such information as will be helpful to the state authorities in providing for the said institution.

Seventh. The members of said board of regents shall serve without compensation. Each regent, however, shall be paid his actual traveling expenses in going to and coming from any meeting of said board, and such claims for expenses shall be audited on vouchers issued by the president and secretary of said board the same as any other claims are audited. [L. '09, p. 240, § 5. Cf. L. '90, pp. 396—398, §§ 7, 9, 11; 1 H. C., §§ 938, 949, 950; L. '93, p. 299, § 10; L. '95, p. 194, § 2; L. '97, p. 429, § 186.]

See *infra*, § 4856, authorized to apply for participation in Carnegie fund.

See *infra*, § 7846, control of university lands.

Cited in 74 Wash. 577, 578.

leges, § 1; State v. Hewitt Land Co., 74 Wash. 573, 134 Pac. 474.

Property and Funds—Control and Disposition: See Remington's Digest, Col-

§ 4558. [4322.] Faculty, How Constituted.

The faculty of the University of Washington shall consist of the president and the professors, and the said faculty shall have charge of the immediate government of the institution under such rules as may be prescribed by the board of regents. [L. '09, p. 241, § 6. Cf. 1 H. C., § 944; L. '97, p. 430, § 187.]

§ 4559. [4323.] Nonsectarian.

The University of Washington shall never be under the control of any religious or sectarian denomination or society whatever. [L. '90, p. 396, § 5; 1 H. C., § 947; L. '97, p. 430, § 188; L. '09, p. 242, § 7.]

See Const., Art. IX, § 4.

§ 4560. [4324.] Attorney General Legal Adviser.

The attorney general of the state shall be the legal adviser of the president and board of regents of the university, and he shall institute

and prosecute or defend all suits in behalf of the same. [L. '90, p. 399, § 19; 1 H. C., § 952; L. '97, p. 430, § 189; L. '09, p. 242, § 8.]

§ 4561. [4325.] Authority of Regents to Expend Income.

The board of regents is authorized to expend such portion of the income of the university fund as it may deem expedient for the purchase of apparatus, library, and cabinets of natural history, providing suitable means to keep and preserve the same, and in the procurement of other means of facility for instruction. [L. '90, p. 397, § 8; 1 H. C., § 946.]

Query: Whether this section is superseded by § 4557, *supra*.

§ 4562. [4326.] Erection of Buildings.

It shall be the duty of the board of regents herein provided for, as soon after their organization as practicable, and as soon as there shall be an appropriation therefor in the hands of the state treasurer in any amount sufficient to warrant the beginning the erection of the several buildings herein provided for, or any wing or section of the same, to enter into contracts with one or more contractors for the erection and construction of such suitable buildings and improvements for the institution created by this chapter as in their judgment shall be deemed best, or the funds aforesaid shall warrant, all things considered; such contract or contracts to be let after open public notice and competition under such regulations as shall be established by said board to the person or persons who offer to execute such work on the most advantageous terms: Provided, that in all cases said board shall require from contractors a good and sufficient bond for the faithful performance of their work, and the full protection of the state against mechanics' and other liens: And provided further, that the board shall not have the power to enter into any contract for the erection of any buildings or improvements which shall bind said board to pay out any sum of money in excess of the amount provided for said purpose. [L. '09, p. 242, § 9.]

The meaning of "several buildings herein provided for" is not clear, as this act does not authorize or provide for any.

Cited in 102 Wash. 660.

A surety on a contractor's bond for the faithful performance of a state contract, under this section, is liable for claims duly filed with the state board for

materials furnished prior to default, the fairness of which is not questioned, although they had not yet been paid: *Finne v. Maryland Casualty Co.*, 102 Wash. 651, 173 Pac. 501.

§ 4563. [4327.] Regents may Employ Architects.

The board provided for in this chapter shall have power in their discretion to employ skilled architects and superintendents to prepare plans and specifications, and to supervise the construction of any of the buildings provided for in this chapter, and to fix the compensation for such services subject to the provisions and restrictions of this act. [L. '09, p. 242, § 10.]

See note to last section.

§ 4564. [4328.] Disbursement of Funds.

Whenever there shall be any money in the hands of the state treasurer to the credit of any of the specific funds set apart for that institution

created by this chapter, deemed sufficient by the board to commence the erection of any of the necessary buildings or improvements, or to pay the necessary running or other expenses of said institution, the state auditor, on the request in writing of said board, shall, and it is hereby made his duty to draw his warrant in favor of the treasurer of said board and upon the state treasury against the specific fund belonging to said institution in such sum not exceeding the amount on hand in such specific fund at such time as said board may deem necessary: Provided, that said board shall draw said money as it may be necessary to disburse the same. [L. '09, p. 243, § 11.]

§ 4565. [4329.] Donations to be Kept as Separate Fund.

All donations of money, security, or other property shall be paid into the state treasury and invested as other funds of the university, and donations may be made to and for the sole use of any one of the departments of the university, and donations so made shall be kept as a separate fund for the use of such department. [L. '90, p. 399, § 18; 1 H. C., § 956.]

It seems that subdivision 4 of § 4557, *supra*, may supersede parts of this section.

§ 4566. [4330.] Restrictions upon Regents as to Debts, etc.

The board of regents are hereby prohibited from creating any debt as against the university, or in any manner encumbering the same, or of incurring any expense beyond their ability from the annual income of the university for the then current year. [L. '90, p. 399, § 20; 1 H. C., § 957.]

Cited in 74 Wash. 578.

CHAPTER IV

STATE COLLEGE OF WASHINGTON.

§ 4567. [4332.] Designation.

The name of the Washington Agricultural College Experiment Station and School of Science be and the same is hereby changed to the State College of Washington. [L. '05, p. 83, § 1.]

Cited in 51 Wash. 551.

§ 4568. [4333.] Establishment—Purpose—Admission of Students.

The State College, Experiment Station and School of Science of the state of Washington, as heretofore located at Pullman, Whitman county, shall be an institution of learning open to the children of all residents of this state, and to such other persons as the board of regents may determine, under such rules and regulations as may be prescribed by the board of regents; shall be nonsectarian in character, and devoted to practical instruction in agriculture, mechanical arts, and natural sciences connected therewith, as well as a thorough course of instruction in all branches of learning upon agricultural and other industrial pursuits.

No student shall be admitted except upon examination satisfactory to the faculty of the state college: Provided, however, that students shall be admitted without examination upon presentation of certificates from those public high schools and other educational institutions in this state whose courses of study shall have been approved by said faculty of the

state college and accredited by the state board of education: Provided further, that said faculty shall have power to specify the preparation required for admission to any department of the state college. [L. '09, p. 243, § 1. Cf. L. '91, p. 334, §§ 1, 2; 1 H. C., §§ 960, 961; L. '97, p. 430, § 190.]

Cited in 51 Wash. 551; 71 Wash. 216.

§ 4569. Student Fees.

The board of regents of the State College of Washington shall charge to and collect from each of the students registering at said institution, who have not resided in this state or territory of Alaska one year prior to date of registration, a tuition fee of seventy-five (\$75.00) dollars per semester. All other students except those in summer schools, short courses, correspondence or extension courses, shall be charged [charged] a tuition fee of not less than ten (10) dollars per semester. [L. '21, p. 654, § 1.]

§ 4570. Disposition of Fees.

The tuition fees collected under section 4569, shall be deposited with the state treasurer in the State College Current Fund, and expended by the board of regents for either buildings or equipment or operation or maintenance as may be deemed most advisable for the best interests of the institution. Expenditures so made shall be accounted for in accordance with existing law. [L. '21, p. 654, § 2.]

§ 4571. Refund of Fees.

Tuition fees collected under this act are not returnable unless in case of sickness or other causes beyond the control of the student. In no case shall more than one-half ($\frac{1}{2}$) of the tuition be refunded. Students withdrawing under discipline forfeit all rights to the return of any portion of the fees. No portion of the tuition shall be refunded after thirty (30) days from date of registration of the student. [L. '21, p. 654, § 3.]

§ 4572. Exemptions from Payment of Fees.

The board of regents may exempt the following classes of persons from the payment of tuition: (1) All honorably discharged service men who served in the military or naval service of the United States during the late World War; and all honorably discharged service men in the military or naval services of any of the governments associated with the United States during said war, provided they were citizens of the United States at the time of their enlistment and who are again citizens at the time of their registration at the State College. If any of such service men have not resided in this state for one (1) year prior to registration said board may exempt them up to one-half ($\frac{1}{2}$) of the tuition payable by other nonresident students; (2) members of the staff of the State College of Washington; (3) In case of deserving students of this state and Alaska who, after a quarter in residence have shown a marked capacity for the work done by them in school, the board of regents, may, in lieu of collecting the fees provided for in section 4569 extend credit to said students in the amount of said fees, taking therefor the promissory note of the students with interest at the rate of four per cent per annum. [L. '21, p. 655, § 4.]

§ 4573. [4334.] Ex-officio Visitors.

The governor of the state of Washington, the superintendent of public instruction, members of the legislature, and county commissioners shall be ex-officio visitors of said college. But said visitors shall have no power granted to control the action of the board of regents or to negative its duties as defined by law. [L. '09, p. 244, § 2. Cf. L. '90, p. 262, § 5; L. '97, p. 431, § 191.]

See *infra*, § 10899, visitation by state board of control.

Cited in 51 Wash. 552.

§ 4574. [4335.] Courses of Instruction.

The course of instruction of said college shall embrace the English language, literature, mathematics, philosophy, civil and mechanical engineering, chemistry, animal and vegetable anatomy and physiology, the veterinary art, entomology, geology, political economy, rural and household economy, horticulture, moral philosophy, history, mechanics, and such other courses of instruction as shall be prescribed by the board of regents. One of the objects of said college shall be to train teachers of physical science, and thereby further the application of the principles of physical science to industrial pursuits; to collect information as to schemes of technical instruction adopted in other parts of the United States and in foreign countries, and to hold farmers' institutes at such times and places and under such regulations as the board of regents may determine: Provided, that no student shall be admitted to any department of the State College who is under the age of sixteen years. [L. '09, p. 244, § 3. Cf. L. '91, p. 334, § 3; 1 H. C., § 962; L. '97, p. 431, § 192.]

Cited in 51 Wash. 553.

§ 4575. [4336.] Laboratories and Departments of Instruction—Military Tactics.

The board of regents shall provide that all instruction given in the college shall, to the utmost practicable extent, be conveyed by means of practical work in the laboratory, and shall provide in connection with said college the following laboratories: One physical laboratory or more, one chemical laboratory or more, and one biological laboratory or more, and suitably furnish and equip the same. Said board of regents shall provide that all male students shall be trained in military tactics. Said board of regents shall establish a department of elementary science, and in connection therewith provide instruction in the following subjects: Elementary mathematics, including elementary trigonometry, elementary mechanics, elementary and mechanical drawing and land surveying. Said board of regents shall establish a department of said college to be designated as the department of agriculture, and in connection therewith shall provide instruction in the following subjects—First: Physics, with special application of its principles to agriculture. Second: Chemistry, with special application of its principles to agriculture. Third: Morphology and physiology of plants, with special reference to the commonly grown crops and their fungus enemies. Fourth: Morphology and physiology of the lower forms of animal life, with special reference to insect pests. Fifth: Morphology and physiology of the higher forms of animal life, and in par-

ticular of the horse, cow, sheep and swine. Sixth: Agriculture, with special reference to the breeding and feeding of livestock, and the best mode of cultivation of farm produce. Seventh: Mining and metallurgy. And it shall appoint demonstrators in each of these subjects, to superintend the equipment of a laboratory and to give practical instruction in the same. Said board of regents shall establish an agricultural experiment station in connection with the department of agriculture of said college, appoint its officers and prescribe such regulations for its management as it may deem expedient. Said board of regents may establish other departments of said college, and provide courses of instruction therein, when those are, in its judgment, required for the better carrying out of the object of the college. [L. '09, p. 244, § 4. Cf. L. '90, p. 263, § 8; 1 H. C., § 963; L. '97, p. 431, § 193.]

Cited in 51 Wash. 553.

§ 4576. [4337.] Management, in Whom Vested—Regents—Term—Bond, etc.

The management of said college and experiment station, the care and preservation of all property of which the institution shall become possessed, the erection and construction of all buildings necessary for the use of said college and station, and the disbursement and expenditure of all money provided for by this chapter, shall be vested in a board of five regents, said five members of the board of regents shall be appointed in the manner provided by law; said regents and their successors in office shall have the right to cause all things to be done necessary to carry out the provisions of this chapter. The board of regents provided for in this chapter, shall be appointed by the governor, by and with the consent of the senate, one for a term of two years, two for a term of four years, and two for a term of six years; and each regent shall, before entering upon the discharge of his respective duties as such, execute a good and sufficient bond to the state of Washington, with two or more sufficient sureties, residents of the state, in the penal sum of not less than five thousand dollars (\$5,000) each, conditioned for the faithful performance of his duties as such regent: Provided, that all appointments made to fill vacancies caused by death, resignation or otherwise, shall be for the unexpired term of the incumbent whose place shall have become vacant. All other appointments made subsequent to the appointment of the first board of regents provided for in this act shall be for the term of six years and until the appointment and qualification of a successor to each appointee: Provided further, that regents now serving upon such board shall continue as such during the term for which they were respectively appointed. [L. '09, p. 245, § 5. Cf. L. '91, p. 335, § 4; 1 H. C., § 964; L. '97, p. 432, § 194.]

See *infra*, § 4856, authorized to apply for participation in Carnegie fund.

Cited in 51 Wash. 551.

If a board of regents stands by and allows a succeeding board to assume and discharge the duties of such office without question, the succeeding board, although illegally appointed, becomes the

de facto board, and the courts should aid it in obtaining possession of the funds devoted to such institution: *State ex rel. Stearns v. Smith*, 9 Wash. 195, 37 Pac. 295.

§ 4577. [4338.] Organization of Board—Treasurer, Bond of—Secretary, Bond of.

The board of regents shall meet and organize by the election of its president and treasurer from their own number, on the first Wednesday in April of each year. The person so elected as treasurer shall, before entering upon the discharge of his duties as such, execute a good and sufficient bond to the state of Washington with two or more sufficient sureties, residents of the state, in the penal sum of not less than forty thousand dollars (\$40,000), conditioned for the faithful performance of his duties as such treasurer, and that he will faithfully account for and pay over to the person or persons entitled thereto all moneys which shall come into his hands as such officer, which bond shall be approved by the governor of the state, and shall be filed with the secretary of state. The president of the college shall be secretary of the board of regents, and shall perform all the duties pertaining to that office, but shall not have the right to vote. The secretary shall in like manner as the treasurer give a bond in the penal sum of not less than five thousand dollars (\$5,000), conditioned for the faithful performance of his duties as such officer. [L. '09, p. 246, § 6. Cf. L. '91, p. 336, § 6; 1 H. C., § 966; L. '97, p. 433, § 195.]

Cited in 51 Wash. 551.

§ 4578. [4339.] Duties of President, Treasurer and Secretary.

The president of said board shall be the chief executive officer, shall preside at all meetings thereof, except that in his absence the board may appoint a president pro tempore, and sign all instruments required to be executed by said board. The treasurer shall be the financial officer of said board, shall keep a true account of all moneys received and expended by him. The secretary shall be the recording officer of said board, shall attest all instruments required to be signed by the president, and shall keep a true record of all the proceedings of said board, and do all other things required of him by said board. [L. '09, p. 247, § 7. Cf. L. '91, p. 336, § 7; 1 H. C., § 967; L. '97, p. 434, § 196.]

Cited in 51 Wash. 551.

§ 4579. [4340.] By-laws, Enactment of—Experimental Station.

The regents shall have the power, and it shall be their duty, to enact laws for the government of said State College, Experiment Station and School of Science: Provided, the board of regents shall maintain at least one experimental station in the western portion of the state. [L. '09, p. 247, § 8. Cf. L. '91, p. 336, § 8; 1 H. C., § 968; L. '97, p. 434, § 197.]

§ 4580. [4341.] Disposition of Moneys and Rules for Management of.

The board of regents shall direct the disposition of any moneys belonging to or appropriated to the agricultural college, experiment station and school of science, established by this act, and shall make all rules and regulations necessary for the management of the same, adopt plans and specifications for necessary buildings, and superintend the construction of said buildings, and fix the salaries of professors, teachers and other

employees, and tuition fees to be charged in said college. [L. '09, p. 247, § 9. Cf. L. '91, p. 337, § 9; 1 H. C., § 969; L. '97, p. 434, § 198.]

Cited in 51 Wash. 551.

§ 4581. [4342.] Experimental Station Established by Congress.

The agricultural experiment station provided for in this act in connection with the State College shall be under the direction of said board of regents of said college for the purpose of conducting experiments in agriculture according to the terms of section one (1) of an act of congress approved March 2, 1887, and entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several states, under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto." The said college and experiment station shall be entitled to receive all the benefits and donations made and given to similar institutions of learning in other states and territories of the United States by the legislation of the congress of the United States now in force, or that may be enacted, and particularly to the benefits and donations given by the provisions of an act of congress entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agricultural and mechanic arts," approved July 2, 1862, and all acts supplementary thereto, including the acts entitled "An act to establish agricultural experiment stations in connection with colleges established in the several cities [states] under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto," which said last entitled act was approved March 2, 1887; also, "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July 2, 1862," which said last mentioned act was approved August 30, 1890. [L. '09, p. 247, § 10. Cf. L. '91, p. 337, § 10; 1 H. C., § 970; L. '97, p. 434, § 199.]

§ 4582. [4343.] Assent to Congressional Requirements.

The assent of the legislature of the state of Washington is hereby given, in pursuance of the requirements of section nine (9) of said act of congress, approved March 2, 1887, to the granting of money therein made to the establishment of experiment stations in accordance with section one (1) of said last mentioned act, and assent is hereby given to carry out, within the state of Washington, every provision of said act. [L. '09, p. 248, § 11. Cf. L. '91, p. 338, § 11; 1 H. C., § 971; L. '97, p. 435, § 200.]

§ 4583. [4343-1.] To Receive and Expend Moneys Granted.

The board of regents of the State College of Washington is hereby authorized and empowered to receive and expend the moneys appropriated under the act of congress approved May 8, 1914, and entitled "An act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of congress approved July 2, 1862, and of acts supplemental thereto, and the United States Department of Agriculture," and to organize and conduct agricultural extension work in connection with the State College of

Washington in accordance with the terms and conditions expressed in said act of congress. [L. '15, p. 349, § 1.]

§ 4584. Funds Under Morrill Act.

All funds granted by the United States government under the Morrill act, passed by congress and approved July 2, 1862, together with all acts amendatory thereof and supplementary thereto, for the support and in aid of colleges of agriculture and mechanic arts, as well as experiment stations and farms and extension work in agriculture and home economics in connection with colleges of agriculture and mechanic arts are hereby allotted to the State College of Washington. [L. '17, p. 38, § 2.]

§ 4585. [4344.] Acceptance of Federal Aid.

The state of Washington hereby assents to the purposes, terms, provisions and conditions of the grant of money provided in an act of congress approved March 16, 1906, said act being entitled "An act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof," and having for its purpose the more complete endowment and maintenance of agricultural experiment stations theretofore or thereafter established under an act of congress approved March 2, 1887. [L. '07, p. 423, § 1.]

Cited in 51 Wash. 555.

§ 4586. [4345.] Disposition of Appropriation.

Said annual sum appropriated and granted to the state of Washington in pursuance of said act of congress approved March 16, 1906, shall be paid as therein provided to the treasurer or other officer duly appointed by the board of regents of the State Agricultural Experiment Station at Pullman, Washington; and the board of regents of such experiment station are hereby required to report to the secretary of agriculture on or before the first day of September of each year a detailed statement of the amount so received and of its disbursements on schedules prescribed by the secretary of agriculture. [L. '07, p. 424, § 2.]

Superseded, in part, by § 5527, *infra*, requiring payment to the state treasurer.

Cited in 51 Wash. 555.

ex rel. Johnson v. Clausen, 51 Wash. 548, 99 Pac. 743.

What are part of the state "finances" to be paid to the state treasurer: State

§ 4587. [4346.] Experimental Station at Puyallup.

The operation and conduct of the agricultural experiment station heretofore established at Puyallup, Washington, shall be under the supervision and control of the board of regents of the agricultural college and school of science, and the state auditor is hereby authorized to audit all claims and, if found correct, to issue warrants upon the state treasurer in payment of bills duly authorized by said board as provided by law, and the state treasurer is hereby directed to pay the same. [L. '99, p. 132, § 1.]

§ 4588. [4347.] Acquisition of Lands for Experimental Purposes.

The board of regents of the State College of Washington is hereby authorized and empowered to acquire by lease or gift, any tract or tracts

of land, which, in its judgment, are necessary for experimental or demonstrational purposes, or for otherwise carrying out the purposes or work of the college as defined by law, and to pay for the same out of the maintenance fund of the college: Provided, that not more than twelve hundred dollars a year shall be paid from said fund for said purposes: Provided further, that when said land is leased by the state for the purposes of this act, such land shall be exempt from taxation. [L. '09, p. 815, § 1.]

See *infra*, § 5524, disposition of lands.

See *infra*, § 7849, sale of lands.

§ 4589. Agricultural Experiment Substation.

That the board of regents of the State College of Washington be hereby authorized to establish and maintain a substation of the Washington agricultural experiment station in an irrigated district and to conduct investigational work upon the principles and practices of irrigation agriculture including the duty of water and its relation to soil types, crops, climatic conditions, together with ditch and drain construction, fertility investigations and methods of tillage introduction and testing of new and improved crops, the method of combating plant diseases and insect pests, marketing, the handling of fruit by-products, farm management, and such other subjects relative to the development of agriculture under irrigation conditions as may seem to it advisable. [L. '17, p. 344, § 1.]

§ 4590. Location.

The location of said substation shall be determined by the board of regents of the State College of Washington solely with a view of rendering the greatest aid to all the irrigated districts of the state. [L. '17, p. 344, § 2.]

§ 4591. Time for Establishment.

That said station shall be established as soon as funds are available therefor, by special appropriation, gifts or otherwise. [L. '17, p. 344, § 3.]

§ 4592. [4348.] Meetings of Board.

The meetings of the board of regents may be called in such manner as the board may prescribe, and the majority of said board shall constitute a quorum for the transaction of business; but a less number may adjourn from time to time. No vacancy in said board shall impair the rights of the remaining board. A full meeting of the board shall be called at least once a year. [L. '09, p. 248, § 12. Cf. L. '91, p. 338, § 12; 1 H. C., § 972; L. '97, p. 435, § 201.]

§ 4593. [4349.] Oath of Regents.

Each member of the board of regents created by this chapter shall, before entering upon his duties, take and subscribe an oath to discharge faithfully and honestly his duties in the premises, and to perform strictly and impartially the same to the best of his ability; said oath shall be filed with the secretary of state. [L. '09, p. 248, § 13. Cf. L. '91, p. 338, § 14; 1 H. C., § 974; L. '97, p. 435, § 202.]

§ 4594. [4350.] Expenses of Regents.

The regents shall be allowed their actual and necessary traveling expenses in going to and returning from all the necessary sessions of the board; and also their necessary expenses while in actual attendance upon the same. [L. '09, p. 249, § 14. Cf. L. '91, p. 338, § 15; 1 H. C., § 975; L. '97, p. 436, § 203.]

§ 4595. [4351.] Annual Report.

The board of regents shall, on or before the first day of November of each year, make a full and true report in detail of all their acts and doings during the previous year, their receipts and expenditures, the exact status of their institution, and other information they may deem proper and useful, or which may be called for by the governor, which said report shall be made to the governor, who shall transmit the same to the succeeding session of the legislature. A copy of said report shall be furnished to the superintendent of public instruction. [L. '09, p. 249, § 15. Cf. L. '91, p. 339, § 16; 1 H. C., § 976; L. '97, p. 436, § 204.]

§ 4596. [4352.] Disbursement of Funds.

The treasurer of said board shall make disbursement of the funds in his hands on the order of the board, which order shall be countersigned by the secretary of the board, and shall state on what account the disbursement is made. [L. '09, p. 249, § 16. Cf. L. '91, p. 340, § 19; 1 H. C., § 979; L. '97, p. 436, § 205.]

See *infra*, § 5526, funds.

Superseded by § 5527, *infra*.

See *infra*, § 5539, investment of funds.

Cited in 51 Wash. 551.

§ 4597. [4353.] No Employee shall have Pecuniary Interest in Contracts.

No employee or member of the board created by this chapter shall be interested pecuniarily, either directly or indirectly, in any contract for any building or improvement of said institution, or for the furnishing of supplies for the same. [L. '09, p. 249, § 17. Cf. L. '91, p. 340, § 21; 1 H. C., § 981; L. '97, p. 436, § 206.]

§ 4598. [4354.] Governor Ex-officio Member of Board.

The governor of the state shall be ex-officio advisory member of the board provided for in this chapter, but shall not have the right to vote nor be eligible to office therein. [L. '91, p. 340, § 22; 1 H. C., § 982; L. '97, p. 436, § 207; L. '09, p. 249, § 18.]

§ 4599. [4355.] Board may Grant Degrees.

The board of regents shall grant to every student, upon graduation, a suitable diploma or degree, such student having been recommended for such honor by the faculty. The board shall also have power, upon recommendation of the faculty, to confer the usual honorary degrees upon other persons than graduates of this college in recognition of their learning or devotion to literature, art or science; but no degree shall ever be conferred in consideration of the payment of money or other valuable thing. The

said board is also empowered, upon recommendation of the faculty, to grant normal diplomas which shall entitle the holder to teach in any public school in the state for a period of five years; and to grant life diplomas to candidates who shall give satisfactory evidence of having taught successfully for twenty-four (24) months: Provided, that all candidates for the normal diploma and life diploma shall have satisfactorily completed not less than twelve semester hours in the department of education. [L. '09, p. 249, § 19. Cf. L. '95, p. 365, § 1; L. '97, p. 436, § 208.]

§ 4600. [4356.] To Supervise the Construction of Improvements.

It shall be the duty of the board of regents herein provided for, as soon after their organization as practicable, and as soon as there shall be an appropriation therefor in the hands of the state treasurer in any amount sufficient to warrant the beginning of the erection of the several buildings herein provided for, or any wing or section of the same, to enter into contracts with one or more contractors for the erection and construction of such suitable buildings and improvements for the institution created by this chapter as in their judgment shall be deemed best, or the funds aforesaid shall warrant, all things considered; such contract or contracts to be let after open public notice and competition under such regulations as shall be established by said board to the person or persons who offer to execute such work on the most advantageous terms: Provided, that in all cases said board shall require from contractors a good and sufficient bond for the faithful performance of the work, and the full protection of the state against mechanics' and other liens: And provided further, that the board shall not have the power to enter into any contract for the erection of any buildings or improvements which shall bind said board to pay out any sum of money in excess of the amount provided for said purpose. [L. '09, p. 250, § 20. Cf. L. '91, p. 339, § 17; 1 H. C., § 977; L. '97, p. 437, § 209.]

§ 4601. [4357.] To Employ Architects.

The board provided for in this chapter shall have power in their discretion to employ skilled architects and superintendents to prepare plans and specifications, and to supervise the construction of any of the buildings provided for in this chapter, and to fix the compensation for such services subject to the provisions and restrictions of this act. [L. '09, p. 250, § 21. Cf. L. '91, p. 340, § 18; 1 H. C., § 978; L. '97, p. 437, § 210.]

§ 4602. [4358.] State Auditor to Issue Warrants on Proper Funds.

Whenever there shall be any money in the hands of the state treasurer to the credit of any of the specific funds set apart for that institution created by this chapter, deemed sufficient by the board to commence the erection of any of the necessary buildings or improvements, or to pay the necessary running or other expenses of said institution, and any proper indebtedness has been incurred, the state auditor upon receipt of properly audited vouchers shall, and it is hereby made his duty to draw his warrants for the payment thereof upon the state treasurer against the specific fund belonging to said institution in such sum, not exceeding the amount on hand in such specific fund at such time, provided proper appropriations

have been made therefor. [L. '09, p. 251, § 22. Cf. L. '91, p. 340, § 20; 1 H. C., § 980; L. '97, p. 437, § 211.]

§ 4603. [4359.] Board may Execute Bonds to United States.

The board of regents of the agricultural college and school of science is authorized and empowered to give and execute, on behalf of the state of Washington, the bonds and other papers required by the war department for the safekeeping of the arms and equipments loaned by the United States to the agricultural college and school of science. [L. '99, p. 175, § 1.]

CHAPTER V.

NORMAL SCHOOLS.

§ 4604. [4360.] Establishment—Corporate Title.

The State Normal School at Cheney, the State Normal School at Bellingham, the State Normal School at Ellensburg, and such other state normal schools as may hereafter be established, shall each be under the management and control of a board of three trustees, to be known as "Board of Trustees of the State Normal School at ———." Said trustees shall be appointed by the governor, by and with the advice and consent of the senate. [L. '09, p. 251, § 1. Cf. L. '93, p. 254, § 1; L. '97, p. 438, § 212.]

See *infra*, §§ 5522, 5539, normal school fund.

State Normal School at Centralia established. See L. '19, p. 410, § 1.

What is normal school. *Ann. Cas.* 1912B, 1354.

establish schools. *Ann. Cas.* 1912B, 1365.

Establishment of normal school as within general power of state to

Validity of expenditure of school funds for maintenance of normal school. *Ann. Cas.* 1917C, 921.

§ 4605. [4361.] Appointment of Trustees—Term of.

All trustees of the state normal schools serving at the time of the passage of this act shall continue to hold their respective offices as such trustees for the full term for which they were appointed; and thereafter all trustees shall be appointed for six years, except in cases of appointments to fill vacancies, in which cases the appointment shall be made for the unexpired term of the trustee whose office has become vacant. In case of the establishment of any additional state normal schools, unless otherwise expressly provided by law, the governor shall appoint one trustee for two years, one for four years and one for six years. [L. '09, p. 251, § 2. Cf. L. '93, p. 255, § 2; L. '97, p. 438, § 213.]

§ 4606. [4362.] Trustees to Elect Officers and Enact By-laws—Quorum.

Each board of normal school trustees shall elect one of its members chairman, and it shall elect a secretary, who may or may not be a member of the board. Each board shall have power to adopt by-laws for its government and for the government of the school, which by-laws shall not be inconsistent with the provisions of this act, and to prescribe the duties of its officers, committees and employees. A majority of the board shall constitute a quorum for the transaction of all business. [L. '09, p. 252, § 3. Cf. L. '93, p. 255, § 3; L. '97, p. 438, § 214.]

§ 4607. [4363.] Powers and Duties Enumerated.

Each board of normal school trustees shall have power, and it shall be its duty—First: To elect a principal and such other teachers, assistants and employees as the necessities of the school may require for a period not exceeding four years. Second: For good and lawful reasons to discharge any or all such teachers and employees. Third: To adopt the necessary text-books, and to provide books of reference for the use of students and teachers, and to provide for the proper care of the same. Fourth: To have charge of the erection of all buildings pertaining to the school, unless otherwise expressly provided, and to have the care and management of all buildings and other property belonging to the school. Fifth: To audit all accounts against the school, and to certify all bills, which may be allowed, to the state auditor, who shall draw warrants on the state treasurer for such amounts as he shall find to have been properly or legally allowed. Sixth: To purchase all supplies for the use of the school, to provide a library suited to its wants, to provide for lectures on subjects pertaining to education and the art of science of teaching, and to do such other things not forbidden by law as may become necessary for the good of the school. [L. '09, p. 252, § 4. Cf. L. '93, p. 255, § 4; L. '97, p. 438, § 215; L. '05, p. 170, § 1.]

Former laws cited in 17 Wash. 486.

For former laws on this subject see L. '90, pp. 278, 281.

§ 4608. [4364.] Boarding-houses.

Each board of normal school trustees shall have power to establish and maintain a boarding-house or houses for the accommodation of students, to employ a matron and such other assistance as may become necessary to conduct the same, to make such rules for its government and management as they may deem necessary, and to charge such rates for board and entertainment as will make such boarding-house or houses self-sustaining. [L. '09, p. 252, § 5. Cf. L. '93, p. 256, § 5; L. '97, p. 439, § 216.]

§ 4609. [4365.*] Meetings.

Each board of normal school trustees shall hold two regular or stated meetings each year, at such times as may be provided in its by-laws, such special meetings shall be held as may be deemed necessary, whenever called by the chairman or by a majority of the board. The several boards of normal school trustees shall hold one annual meeting each year, at a time and at a place agreed upon by the several boards, for the purpose of discussing normal school policies, and to agree upon the best means for general betterment. The presidents of the several normal schools shall attend this annual meeting and make such reports and offer such suggestions as will enable the trustees to determine the greatest needs of these institutions. [L. '17, p. 507, § 1; L. '09, p. 253, § 6. Cf. L. '93, p. 256, § 6; L. '97, p. 439, § 217.]

§ 4610. [4366.] Duties of Principal.

The principal of each state normal school shall have a general supervision of the school, shall see that all laws and rules of the board of

trustees are observed by teachers and students, that the course or courses of study prescribed are faithfully pursued, shall assign students to their proper classes or grades, and unless otherwise specially provided, he shall designate the work to be performed by each teacher. He shall, at the close of each school year, make a detailed annual report to the board of trustees, containing a classified catalogue of all students that have been enrolled during the year, and such other information as he may deem advisable or as the board may require, and it shall be his duty to superintend the printing of the same. It shall also be his duty, when required by the board of trustees, to attend county institutes and other educational gatherings, and to lecture upon educational topics that are calculated to enhance the interests of popular education or of his school. The board of trustees shall audit and allow all his necessary expenses incurred in traveling. [L. '09, p. 253, § 7. Cf. L. '93, p. 256, § 7; L. '97, p. 439, § 218.]

Cited in 71 Wash. 216.

§ 4611. [4367.*] Model and Manual Training Departments.

A model school or schools or training departments shall be provided for each state normal school contemplated by this act, in which all students, before graduation, shall have actual practice in teaching for not less than ninety hours under the supervision and observation of critic teachers. All schools or departments provided for herewith shall organize and direct their work in such a manner as shall be in harmony with public school needs. [L. '17, p. 507, § 2; L. '09, p. 253, § 8. Cf. L. '93, p. 258, § 12; L. '97, p. 440, § 219.]

Cited in 51 Wash. 500.

§ 4612. [4368.] Trustees to Estimate Number of Pupils Required for Model School.

The board of trustees of any normal school having a model school or training department in connection therewith, as authorized by section 4611 shall be authorized, and it shall be their duty on or before the first Monday of September of each year, to file with the board of the school district in which such normal school is situated, a certified statement showing an estimate of the number of public school pupils who will be required to make up such model school, specifying the number required for each grade for which training for students is required. [L. '07, p. 180, § 1.]

Cited in 51 Wash. 552.

§ 4613. [4369.] Selection of Pupils from Public Schools.

It shall thereupon be the duty of the board of the school district with which such statement has been filed, to apportion for attendance to the said training school, a sufficient number of pupils from the public schools under the supervision of said board as will furnish to such normal school the number of pupils required in order to maintain such training school: Provided, that the principal of said normal school may refuse to accept such pupil as in his judgment by reason of incorrigibility, or mental defects would tend to reduce the efficiency of said training department. [L. '07, p. 181, § 2.]

§ 4614. [4370.*] Report of Attendance of Common School Pupils.

Annually, on or before the date for reporting the school attendance of the school district in which said model school or training department is situated, for the purpose of taxation for the support of the common schools, the board of trustees of each such normal school having supervision over the same shall file with the board of the school district, in which such model school or training department is situated, a report showing the number of common school pupils at each such model school or training department during the school year last passed, and the period of their attendance in the same form that reports of public schools are made. The clerk of the school district shall, in reporting the attendance in said school district, segregate the attendance at said model school or training department, from the attendance in the other schools of said district: Provided, the attendance shall be credited to the school district in which the pupil resides. [L. '17, p. 508, § 3; L. '07, p. 181, § 3.]

§ 4615. [4372.*] Diplomas and Certificates, How Issued.

Every certificate and diploma issued by a normal school shall be signed by the chairman of the board of trustees, by the president of the normal school issuing same, and shall be countersigned by the state superintendent of public instruction and sealed with the state seal. Every certificate and diploma shall specifically state what course of study the holder has completed, for what length of time certificate or diploma is valid in the schools of the state, and there shall be appended a statement of subjects showing academic and professional training. [L. '17, p. 508, § 4; Cf. L. '09, p. 254, § 9. Cf. L. '93, p. 259, § 13; L. '95, p. 366, § 2; L. '97, p. 440, § 220; L. '05, p. 171, § 2.]

§ 4616. [4373.*] Tuition Free—Students Admitted—Expulsion.

No charge shall be made against any student for tuition in any of the normal schools contemplated by this act: Provided, that the boards of trustees of such schools are hereby authorized and empowered to charge such fees for extension work provided for under section 4617 as the boards of trustees of the several normal schools shall by joint action determine; all fees collected to be paid into a revolving fund of the school collecting the same, and to be held by the trustees of such school and used and expended by such trustees in carrying on the extension work of such school, and to be accounted for in accordance with existing laws. All students shall be required to furnish satisfactory evidence of good moral character, and any student may be suspended or expelled from any state normal school contemplated by this act who is found to be immoral, or who has refused to comply with its rules and regulations for its government. [L. '21, p. 492, § 1. Cf. L. '90, p. 254, § 10. Cf. L. '93, p. 259, § 14; L. '97, p. 440, § 221; L. '05, p. 171, § 3.]

§ 4617. Extension Department for Teachers.

In order to assist teachers who are now in the service and candidates for certificates to meet the new requirements in education without undue hardship, each normal school shall establish and maintain an extension department. The work of the department shall be planned in a

manner to supplement the previous training of teachers in service in the state, and the subject matter studied shall comprise the usual subjects included in the normal school curriculum.

In order to prevent overlapping of territory in connection with this extension work, the state board of education shall district the state making a definite assignment of territory to each institution. The head of the extension department of each normal school after being assigned specific territory shall co-operate with the several county superintendents or educational executive officers of the several counties in planning the work for each year which shall be set forth in writing, a copy to be retained by each and a copy forwarded to the state superintendent of public instruction.

At the close of the year, a report of the work shall be made jointly by the extension department and the county superintendent. A copy of the same is to be filed with the normal school having charge of the work and a copy to the state superintendent of public instruction.

When agreed to by the county superintendent and approved by the state superintendent of public instruction, extension work may be accepted from teachers of any county in lieu of the regular teachers' institute work, when the actual recitation periods equal the number of hours included in the three days' institute session.

When any county adopts the above plan in lieu of the regular institute session, all moneys accumulated in the regular institute fund and that appropriated to this fund in accordance with the regular provisions of law may be expended by the county superintendent of said county to promote the extension work in connection with the course and plan agreed upon and set forth in writing as heretofore stated. [L. '17, p. 508, § 5.]

§ 4618. [4374.] Courses of Study—Diplomas.

The state board of education shall prescribe courses of study for the normal schools of the state as follows: (1) An elementary course of two years; (2) a secondary course of two years; (3) advanced courses of two and three years; (4) a complete course of five years; (5) an advanced course of one year for graduates from colleges and universities. Upon the satisfactory completion of any one of these courses a student shall be awarded an appropriate certificate or diploma as follows: Upon the completion of the elementary course, a certificate to be known as an elementary normal school certificate, which shall authorize the holder to teach in any elementary school for a period of two years; upon the completion of the secondary course a certificate to be known as a secondary normal school certificate, which shall authorize the holder to teach in the common schools of the state for a period of three years; upon the completion of any advanced course a diploma to be known as a normal school diploma, which shall authorize the holder to teach in the common schools of the state for a period of five years, and upon satisfactory evidence of having taught successfully for three years such person shall receive a life diploma countersigned by the superintendent of public instruction. Upon the completion of the work of the junior year any student may be given a secondary normal school certificate by vote of the

faculty: Provided, that no one shall receive a diploma or secondary normal school certificate who has not attained the age of nineteen years, and attended the same state normal school one full school year of thirty-six weeks: Provided further, that no one shall receive a secondary normal school certificate or a normal school diploma who has not given evidence of ability to teach and govern a school by successful practice in the training department for a period of not less than eighteen weeks. The state board of education shall also prescribe uniform terms of admission to, and graduation from, the state normal schools, and shall define the qualifications for admission to each of the several courses. [L. '09, p. 254, § 11. Cf. L. '93, pp. 257, 258, §§ 10, 11; L. '97, p. 441, § 222; L. '99, p. 325, § 267; L. '05, p. 171, § 4.]

§ 4619. [4375.] Free Text-books—Deposit Fee—Library Fund.

The board of trustees may provide out of the funds appropriated for the purpose, such text-books and supplies as are needful for successfully carrying into effect the courses of study prescribed. Each student upon admission to the school may be required to pay into the library fund of the school a sum not to exceed ten dollars, one-half of which shall be applied to the support of the general library and reading-room, and the remaining half shall be kept as indemnity for loss or damage of books belonging to the school in the hands of the student, and shall be returned to him after deducting such amount as may be justly charged for all loss or damage beyond reasonable wear. [L. '09, p. 255, § 12. Cf. L. '93, p. 260, § 15; L. '97, p. 442, § 223; L. '99, p. 326, § 27; L. '05, p. 172, § 5.]

§ 4620. [4376.] Requirements for Admission.

No person shall be admitted to any state normal school as a student who has not attained the age of sixteen years, if a male, or fifteen years if a female, nor until by an entrance examination or otherwise he or she shall have established the fact that he or she is qualified to enter some one of the grades or courses provided for in the course of study. [L. '09, p. 255, § 13. Cf. L. '93, p. 262, § 18; L. '97, p. 442, § 224.]

§ 4621. [4377.] Annual Meeting of Principals.

It shall be the duty of the principals of the several state normal schools contemplated by this act to meet once annually to consult with each other relative to matters concerning their school work, and to discuss methods of teaching and plans of management. [L. '09, p. 256, § 14. Cf. L. '93, p. 262, § 19; L. '97, p. 442, § 225.]

§ 4622. [4378.] Biennial Report.

Each board of normal school trustees shall biennially on or before the first day of October next preceding each regular session of the state legislature of this state, make, through its secretary, a report to the governor of the state, which report shall be included with and constitute a part of the biennial report of the superintendent of public instruction. Said normal school report shall embrace a statement of the receipts and expenditures of the schools, and the purpose for which all moneys have been expended; a classified catalogue of all students enrolled in each of

said schools; a directory of all graduates of each school properly classified; the course or courses of study pursued in the several schools, and such other information as may be deemed advisable. [L. '09, p. 256, § 15. Cf. L. '93, p. 262, § 20; L. '95, p. 368, § 3; L. '97, p. 442, § 226.]

§ 4623. [4379.] Trustees shall have no Pecuniary Interest in Contracts.

No normal school trustee shall be awarded any contract for the erection, repair or the furnishing of any building belonging to any state normal school contemplated by this act, nor for the furnishing of supplies or materials for the same; and no such trustee shall act as agent for any publishing house proposing to furnish books for such school. Any trustee who shall violate any of the above named provisions shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and his office as such trustee shall be declared vacant. [L. '09, p. 256, § 16. Cf. L. '93, p. 263, § 22; L. '97, p. 443, § 227.]

CHAPTER VI.

WASHINGTON STATE TRAINING SCHOOL.

§ 4624. [4380] Change of Designation.

The reform school at Chehalis, in Lewis county, shall be known as the Washington State Training School. [L. '09, p. 256, § 1.]

This and the next six sections relate to the reform school, and do not entirely harmonize with other general laws on that subject.

See *infra*, § 4631, state school for girls.

See *infra*, § 10299, establishment.

§ 4625. [4381.] Purpose.

The said school shall be for the keeping and reformatory training of all youths between the ages of eight and eighteen years who are residents of the state of Washington and who are committed to said institution by a court of competent jurisdiction. [L. '09, p. 256, § 2.]

This section is not in harmony with § 10300.

§ 4626. [4382.] Causes for Commitment.

When a boy of sane mind between the ages of eight and sixteen years or a girl of sane mind between the ages of eight and eighteen (18) years shall, in any court of record in this state, be found guilty of any crime except murder, or manslaughter, or highway robbery, or who for want of proper paternal care is growing up in mendicancy or vagrancy or is incorrigible, or has been expelled from a public school, and complaint thereof is made and properly sustained, the court may if in its opinion the accused is a proper subject therefor, instead of entering judgment cause an order to be entered that said boy or girl be sent to the State Training School, in pursuance of the provisions of this act, and a copy of said order under seal of said court shall be sufficient warrant for carrying said boy or girl to the said school and for his or her commitment to the custody of the superintendent thereof. [L. '09, p. 257, § 3.]

See *infra*, § 4631, state school for girls, a later enactment.

This section is not in harmony with § 1980, *supra*, nor with the Penal Code of 1909, § 2276, *supra*, a later enactment.

§ 4627. [4383.] Management by Board of Control.

The state board of control shall have full charge of the management of the said State Training School. It shall have power to adopt rules and regulations for its government, and shall prescribe, in a manner consistent with the provisions of the laws of this state, the duties of the persons connected with the management of the institution. [L. '09, p. 257, § 4.]

This section harmonizes with § 10899.

See infra, § 10301, audit and payment of bills.

See infra, §§ 10305, 10306, complaints, departments, etc.

See infra, § 10302, matron to control female department.

§ 4628. [4384.] Superintendent.

The state board of control shall employ a competent person who shall be known as the superintendent of the Washington State Training School. He shall be the executive head of the said institution, and he shall hold his office during the pleasure of the state board of control. [L. '09, p. 257, § 5.]

This section conflicts with § 10902, providing for a four year term of office.

See supra, § 4523, annual report to state superintendent.

See infra, §§ 10302—10308, powers, duties, etc.

§ 4629. [4385.] Assistants and Employees, Appointed by Superintendent.

The superintendent of the said State Training School shall have power to appoint all assistants and employees required for the management of the institution placed in his charge, the number of said assistants and employees to be determined and fixed by the state board of control. The superintendent may at his pleasure discharge any person therein employed. [L. '09, p. 257, § 6.]

This section harmonizes with § 10902.

§ 4630. [4386.] Curriculum.

All branches taught in the first eight grades of the public schools shall be taught in the State Training School. The inmates shall be taught and trained in morality, temperance, frugality, and they shall also be instructed in the different trades and callings of the two sexes, as far as possible, in the scope of the institution. [L. '09, p. 257, § 7.]

This is the same as § 10307.

CHAPTER VII.**STATE SCHOOL FOR GIRLS.****§ 4631. [4386-1.] School for Girls.**

That there be established an institution which shall be known as the State School for Girls. [L. '13, p. 513, § 1.]

§ 4632. [4386-2.] Commission to Construct Buildings.

The governor shall appoint four electors of the state of Washington, two of whom shall be women, who, together with the members of the state board of control, shall select a site for such school, to consist of not more than one hundred sixty acres of fertile land, and at a cost not to

exceed the sum of one hundred fifty dollars (\$150) per acre, said site to be within a radius of not less than one mile and not more than ten miles of the State Training School at Chehalis. As soon as the site has been selected, the state board of control shall at once proceed to the erection and equipment of such buildings as may be necessary, the number, kind and character of which shall be determined by the state board of control acting as a joint commission with the four electors above mentioned. In the construction and arrangement of buildings, the cottage plan shall be followed as far as practicable, each cottage to provide for a group of not to exceed thirty girls: Provided, that the above-named electors shall serve without compensation other than necessary expenses. [L. '13, p. 513, § 2.]

§ 4633. [4386-3.] Management—Superintendent.

The government, control and business management of such school shall be vested in the state board of control. The board shall, with the approval of the governor, appoint a suitable superintendent of said school and shall designate the number of subordinate officers and employees to be employed, and fix their respective salaries, and have power, with the like approval, to make and enforce all such rules and regulations for the administration, government and discipline of the school as they may deem just and proper, not inconsistent with this act. The superintendent and all subordinate officers of the school shall be women: Provided, however, if a married woman be appointed superintendent or to any subordinate position, the husband of such appointee may, with the consent of the board, reside at the institution, and may be assigned such duties or employment as the board may prescribe. [L. '13, p. 514, § 3.]

See *infra*, § 10893, state board of control abolished.

§ 4634. [4386-4.] Bond of Superintendent.

Before entering upon the discharge of her duties, the superintendent shall give a surety bond payable to the state of Washington in such sum as the board of control shall prescribe, to be approved by the said board, conditioned for the faithful performance of her duties, and that she will faithfully account for all moneys, property and effects of the institution or the inmates intrusted to her care. [L. '13, p. 514, § 4.]

§ 4635. [4386-5.] Duties of Superintendent.

The superintendent, subject to the direction and approval of the board of control shall: (1) Have general supervision and control of the grounds and buildings of the institution, the subordinate officers and employees, and the inmates thereof, and all matters relating to their government and discipline; (2) make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the board of control, as may seem to her proper or necessary for the government of such institution and for the employment, discipline and education of the inmates; (3) exercise such other powers, and perform such other duties as the board of control may prescribe; and (4) have power to engage and remove all employees, subject to the approval of the board of control. [L. '13, p. 515, § 5.]

§ 4636. [4386-6.] Commitment of Girls.

Any girl more than ten and under eighteen years of age, who has been found delinquent under the juvenile delinquency law of this state, may be committed by the court to the state school for girls, there to remain until twenty-one years of age, unless sooner paroled or discharged as provided in sections 4638 and 4639, and such commitment shall not be subject to modification or revocation. [L. '13, p. 515, § 6.]

§ 4637. [4386-7.] Court Record of Girl—Age.

The superior court shall cause a memorandum to be made and kept of the name, age, birthplace, occupation, last place of residence, and previous record of such girl, and the names and places of residence of the parents, next of kin or guardian of such girl, a copy of which shall be furnished to the superintendent at the time of the commitment to the school. The court shall find and determine the age of the girl, which shall be stated in the order for commitment. Such finding shall be conclusive evidence as to such age in any action to recover damages for detention and shall be presumptive evidence in any other inquiry, action or proceeding. [L. '13, p. 515, § 7.]

§ 4638. [4386-8.] Parole—Behavior Credits.

The board of control, acting with the superintendent, shall, under a system of marks, or otherwise, fix upon a uniform plan by which girls may be paroled or discharged from the school, which system shall be subject to revision from time to time. Each girl shall be credited for personal demeanor, diligence in labor or study and for the results accomplished, and charged for derelictions, negligence or offense. The standing of each girl shall be made known to her as often as once a month. [L. '13, p. 516, § 8.]

§ 4639. [4386-9.] Conditional Parole.

Every girl shall be entitled to a trial on parole before reaching the age of twenty years, such parole to continue for at least one year unless violated. The superintendent and resident physician, with the approval of the board of control, shall determine whether such parole has been violated. Any girl committed to the school who shall escape therefrom, or who shall violate a parole, may be apprehended and returned to the school by any officer or citizen on written order or request of the superintendent. Any person who shall go upon the school grounds except on lawful business, or by consent of the superintendent, or who shall entice any girl away from the school, or who shall in any way interfere with the management or discipline, shall be guilty of a misdemeanor. [L. '13, p. 516, § 9.]

§ 4640. [4386-10.] Health of Inmates.

No girl shall be received in the State School for Girls who is not of sound mind, or who is subject to epileptic or other fits, or is not possessed of that degree of bodily health which should render her a fit subject for the discipline of the school. It shall be the duty of the court committing her to cause such girl to be examined by a reputable physician to be ap-

pointed by the court, who will certify to the above facts, which certificate shall be forwarded to the school with the commitment. Any girl who may have been committed to the school, not complying with the above requirements, may be returned by the superintendent to the court making the commitment, or to the officer or institution last having her in charge. The board of control shall arrange for the transportation of all girls to and from the school. [L. '13, p. 516, § 10.]

§ 4641. [4386-11.] Instruction—Part of School System.

It shall be the duty of the superintendent, subject to the approval of the board of control, to employ teachers, and as far as practicable, to instruct the girls in all of the branches usually taught in the grades of the common schools of the state, also in such trades and vocational occupations as may be found desirable. The educational work of the school shall be a part of the educational system of the state, and such shall be under the supervision of the state board of education. Only those certified by the state superintendent of public instruction shall be employed as teachers. [L. '13, p. 517, § 11.]

§ 4642. [4386-12.] Hiring Out—Apprenticeships.

The superintendent shall have power to place any girl under the age of eighteen years at any employment for account of the institution or the girl employed, and receive and hold the whole or any part of her wages for the benefit of the girl less the amount necessary for her board and keep, and may also, with the consent of any girl over fourteen years of age, and the approval of the state board of control indorsed thereon, execute indentures of apprenticeship, which shall be binding on all parties thereto. In case any girl so apprenticed shall prove untrustworthy or unsatisfactory, the superintendent may permit her to be returned to the school, and the indenture may thereupon be canceled. If such girl shall have an unsuitable employer, the superintendent may, with the approval of the board of control, take her back to the school, and cancel the indenture of apprenticeship. All indentures so made shall be filed and kept in the school. A system may also be established, providing for compensation to girls for services rendered, and payments may be made from time to time, not to exceed in the aggregate to any one girl the sum of twenty-five dollars for each year of service. [L. '13, p. 517, § 12.]

§ 4643. [4386-13.] Transfer of Girls from State Training School.

As soon as the school buildings have been erected and equipped all girls then in the Washington State Training School at Chehalis, shall be transferred to the State School for Girls, all who may then be on parole shall be transferred to the supervision of said school. Both shall thereafter be subject to all the laws, rules and regulations governing the school last mentioned. [L. '13, p. 517, § 13.]

CHAPTER VIII.

STATE SCHOOL FOR THE DEAF AND THE BLIND.

§ 4644. [4387.] Management by Board of Control.

The State School for the Deaf and the Blind at Vancouver shall be under the direction of the state board of control, and the funds for its maintenance shall be appropriated by the legislature of the state of Washington. [L. '09, p. 258, § 1. Cf. L. '07, p. 378, § 2. Cf. L. '86, p. 136, §§ 1, 3; 1 H. C., §§ 983, 984; L. '97, p. 443, § 228; L. '05, p. 254, § 1.]

See *infra*, § 10899, state board of control abolished. See *infra*, § 10893.

See *infra*, § 4805, subd. 4, schools for defective youth in districts of first class.

§ 4645. [4387-1.] Separation of School for Deaf and Blind.

Upon the taking effect of this act, the State School for the Deaf and Blind at Vancouver shall be divided into two institutions, one for the blind to be known as the State School for the Blind, and one for the deaf to be known as the State School for the Deaf, each of said institutions to be located at Vancouver. The state board of control shall appoint a superintendent for each institution. All provisions of law relating to the State School for the Deaf and Blind shall, so far as the same are applicable, govern the management of the State School for the Deaf the State School for the Blind hereby created. [L. '13, p. 6, § 1.]

§ 4646. [4388.] Annual Term.

The regular term of said school shall begin on the second Wednesday of September, and close on the second Wednesday of the following June. [L. '09, p. 258, § 2. Cf. L. '86, p. 139, § 23; 1 H. C., § 1003; L. '97, p. 446, § 246; L. '03, p. 276, § 2.]

§ 4647. [4389.] Free Tuition—Age.

The institution shall be free to residents of the state of Washington who are between the ages of six and twenty-one years, and who are deaf and blind, or either deaf or blind: Provided, that they are free from loathsome or contagious diseases. [L. '09, p. 258, § 3. Cf. L. '86, p. 136, § 2; 1 H. C., § 985; L. '97, p. 443, § 229; L. '03, p. 266, § 1.]

§ 4648. [4390.] Admission of Persons from Other States.

The state board of control may admit to this school deaf or blind children from other states, but the parents or guardians of such children will be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children. [L. '09, p. 258, § 4. Cf. L. '86, p. 141, § 32; 1 H. C., § 1002; L. '97, p. 446, § 251.]

§ 4649. [4391.] Superintendent — Appointment — Term — Qualification — Employees.

The superintendent shall be appointed by the state board of control, for a term of four years, subject to removal at the discretion of the board of control. Said superintendent must be not less than thirty nor more than seventy years of age and must be practically acquainted with

the school management and class instruction of the deaf and the blind, having had at least ten years' actual experience in teaching in schools for the deaf and the blind. The superintendent shall have power to appoint all subordinates. The state board of control shall have power to fix the number of employees and the salary paid to each and may discharge any employee at its discretion. [L. '09, p. 258, § 5. Cf. L. '07, p. 278, § 3.]

See *infra*, § 10902.

§ 4650. [4392.] Duty of District School Clerk.

It shall be the duty of the clerks of all school districts in the state of Washington at the time for making the annual reports, to report to the school superintendent of their respective counties the names of all deaf, mute or blind youth residing within their respective districts who are between the ages of six and twenty-one years. [L. '90, p. 497, § 1; 1 H. C., § 1013; L. '97, p. 446, § 252; L. '09, p. 258, § 6.]

§ 4651. [4393.] County Superintendent to Report.

It shall be the duty of each county school superintendent to make a full and specific report of such deaf, mute or blind youth to the county commissioners of his county at the regular meeting of said commissioners held in August in each year. He shall also, at the same time, transmit a duplicate copy of said report to the state board of control and the superintendent of the School for the Deaf and the Blind. [L. '09, p. 259, § 7. Cf. L. '90, p. 497, § 2; 1 H. C., § 1014; L. '97, p. 447, § 253.]

§ 4652. [4394.] Compulsory Attendance.

It shall be the duty of the parents or the guardians of all such deaf or blind youth to send them each year to the said state school for the deaf and the blind. The county superintendent shall take all action necessary to enforce this section or [of] this act: Provided, that if satisfactory evidence shall be laid before the county superintendent that any deaf or blind youth is being properly educated at home or in some suitable institution other than the State School for the Deaf and the Blind, the county superintendent shall take no other action in such case further than to make a record of such fact, and take such steps as may be necessary to satisfy himself that such defective youth shall continue to receive a proper education. [L. '09, p. 259, § 8. Cf. L. '90, p. 498, § 3; 1 H. C., § 1015; L. '97, p. 447, § 254.]

§ 4653. [4395.] Expenses of Indigent Pupils.

If it appears to the satisfaction of the county commissioners that the parents of any such deaf or blind youth within their county are unable to bear the expense of sending and returning them to said state school it shall then be the duty of the commissioners to send and return them to and from said school or maintain them at said school during vacation at the expense of the county. [L. '09, p. 259, § 9. Cf. L. '90, p. 498, § 4; 1 H. C., § 1016; L. '97, p. 447, § 255a; L. '99, p. 131, § 2; L. '99, p. 326, § 28.]

§ 4654. [4395½.] Penalty.

Any parent, guardian, school superintendent or county commissioner who shall, without a proper cause, fail to carry into effect the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any justice of the peace or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars, in the discretion of the court. [L. '09, p. 259, § 10. Cf. L. '90, p. 498, § 5; 1 H. C., § 1017; L. '97, p. 447, § 256.]

CHAPTER IX.**STATE CUSTODIAL SCHOOL.****§ 4655. [4396.] Establishment.**

A state institution hereby is established to be known as "The State Institution for Feeble-minded," for the care and education of the defective and feeble-minded youth of the state of Washington. [L. '05, p. 133, § 1.]

§ 4656. Name Changed.

That the name of the state institution established by chapter 70 of the Laws of 1905 be, and the same is hereby, changed to, and said institution shall hereafter be known as "The State Custodial School." [L. '17, p. 224, § 1.]

The act changing the name to State School and Colony was vetoed. L. '13, p. 597, § 1.

§ 4657. [4397.] Under Management of Board of Control.

The State Custodial School now located at Medical Lake shall be under the direction of the state board of control, and funds for its maintenance shall be appropriated by the legislature of the state of Washington. [L. '09, p. 260, § 1. Cf. L. '05, p. 133, § 3; L. '07, p. 378, § 2.]

Name changed on authority of § 4656.

See *infra*, § 10899, state board of control abolished. See *infra*, § 10893.

§ 4658. [4398.] Location.

The location of the said institution shall be near Medical Lake, in Spokane County, Washington, and shall be on land now owned by the state of Washington, and within two miles of the Eastern Washington Hospital for the Insane. [L. '05, p. 133, § 2.]

The last part of this section is omitted as superseded.

§ 4659. [4399.] Admission—Free Tuition.

This institution shall be free to residents of the state of Washington who are between the ages of six and twenty-one years, and who are idiotic or feeble-minded: Provided, that they are free from loathsome or contagious diseases: Provided, also, that children who are idiotic, epileptic or afflicted in any particular that renders them unfitted for companionship with other children shall be segregated and provided with suitable accommodations and care in separate wards or buildings: Provided further, that expert medical service shall be provided for this institution. [L. '09, p. 260, § 2. Cf. L. '05, p. 133, § 5.]

§ 4660. [4399-2.] Who may be Admitted.

The State Custodial School shall be free to residents of the state of Washington under the age of twenty-one years who are feeble-minded, idiotic or epileptic, or who are physically defective to such extent as to prevent them from being educated in the common schools: Provided, that they are free from contagious diseases. Admission may be applied for as follows:

First. By the father or mother, if father and mother are living together.

Second. If father and mother are not living together, then by the one having the custody of the child.

Third. By the guardian duly appointed.

Fourth. By the superintendent or other officer having charge of any institution or asylum where children are cared for.

Fifth. By county superintendents of schools and boards of county commissioners.

Sixth. By juvenile courts under an order of commitment.

Under items three, four, five and six consent of parents is not required. [L. '13, p. 598, § 2.]

See note to § 4656.

§ 4661. [4399-3.] Application for Admission.

The form of application for admission into said State Custodial School and the necessary checks against improper admission shall be such as the board of control may prescribe and each application shall be accompanied by answers under oath to such interrogatories as the said board shall prescribe, and county superintendents of schools are hereby authorized to administer oaths in such cases. [L. '13, p. 598, § 3.]

See note to § 4656.

§ 4662. [4399-4.] Approval of Application.

County superintendents of schools shall cause to be filled out the prescribed blank applications for admission for such children in their respective districts, who by reason of mental or physical defects are incapable of receiving instruction in the common schools of this state, or whose habits are such as to render them unfit for companionship with normal children, except such as in the judgment of the county superintendent are receiving proper care and education and are being safely kept at home. All applications for admission of defectives under twenty-one years of age except those committed by the juvenile court, shall be made through the county superintendent of schools, who shall keep a record of such and certify to the board of county commissioners all applications that are accepted by the superintendent of the State School and Colony. [L. '13, p. 598, § 4.]

§ 4663. [4399-5.] School Clerks to Report Defectives.

It shall be the duty of the clerks of all school districts in the state of Washington, at the time for making the annual reports, to report to the school superintendent of their respective counties, the names and addresses of all feeble-minded youths residing within their respective

districts, who are under the age of twenty-one years. And each county school superintendent shall make a full report of such defective youth to the county commissioners of their respective counties at their regular August meeting of each year, transmitting a copy of said report to the state board of control and the superintendent of the State Custodial School. [L. '13, p. 599, § 5.]

See note to § 4656.

See also, *infra*, § 4675.

§ 4664. [4399-6.] Parents to Send Defective Children.

Upon notification by the superintendent of the State Custodial School of acceptance of application for admission, it shall be the duty of the parents or the guardian of such defective youth to send them to said institution and the county superintendent of schools shall take all action necessary to enforce this section of this act. [L. '13, p. 599, § 6.]

See note to § 4656.

§ 4665. [4399-7.] County to Pay Expense, When.

If it appears to the satisfaction of the county commissioners that the parents of any such defective youth who have been accepted for admission are unable to pay the expense of sending them to the said institution, it shall be the duty of the commissioners to send them at the expense of the county. [L. '13, p. 599, § 7.]

§ 4666. [4399-8.] Patients Held After Majority.

Inmates arriving at the age of twenty-one years while in the institution, and who, in the judgment of the superintendent, are unfit to be discharged, shall be reported to the superior court of competent jurisdiction, which court, after due examination and finding the case a proper subject for institutional care, may issue an order of commitment to said State Custodial School. [L. '13, p. 599, § 8.]

Name changed, on authority of § 4656.

§ 4667. [4399-9.] Feeble-minded Adults.

Adults under fifty years of age who may be determined to be feeble-minded, and who are of such inoffensive habits as to make them proper subjects for classification, education and discipline in an institution for feeble-minded, may be admitted free upon pursuing the same course of legal commitment as governs admission to the hospitals for insane; but no insane persons, or those who are proper subjects for county poor farms, hospitals or asylums, or cases of senile dementia, shall be admitted to the State Custodial School. [L. '13, p. 600, § 9.]

§ 4668. [4399-10.] Period of Detention.

The superintendent of the State Custodial School shall detain inmates admitted to the institution until satisfied that they are in normal condition and safe and competent to be at large, or that they can receive proper care and education at the home of relatives, or in some other home or institutions. In such cases, or for other good and sufficient

reasons, he may grant discharges; or, in his discretion, permit inmates to visit their homes for stated periods, upon request of parents or guardians approved by the county superintendent of schools. [L. '13, p. 600, § 10.]

See notes to §§ 4656, 4666.

§ 4669. [4399-11.] Tuition Fee.

Any parent or guardian who may wish to enter a child in said institution and pay all expenses of care and maintenance, may do so under terms, rules and regulations prescribed by the board of control. [L. '13, p. 600, § 11.]

§ 4670. [4399-12.] Support Charged to Estate.

When not otherwise provided, the superintendent shall provide the inmates with suitable clothing, the actual cost of which shall be a charge against the parents, guardian or estate of such inmates; and in the event that such parent, guardian or estate is unable or is insufficient to provide or pay for such clothing, the same shall be provided by the state. The board of county commissioners, county superintendent of schools, or other authorized officers, in recommending an applicant for admission to said institution, shall state whether or not such person has an estate of sufficient value, or a parent of sufficient financial ability to defray the expense in whole or in part for such clothing. The expense of personal clothing provided by the state shall be a charge against the parents or estate of inmates if such parents or estate are financially able to pay the same; after proper investigation, the state may proceed against the party or parties or estate and collect the same through the courts as other accounts are collected. [L. '13, p. 600, § 12.]

§ 4671. [4399-13.] Fireproof Buildings—Sexes Separated.

The future construction of the buildings of the State Custodial School shall be fireproof as far as possible. They shall be in two groups for each sex; one for the educational and industrial department and one for the custodial or colony department, with such subdivisions as will best classify and separate the many diverse forms of the infirmity to be cared for. [L. '13, p. 601, § 13.]

§ 4672. [4399-14.] School Training—Agricultural Training.

A school department shall be maintained from September 1st to June 1st each year, for the benefit of those who can be educated along lines best suited to individual capabilities. The processes of agricultural training shall receive consideration and the employment of the inmates in the care and raising of stock, in dairying and in the cultivation of fruits, vegetables, etc., shall be made tributary as far as possible to the maintenance of the institution. Manual training shall also be carried on along such lines as will be of greatest benefit to both the inmates and the institution. [L. '13, p. 601, § 14.]

§ 4673. [4399-15.] Penalty for Violation of Act.

Any parent, guardian or proper officer who shall, without proper cause, fail to carry into effect the provisions of this act, shall be deemed

guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any justice of the peace or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars (\$200), in the discretion of the court. [L. '13, p. 601, § 15.]

§ 4674. [4400.] Same—Children from Other States.

The state board of control may admit to this institution feeble-minded children from other states, but the parents or guardians of such children must be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children. [L. '05, p. 135, § 7; L. '09, p. 260, § 3.]

§ 4675. [4401.] School Clerks to Report Defectives to County Superintendent.

It shall be the duty of the clerks of all school districts in the state of Washington at the time for making the annual reports to report to the school superintendent of their respective counties the names of all feeble-minded youth residing within their respective districts who are between the age of six and twenty-one years. [L. '05, p. 135, § 8; L. '09, p. 260, § 4.]

See, also, *supra*, § 4663.

§ 4676. [4402.] Superintendent to Report to Commissioners and Board of Control.

It shall be the duty of each county school superintendent to make a full and specific report of such defective youth to the county commissioners of his county at the regular meeting of said commissioners held in August in each year. He shall also, at the same time, transmit a duplicate copy of said report to the state board of control. [L. '05, p. 135, § 8; L. '09, p. 260, § 5.]

See *infra*, § 10902, salary, etc.

§ 4677. [4403.] Compulsory Attendance.

It shall be the duty of the parents or the guardians of all such defective youth to send them each year to the said State Custodial School. The county superintendent shall take all action necessary to enforce this section of this act: Provided, that if satisfactory evidence shall be laid before the county superintendent that any defective youth is being properly educated at home or in some suitable institution other than the State Custodial School, the county superintendent shall take no other action in such case further than to make a record of such fact, and take such steps as may be necessary to satisfy himself that such defective youth shall continue to receive a proper education. [L. '09, p. 261, § 6. Cf. L. '05, p. 135, § 9.]

See note to § 4656.

§ 4678. [4404.] Transportation of Poor.

If it appears to the satisfaction of the county commissioners that the parents of any such defective youth within their county are unable to

bear the expenses of sending and returning them to said state school, it shall then be the duty of the commissioners to send and return them to and from said school. [L. '09, p. 261, § 7.]

§ 4679. [4405.] Neglect of Duty—Penalty.

Any parent, guardian, school superintendent or county commissioner who shall, without a proper cause, fail to carry into effect the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any justice of the peace or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars, in the discretion of the court. [L. '09, p. 261, § 8. Cf. L. '05, p. 135, § 9.]

CHAPTER X.

GENERAL PROVISIONS RELATING TO COMMON SCHOOL SYSTEM.

§ 4680. [4406.] Common Schools, What are—Admission.

Common schools shall include schools that are maintained at public expense in each school district and under the control of boards of directors. Every common school, not otherwise provided for by law, shall be open to the admission of all children between the ages of six and twenty-one years residing in that school district. [L. '09, p. 261, § 1. Cf. L. '90, p. 371, § 44; 1 H. C., § 809; L. '97, p. 384, § 64.]

Cited in 71 Wash. 214, 216.

§ 4681. [4407.] Subjects to be Taught.

All common schools shall be taught in the English language, and instruction shall be given in the following branches, viz.: Reading, penmanship, orthography, written arithmetic, mental arithmetic, geography, English grammar, physiology and hygiene with special reference to the effects of alcoholic stimulants and narcotics on the human system, history of the United States, and such other studies as may be prescribed by the state board of education. Attention must be given during the entire course to the cultivation of manners, and the fundamental principles of honesty, honor, industry and economy, to the laws of health, physical exercise, ventilation and temperature of the schoolroom, and not less than ten minutes each week must be devoted to the systematic teaching of kindness to not only our domestic animals, but to all living creatures. [L. '09, p. 262, § 2. Cf. L. '86, pp. 29—31; L. '90, p. 372, § 45; 1 H. C., § 810; L. '95, p. 8, § 1; L. '97, p. 384, § 65.]

§ 4682. Physical Education for Common Schools.

After the first day of September, 1919, during periods averaging at least twenty minutes in each school day, every pupil attending the first eight grades of the public schools of the state of Washington, shall receive as part of the required instruction therein, such courses in physical education as shall be prescribed by the state board of education: Provided, that individual pupils or students may be excused on account of physical disability or religious belief. [L. '19, p. 205, § 1.]

§ 4683. Requirement for High Schools and Higher Institutions.

All high schools of the state and all state normal schools, the University of Washington, the State College of Washington, shall, each of them, emphasize the work in physical education, and shall carry into effect all such courses provided by the state board of education; said courses to provide for a minimum of ninety minutes in each school week: Provided, that individual students may be excused on account of physical disability or religious belief, or because of participation in directed athletics or military science and tactics. [L. '19, p. 205, § 2.]

§ 4684. Duty of Board of Education.

The state board of education shall, on or before August 1, 1919, prepare said courses of instruction in physical education, and shall direct and enforce the instruction in such courses throughout the state, with the assistance of the school officials, principals, county superintendents, boards of directors of the public schools, boards of trustees of the state normal schools, and boards of regents of the University of Washington, and of the State College of Washington. [L. '19, p. 205, § 3.]

§ 4685. Distribution of Printed Courses.

Prior to September 1, 1919, the state superintendent of public instruction shall cause to be printed and distributed to school officials, principals, county superintendents, boards of directors of public schools, boards of trustees of the state normal schools, and boards of regents of the University of Washington, of the State College of Washington, a sufficient number of copies of said courses, to supply all teachers in the state concerned in the enforcement of the provisions of this act, and shall cause any revision or revisions of said courses to be printed and distributed in like manner. [L. '19, p. 206, § 4.]

§ 4686. Duty of School Officials.

It shall be the duty of school officials, principals, county superintendents, boards of directors of public schools, boards of trustees of the state normal schools, and boards of regents of the University of Washington, and of the State College of Washington, to direct and enforce said courses in physical education, or any revision or revisions thereof, as may be prescribed by the state board of education. [L. '19, p. 206, § 5.]

§ 4687. [4408.] School Day and Month Defined.

A school day shall consist of six hours for all pupils above the primary grades, exclusive of an intermission at noon; but any board of directors may fix as a school day for their district a less number of hours than six: Provided, that for pupils belonging to the primary grades the school day shall not be less than four hours, exclusive of an intermission at noon, and for pupils belonging to grades above the primary grade the minimum school day shall not be less than five hours, exclusive of an intermission at noon. In the absence of any by-law or order of the board of directors defining the school day for their district, any teacher may dismiss all pupils belonging to the primary grades after an attendance of four hours, exclusive of said intermission. The school month shall consist of twenty

days, or four weeks of five days each, and the term "school year," for all matters pertaining to experience in teaching and for all matters pertaining to the granting of or renewing of certificates, shall consist of not fewer than nine school months. [L. '09, p. 262, § 3. Cf. L. '90, p. 372, § 46; 1 H. C., § 811; L. '97, p. 384, § 66; L. '03, p. 178, § 22.]

§ 4688. [4409.] School Year.

The school year shall begin on the first day of July and end with the last day of June. [L. '90, p. 373, § 49; 1 H. C., § 814; L. '97, p. 384, § 66; L. '09, p. 262, § 4.]

School year of nine months, see last section.

§ 4689. [4410.] Contagious Diseases.

No teacher, pupil or janitor shall be permitted to attend school from any house in which smallpox, varioloid, scarlet fever, diphtheria or any other contagious or infectious diseases are prevalent. No teacher, pupil or janitor shall be permitted to return to school from any house where the above-mentioned diseases, or any form of them, have prevailed, until three weeks shall have elapsed from the beginning of convalescence of the patient, or upon the certificate of a registered physician in good standing that there is no danger of contagion. In case of whooping-cough, chicken-pox and measles, certified by a physician to be not of a malignant character, this rule shall not apply to teachers, pupils or janitors who have had the diseases and have entirely recovered from them: Provided, that no pupil, teacher or janitor can attend school or be employed who is afflicted with pulmonary tuberculosis. [L. '09, p. 262, § 5. Cf. L. '90, p. 372, § 47; 1 H. C., § 812; L. '97, p. 384, § 68.]

Cited in 113 Wash. 625.

A school district has no authority to render free medical services to pupils by maintaining a clinic for the treatment of school children whose parents are unable to pay for regular professional services: *McGilvra v. Seattle School District No. 1*, 113 Wash. 619, 194 Pac. 817.

In a law for the compulsory vaccination of all pupils attending the public schools, an exception will be presumed in favor of individuals whose health is

such as to render the operation dangerous or injurious: *State ex rel. McFadden v. Shorrock*, 55 Wash. 208, 104 Pac. 214.

A law requiring "successful vaccination" of school children is not too indefinite for enforcement because of its failure to define the terms used; and permitting attendance after the usual reaction, or after three operations without reaction, is not a violation of the statute, but a recognition of an intended exception: *State ex rel. McFadden v. Shorrock*, 55 Wash. 208, 104 Pac. 214.

§ 4690. [4411.] Pupils shall Comply With Regulations.

All pupils who may attend the common schools shall comply with the regulations established in pursuance of the law for the government of the schools, shall pursue the required course of studies, and shall submit to the authority of the teachers of such schools. Continued and willful disobedience or open defiance of authority of the teacher shall constitute good cause for expulsion from school. [Cf. L. '90, p. 372, § 48; 1 H. C., § 813; L. '97, p. 385, § 69; L. '09, p. 263, § 6.]

Cited in 43 Wash. 449.

Control of Pupils and Discipline—Authority to Make Rules and Reasonableness—Fraternities: See *Remington's Di-*

gest, Schools, § 58; *Wayland v. Hughes*, 43 Wash. 441, 86 Pac. 642, 7 L. R. A. (N. S.) 352.

§ 4691. [4412.] Minimum Length of School Term.

All school districts in this state shall maintain school during at least six months each year. [L. '09, p. 263, § 7. Cf. L. '97, p. 385, § 70; L. '03, p. 179, § 23.]

Cited in 84 Wash. 85.

§ 4692. [4413.] Construction of Words "He" or "His," etc.

Whenever the word "he" or "his" occurs in this act, referring to either the members of the city board of directors, county superintendents of common schools, city superintendents, directors, clerks, state board of education or other school officers, it shall be understood to mean also "she" or "her," and any woman possessing all of the qualifications of an elector, except as to sex, and possessing all of the other qualifications required by law for such offices shall be eligible to hold such offices. [Cf. L. '90, p. 382, § 78; 1 H. C., § 856; L. '95, p. 66, § 1; L. 97, p. 425, § 176; L. '09, p. 263, § 8.]

§ 4693. [4414.] Free from Sectarian Influence.

All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence. [L. '09, p. 263, § 9.]

See Const., Art. IX, § 4.

CHAPTER XI.

SCHOOL DISTRICTS, CLASSIFICATION AND POWERS.

§ 4694. [4415.] County District Defined.

For purposes of supervision and administration, each county in the state shall constitute one county district. [L. '97, p. 357, § 2; L. '09, p. 264, § 1.]

Classification: See Remington's Digest, Schools, § 14; Westland Pub. Co. v. Royal, 36 Wash. 399, 78 Pac. 1096.

General: See Remington's Digest, Schools, § 9; Wilsey v. Cornwall, 40 Wash. 250, 82 Pac. 303.

Prerequisites of Legal Organization in

§ 4695. [4416.] First Class.

Any school district in this state containing a city of the first class or of the second class, or containing a city having the population requisite for a city of the first class or of the second class, as shown by any regular or special census, shall be a school district of the first class. [L. '09, p. 264, § 2.]

§ 4696. [4417.] Second Class.

Any school district in this state containing a city of the third class, or of the fourth class, or containing a city having the population requisite for a city of the third or of the fourth class, as shown by any regular or special census, shall be a school district of the second class. [L. '09, p. 264, § 3.]

§ 4697. [4418.] Third Class.

All other school districts shall be school districts of the third class. [L. '09, p. 264, § 4.]

§ 4698. [4419.] Consolidated Districts.

Any school district which has been formed by the consolidation of two or more school districts shall be designated as a consolidated school district. [L. '09, p. 264, § 5.]

§ 4699. [4420.] Joint District.

Any school district composed of territory in two or more counties shall be designated as a joint school district. [L. '09, p. 264, § 6.]

§ 4700. [4421.] Union High School District.

Any school district established for the purpose of maintaining a high school by the union of two or more contiguous districts in the same county, shall be designated as a union high school district. [L. '09, p. 264, § 7.]

§ 4701. [4422.] Designation.

The term "school district," as used in this act, is declared to mean the territory under the jurisdiction of a single board designated as a board of school directors, and shall be organized in form and manner as hereinafter provided, and shall be known as — (here insert name of city in case of districts of first or second class) School District No. —, — county, state of Washington: Provided, that all school districts now existing as shown by the records of the county superintendent are hereby recognized as legally organized districts, subject to the classification of this chapter. [L. '09, p. 264, § 1. Cf. L. '90, p. 361, § 18; 1 H. C., § 783; L. '97, p. 357, § 3.]

Cited in 111 Wash. 332.

This section fixes the status of a district then shown by the records and precludes a claim by a town that it was a

district separate and apart therefrom: Tukwila School Dist., In re, 111 Wash. 329, 190 Pac. 1010.

§ 4702. [4423.] Corporate Powers.

A school district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes, and in that name and style may sue and be sued, purchase, hold and sell such personal and real estate, and enter into such obligations as are authorized by law; and the title to all school buildings or other property, real or personal, owned by any such school district shall, upon the organization of a district under the provisions of this act, vest immediately in the new district, and the board of directors of such school district shall have exclusive control of the same for all purposes herein contemplated. [L. '09, p. 265, § 2.]

See infra, §§ 4509, 6639, assessments for local improvements.

Cited in 107 Wash. 285.

This section includes the right to employ special counsel where the prosecuting attorney could not properly represent antagonistic interests of the several districts involved and urgent necessity ex-

isted for special assistance; notwithstanding section 116, supra, makes the prosecuting attorney the legal adviser of all school districts: State ex rel. Dysart v. Gage, 107 Wash. 282, 181 Pac. 855.

§ 4703. [4424.*] Each Incorporated City to Constitute One District.

Every incorporated city in the state shall be comprised in one school district, and shall be under the control of one board of directors: Pro-

vided, that any two or more contiguous or adjacent districts of the second and third class may form a union high school district in the manner and with all the powers provided by law for union high school districts: Provided, that nothing in this section shall be so construed as to prevent the extension of such city district a reasonable distance beyond the limits of such city: And provided further, that nothing in this section shall be so construed as to change or disturb the boundaries of any school district organized prior to the incorporation of any city, except in cases of incorporation of cities lying partly in two or more school districts organized prior to the incorporation of such city, or the extension of the boundaries of cities beyond the limits of the school districts in which they are situated, or in cases where two or more cities unite, as provided by law: And provided further, that the fact of the issuance of bonds by school districts, heretofore or hereafter, shall not prevent the formation of new school districts, whether or not such bonds have been redeemed, canceled, or paid in whole or in part and shall not prevent the transfer or uniting with another school district of a portion or the whole of a district where bonds have been or may hereafter be issued. [L. '21, p. 297, § 1; L. '09, p. 265, § 3. Cf. L. '90, p. 379, § 65; L. '91, p. 257, § 23; 1 H. C., § 834; L. '97, p. 385, § 72.]

Former laws cited in 36 Wash. 411.

Organization of City School Districts Digest, Schools, § 13; McGovern v. Fairchild, 2 Wash. 479, 27 Pac. 173.
With Adjacent Territory: See Remington's

§ 4704. [4425.] Purchase of Schoolhouse Sites.

Any school district may purchase, under the provisions of law governing the sale thereof, a schoolhouse site or sites of not less than three acres nor more than ten acres each, of any school lands of the state of Washington. [L. '95, p. 17, § 1; L. '97, p. 359, § 7; L. '09, p. 265, § 4.]

§ 4705. [4426.] Preference Right to Purchase.

In all cases when a schoolhouse is or may be erected upon any school lands of this state the school district to which such schoolhouse belongs shall have the preference right for six months after the filing of the final appraisal of such school lands not already appraised, to purchase schoolhouse sites to include the lands occupied by such schoolhouses, at the appraised value thereof. [L. '95, p. 17, § 2; L. '97, p. 359, § 8.]

§ 4706. Playgrounds—Actions for Tort.

No action shall be brought or maintained against any school district or its officers for any noncontractual acts or omission of such district, its agents, officers or employees, relating to any park, playground, or field house, athletic apparatus or appliance, or manual training equipment, whether situated in or about any schoolhouse or elsewhere, owned, operated or maintained by such school district. [L. '17, p. 332, § 1.]

Cited in 102 Wash. 50, 345, 445; 108 Wash. 612; 109 Wash. 654; 110 Wash. 99, 100.

The generality of the title to this act is not a valid objection to the act; nor is the act open to the objection of being

class legislation; nor does it amend or revise an act by reference to its title only; Swanson v. School District No. 15, 109 Wash. 652, 187 Pac. 386.

That part of this section forbidding actions against school district officers is

severable from the balance: *Swanson v. School District No. 15*, 109 Wash. 652, 187 Pac. 386.

This section exonerates a district only from liability for negligence as to athletic apparatus or appliances or manual training equipment used in connection with any park, playground or field house: *Stovall v. Toppenish School District No. 49*, 110 Wash. 97, 188 Pac. 12, 9 A. L. R. 908.

This section (Amendment of 1917), does not apply to an action which had gone to judgment against the school district prior to the taking effect of the law in June, 1917, notwithstanding the pendency of an appeal by the defendant at that time; since the prevailing party is not "maintaining" an action by appearing and resisting the appeal: *Bruenn v. North Yakima School Dist. No. 7*, 101 Wash. 374, 172 Pac. 569; *Kelley v. School Dist. No. 71*, 102 Wash. 343, 173 Pac. 333; *Holt v. School Dist. No. 71*, 102 Wash. 442, 173 Pac. 335.

This section prohibits the prosecution of an appeal by plaintiff after taking effect of the law: *Foley v. Pierce County School District No. 10*, 102 Wash. 50, 172 Pac. 819.

This section applies to pending actions that had accrued prior to the enactment of the law: *Bailey v. School District No. 49*, 108 Wash. 612, 185 Pac. 810.

As to the right to sue a school district in tort rests in statute, it is not a vested right of property; hence this act repealing the law is not unconstitutional in depriving a child of his former right of action for injuries sustained on playgrounds prior to the enactment of the law: *Bailey v. School District No. 49*, 108 Wash. 612, 185 Pac. 810.

The provision of this section forbidding certain actions against school district officers is severable from that part of the act forbidding actions against school districts; so that failure of the title of the act to include officers does not affect the constitutionality of the balance of the act relating to school districts: *Swanson v. School District No. 15*, 109 Wash. 652, 187 Pac. 386.

This section bears a direct relation to the title, "An act relating to actions

against school districts"; and the generality of the title is not a valid objection to it: *Swanson v. School District No. 15*, 109 Wash. 652, 187 Pac. 386.

This section changing the law relating to certain actions against school districts, being a complete and independent act without reference to prior laws on the subject, does not offend against Const., Art. II, § 37, providing that no act shall be revised or amended by reference to its title but the revised act shall be set forth in full: *Swanson v. School District No. 15*, 109 Wash. 652, 187 Pac. 386.

While repeals by implication are not favored, the later of two irreconcilable acts must prevail: *Swanson v. School District No. 15*, 109 Wash. 652, 187 Pac. 386.

This section is not open to the objection of being class legislation; since it covers all school districts in the state: *Swanson v. School District No. 15*, 109 Wash. 652, 187 Pac. 386.

Liability for Torts, in General: See *Remington's Digest, Schools*, § 29-1; *Redfield v. School District No. 3*, 48 Wash. 85, 92 Pac. 770; *Howard v. Tacoma School Dist. No. 10*, Pierce County, 88 Wash. 167, 152 Pac. 1004, Ann. Cas. 1917D, 792; *Holt v. School Dist. No. 71*, 102 Wash. 442, 173 Pac. 335; *Foley v. Pierce County School Dist. No. 10*, 102 Wash. 50, 172 Pac. 819; *Kelley v. School Dist. No. 71*, 102 Wash. 343, 173 Pac. 333.

Negligence as to playground apparatus: *Stovall v. Toppenish School District No. 49*, 110 Wash. 97, 188 Pac. 12, 9 A. L. R. 908.

Care as to employer of licensee using school elevator: See *Smith v. Seattle School District No. 1*, 112 Wash. 64, 191 Pac. 858.

Liability of school board for defective condition of public school premises. 3 Ann. Cas. 884; 10 Ann. Cas. 406; Ann. Cas. 1917D, 797.

Liability of school district or school corporation for torts. 49 L. R. A. (N. S.) 1026.

Liability of school district or school board for injury to pupil. 14 A. L. R. 1392; 9 A. L. R. 911.

§ 4707. [4426-1.] Insurance Fund in First Class District.

School districts of the first class shall, when in the judgment of the board of directors it be deemed expedient, have power to create and maintain a permanent insurance fund for said districts, to be used to meet losses by fire, if any, of said school districts. [L. '11, p. 378, § 1.]

Power of legislature to devote portion of school fund to establish-

ment of insurance fund. Ann. Cas. 1917C, 925.

§ 4708. [4426-2.] Estimate.

The board of directors shall annually, at the same time and in the same manner as provided for reporting to the board of county commissioners an estimate of the amount of funds required for the support of the schools, report the additional amount of funds determined upon for creating or adding to the permanent insurance fund of the district, and the board of county commissioners are hereby authorized and required to levy and collect such additional amount of funds, the same as other school taxes. [L. '11, p. 378, § 2.]

§ 4709. [4426-3.] Investment.

The county treasurer, when authorized to do so by the board of directors of any school district, may invest any accumulated permanent insurance fund of said district in school, county, or state warrants of the state of Washington, and all profits accruing from such investment, and the funds so invested, shall revert to the permanent insurance fund of said district, and the county treasurer shall be the custodian of all warrants purchased by and with said permanent insurance fund until the same are redeemed, and the county treasurer shall submit a statement of such fund and warrants as a part of his monthly report to each district. [L. '11, p. 378, § 3.]

CHAPTER XII.

HIGH SCHOOL AND NON-HIGH SCHOOL DISTRICTS.

§ 4710. Division of Districts—High School and Non-high School.

For the purposes of this act all school districts in the state of Washington shall be and the same are hereby divided into two divisions to be known and designated respectively as high school districts and non-high school districts. [L. '17, p. 65, § 1.]

§ 4711. Classification of Districts—Removal to Other Class.

The state board of education is hereby empowered, and it shall be the duty of said board, to prescribe rules and regulations governing the classification of school districts as high school districts and non-high school districts and to classify school districts in accordance with such rules and regulations: Provided, that any school district which shall, at the time this act goes into effect, maintain a two year high school course shall by such fact be temporarily classified as a high school district. Any high school district shall be removed from such classification by the state board of education at any time when it shall fail to comply with the rules and requirements of such schools, or when such district shall fail to advance its high school to a four year course within two years from the time of its classification: Provided further, that for good and sufficient reasons the state board of education may grant one or more extensions of time for establishing such four year course. [L. '17, p. 66, § 2.]

This section of the school code, being later in time, controls earlier sections in the same code, so far as there is con-

flict: State ex rel. Calouri v. Stratton, 138 Wash. 485, 185 Pac. 610.

§ 4712. List of High School Districts to be Certified to County Superintendent.

The state board of education shall, within thirty days from the time this act goes into effect, provide each county superintendent of schools in the state with a copy of the rules and requirements for the classification of districts as provided for in this act; and the said board shall, on or before the first day of July of each year, certify to the county superintendent of schools of each county in the state a complete list of all high school districts in his county. [L. '17, p. 66, § 3.]

§ 4713. County Superintendent to Certify List to County Officers.

The county superintendent of schools of each county shall, on or before the first day of September, certify to the county assessor, the county treasurer, the county auditor, and the board of county commissioners of his county, a complete list of all high school districts and all non-high school districts in his county. [L. '17, p. 66, § 4.]

§ 4714. School Clerk's Report—Nonresident Pupils—Record—Cost.

The clerk, or secretary, of every high school district, shall certify under oath, as a part of his annual report to the county superintendent of schools to be made on or before the fifteenth day of July, as required by law, the following facts as nearly as the same can be ascertained: First, the name, postoffice address, county and number of school district if obtainable, of each nonresident high school pupil, not a resident of another high school district, enrolled in the high school, or high schools, of his district during the school year, with the days of attendance of each such nonresident high school pupil. Second, the cost per pupil per day of educating high school pupils for the school year in his district. For ascertaining such cost the following items of high school expenditure shall be used: Salaries of all high school teachers, supervisors, principals, special instructors, superintendent and assistants, janitors, clerks and secretaries, stenographers, and all other employees; fuel, light, water, power, telephones, text-books, office expenses, janitors' supplies, freight, express, drayage, rents for high school purposes, upkeep of grounds, upkeep of shops and laboratories, all materials used in instruction, insurance, current ordinary repairs of every nature, inspection, promotion of health, and such other current expenditures as may be necessary to efficient operation of the high school, or high schools. Expenditures for real estate, construction of buildings, and for other permanent improvements and fixtures shall not be included in estimating high school expenditures for the purposes of this act. When any item shall, as a necessary result of organization, cover both grade and high school work, it shall be prorated, as nearly as practicable, by the clerk, or secretary. [L. '17, p. 66, § 5.]

§ 4715. Certifying Cost of Educating Nonresident Pupils—Tax Levy.

The county superintendent of schools shall, after verifying such reports, certify, on or before the fifteenth day of August each year, to the county commissioners of his county and to the county commissioners of such other counties as any high school district of his county may have claims against under the provisions of this act, the amount of each such high school dis-

trict claim for the cost of educating nonresident high school pupils, and such county commissioners are hereby authorized to levy and shall levy as a tax, not to exceed two mills, against all non-high school districts in their respective counties the aggregate amount, as certified to them by the county superintendent of schools, such levy to be made at the same time and in the same manner as other county levies for school purposes are made. In fixing the amount of any such claim by a high school district for educating nonresident high school pupils the county superintendent shall take the net difference between the cost per pupil per day of educating high school pupils in the given high school district and the apportionment per pupil per day to such high school district from the state current school fund and the county school tax as provided in section 4936, such difference to be multiplied by the days of attendance of nonresident high school pupils in each case. Such amount, when ascertained and certified as provided in this act, shall constitute a valid claim against the high school district fund hereafter provided for in this act. The above tax shall be collected at the same time and in the same manner as other taxes are collected, and shall be segregated by the county treasurer into a fund which shall be designated as the high school district fund and which shall be used only for reimbursing high school districts for the cost of educating nonresident high school pupils whose legal residence shall be in a non-high school district. [L. '17, p. 67, § 6.]

§ 4716. Certificates of Amounts Due High School Districts.

The county superintendent of schools shall, on or before the first day of September, certify to the county treasurer the amounts due to each high school district in his county from the high school district fund, and also the amounts due to the high school district fund of other counties wherein high school districts may have educated pupils from non-high school districts of his county as certified by the county superintendent of schools of such county to the county commissioners of his county. [L. '17, p. 68, § 7.]

§ 4717. Apportionment and Transfer of Funds by County Treasurer.

At the time of apportioning funds to school districts the county treasurer shall transfer to the credit of each high school district the amount due such district from the high school district fund, or such prorated portion thereof as may be in such fund at the time. He shall at the same time transfer to the credit of the high school district fund of other counties such amounts, or prorated portions thereof as may be in the high school district fund of his county, as may be due the high school district fund of such other county as certified by the county superintendent of schools of his county. [L. '17, p. 69, § 8.]

§ 4718. Admission of Nonresident Pupils.

Every high school in the high school district shall admit all persons of school age who are residents of this state, and not residents of another high school district, carrying the grades for which they desire to enroll, upon presentation of satisfactory evidence of having completed in a creditable manner the state eighth grade course of study as prescribed by the

state board of education: Provided, that nothing in this act shall be construed as affecting section 4780. [L. '17, p. 69, § 9.]

§ 4719. Payment for Transportation of Pupils—Joint Agreements.

The board of directors of a non-high school district is hereby empowered to provide and to pay for the transportation of high school pupils to the most available high school when, in their judgment, it shall be to the best interests of the district to do so. Such board is hereby further empowered to enter into agreement with the board of directors of one or more school districts, whether high school districts or non-high school districts, to jointly provide and pay for the transportation of pupils upon such terms as they shall deem best: Provided, that it shall not be required to transport any pupil living within two miles of the school which such pupil attends: Provided further, that all such joint agreements for transporting pupils shall be duly executed in writing, the original to be filed with the county superintendent of schools and a copy thereof with each board of directors. [L. '17, p. 69, § 10.]

Right to use school money for transportation of pupils. *Ann. Cas.* 1912C, 762; *Ann. Cas.* 1916E, 1097;

38 *L. B. A. (N. S.)* 710; 50 *L. B. A. (N. S.)* 428.

§ 4720. Reimbursement not a Tuition Charge.

The reimbursement of a high school district for cost of educating high school pupils for a non-high school district, as provided for in this act, shall not be deemed a tuition charge as affecting the apportionment of current state school funds provided for in section 4877. [L. '17, p. 70, § 11.]

CHAPTER XIII.

NEW DISTRICTS AND ALTERATION OF BOUNDARIES.

§ 4721. [4427.] Petition for New District, Requisites of.

For the purpose of organizing a new district, a petition in writing shall be made to the county superintendent, signed by at least five heads of families residing within the boundaries of the proposed new district, which petition shall describe the boundaries of the proposed new district and give the names of all the children of school age residing within the boundaries of such proposed new district, at the date of presenting said petition. [L. '09, p. 266, § 1. Cf. L. '90, p. 361, § 19; L. '91, p. 246, § 7; 1 H. C., § 784; L. '97, p. 357, § 4; L. '99, p. 18, § 1.]

Former laws cited in 40 Wash. 253; 72 Wash. 455.

Creation of Districts; Powers of Officers: See Remington's Digest, Schools, § 8; Wilsey v. Cornwall, 40 Wash. 250, 82 Pac. 303.

See, also, State ex rel. Bouffleur v. Superior Court, 111 Wash. 477, 191 Pac. 621.

Appeal or Certiorari: See Gregory v. Dixon, 7 Wash. 27, 34 Pac. 212; Wilsey v. Cornwall, 40 Wash. 250, 82 Pac. 303.

Who may petition in relation to organization of school district. 43 *L. B. A. (N. S.)* 293.

§ 4722. [4428.] Notice—Hearing.

The county superintendent shall give notice to the parties interested by causing notices to be posted at least twenty (20) days prior to the time appointed by him for considering said petition, in at least three of the

most public places in the proposed new district, and one on the school-house door of each district affected by the proposed change, and in one of the most public places of the territory affected by the proposed change. On the day fixed in the notice, he shall proceed to hear said petition, and if he deem it advisable to grant the petition he shall make an order establishing said district and describing the boundaries thereof and shall certify his action to the board of county commissioners at their next regular meeting. [L. '09, p. 266, § 2.]

Cited in 69 Wash. 343.

§ 4723. [4429.] Conditions to be Performed.

No new district formed by the subdivision of an old one shall be entitled to any share of public money belonging to the old district until a school has actually been taught one month in the new district and unless within eight months from the order of the county superintendent granting such new district a school is opened, the action making a new district shall be void, and all elections or appointments of directors or clerks made in consequence of such action, and all rights and office of parties so elected or appointed shall cease and determine, and all taxes which may have been levied in such old district shall be valid and binding upon the real and personal property of such new district, and shall be collected and paid into the school fund of the old district. [L. '09, p. 266, § 3. Cf. L. '90, p. 362, § 21; 1 H. C., § 786; L. '97, p. 400, § 115.]

§ 4724. [4430.] Apportionment of Funds Between New and Old District.

When a new district is formed from one or more old districts it shall be entitled to a just share of the school money to the credit of the one or more old districts, from which the new district is formed, at the time the petition was granted to establish the new district. And the county superintendent (or in case of an appeal, the board of county commissioners), shall divide such money and also such money as may, for the current year, afterward be apportioned to the said one or more old districts, according to the number of school children resident in the new district, as may be ascertained by a census taken for that purpose: Provided, that the new district shall be entitled to all school district tax levied within the boundaries of the new district, for the current year in which the new district is formed. And if such tax, or any part of it has already been collected and placed to the credit of the aforementioned one or more old districts, it shall be the duty of the county treasurer, upon the order of the county superintendent, to transfer the money received from such special tax to the credit of the new district. [L. '09, p. 267, § 4. Cf. L. '90, p. 363, § 22; 1 H. C., § 787; L. '93, p. 265, § 1; L. '97, p. 401, § 116; L. '99, p. 22, § 3.]

Adjustment of Pre-existing Rights and Liabilities: See Remington's Digest, Schools, § 12; McGovern v. Fairchilds, 2 Wash. 479, 27 Pac. 173; School District v. Commrs. of King County, 3 Wash. 154, 28 Pac. 376.

Liability of territory annexed to school district to pay proportionate share of existing debts. 27 L. R. A. (N. S.) 1147.

§ 4725. [4431.] Adjustment of Property, Debts, etc.—Appeal.

At the hearing for the formation of a new school district, the county superintendent shall, in case the petition is granted, hear testimony offered

by any person or school district interested therein, for the purpose of finding and determining the amount and value of all school property of whatever nature involved in the proposed action, the nature and amount and value of all bonded, warrant and other indebtedness of the original school district or districts out of whose territory such new district is formed, including all legal uncompleted obligations then existing, and in so doing shall consider the amount of such outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvement, and the location of such improvements, and shall make an equitable adjustment of all property, debts and liabilities among the districts involved.

He shall make a full record of all such findings and terms of adjustment and the decision of said county superintendent shall be final unless appealed from in the manner provided by law, in which case the decision of the board of county commissioners shall be final. [L. '09, p. 267, § 5.]

Cited in 69 Wash. 343.

Real property rights as affected by
alteration of boundaries of school

District. 20 Ann. Cas. 89; 26
L. R. A. (N. S.) 486.

§ 4726. [4432.] Tax Levy to Pay Indebtedness.

When a new school district is formed in the manner provided by this article it shall be the duty of the county commissioners to provide by appropriate levies on the property of such new district, in the manner provided by law, for the payment of such indebtedness as may be imposed upon it by the decision of the county superintendent, or in case of appeal by the board of county commissioners. [L. '09, p. 268, § 6.]

"This article" refers to the first six sections of this chapter.

§ 4727. [4433.] Alterations of Boundaries of School Districts—Requisites of Petition for.

For the purpose of transferring territory from one district to another or enlarging the boundaries of any school district, a petition in writing shall be presented to the county superintendent, signed by a majority of heads of families residing in the territory which it is proposed to transfer or include, or in case there be no family resident in such territory then by the board of directors in one of the districts affected by such proposed change, which petition shall describe the change which it is proposed to have made. It shall also state the reason for desiring said change, and the number of children of school age if any residing in the territory to be transferred. For such proposed transfer of territory the notices shall be posted and the hearing and appeal shall be the same as for the formation of a new district: Provided, that whenever any part of a school district of the third class in which no high school is maintained is bounded on three sides by a school district of the second class in which a high school is situated and maintained, the county superintendent of schools may without petition, transfer the territory of the school district of the third class so bounded to the school district of the second class in which said high school is situated and maintained: Provided, that the county superintendent of schools, shall hold a hearing upon the advisability of said transfer, and shall give notice of the time and place of said hearing to the parties interested, by causing notices to be posted at least twenty

(20) days prior to the time appointed by him for said hearing, in at least three of the most public places in the territory proposed to be transferred, and one on the schoolhouse door of each district affected by the proposed change. On the day, and at the place fixed in the notice, he shall hold said hearing and if he deem it advisable to make such transfer, he shall make an order establishing said transfer, and shall certify his action to the board of county commissioners at their next regular meeting. Upon making such transfer of territory the county superintendent of schools shall fix a time and place for adjusting the assets and liabilities of the school districts affected, and shall give notice thereof by posting said notice at least twenty days prior to the appointed time in not less than three of the most public places in the district from which the territory was transferred (at least one of which shall be in the territory transferred), and a like number in the district to which the territory is transferred. At the time and place fixed he shall hear the testimony offered by any interested party or district, and make an equitable adjustment of all property, debts and liabilities among the districts affected in the same manner and to the same effect as is provided in section 4728. [L. '15, p. 171, § 1. Cf. L. '09, p. 268, § 1; L. '90, p. 362, § 20; L. '91, p. 247, § 8; 1 H. C., § 785; L. '97, p. 358, § 5; L. '01, p. 370, § 1; L. '03, p. 157, § 1.]

See *infra*, § 11116, to correspond with road districts.

Cited in 69 Wash. 343; 72 Wash. 455; 111 Wash. 477.

Upon petition to the county school superintendent for a change of school district boundaries, the superintendent cannot radically depart from the petition and transfer from one district to another territory not described in the petition, except as necessary to correct the descriptions: *State ex rel. Calouri v. Stratton*, 108 Wash. 485, 185 Pac. 610.

Under this section, the county superintendent cannot transfer portions of one school district to another where the petition was not signed by a majority of the heads of families residing in the territory transferred; and this means heads of families, regardless of whether they have children of school age or not: *State ex rel. Bouffleur v. Superior Court*, 111 Wash. 477, 191 Pac. 621.

§ 4728. [4434.] Hearing—Adjustment of Property and Liabilities.

At the hearing for the alteration of any school district the county superintendent shall, in case the petition is granted, hear testimony offered by any person or school district, for the purpose of finding and determining the value and amount of any school property of whatever nature involved in the proposed action, the nature and amount and value of all bonded, warrant and other indebtedness of each school district affected by the action, including all legal uncompleted obligations then existing, and in so doing shall consider the amount of such outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvements and the location of such improvements, and shall make an equitable adjustment of all property, debts and liabilities among the districts involved.

He shall make a full report of all such findings and terms of adjustment and the decision of said county superintendent shall be final unless appealed from in the manner provided by law, in which case the decision of the board of county commissioners shall be final. [L. '09, p. 268, § 2.]

Cited in 108 Wash. 487.

§ 4729. [4435.] Levy for Payment of Indebtedness.

In case of the alteration of any school district, in the manner provided by this article, it shall be the duty of the board of county commissioners to provide by appropriate levies on the property of such district, in the manner provided by law, for the payment of such indebtedness as may be imposed upon it by the decision of the county superintendent, or in case of appeal, by the board of county commissioners. [L. '09, p. 269, § 3.]

"Article" in this section refers to this and the last two preceding sections.

§ 4730. [4436.] Alteration by Extension of City Limits—When Annexation in Effect.

Whenever an incorporated city shall extend its limits in the manner provided by law, so as to include all or a part of one or more school districts, the territory so included shall not be deemed annexed for school purposes until the thirtieth day of June next succeeding the date of annexation for municipal purposes, at which time the county superintendent shall declare the territory added to the limits of said city to be a part of the school district embracing said city: Provided, that when a school-house is located within the territory annexed for municipal purposes, and yet remains the most accessible school for a part of the school district left outside of the territory so annexed to such incorporated city, the county superintendent may annex all or any part of such school district to the school district embracing such city. [L. '09, p. 269, § 1.]

Cited in 72 Wash. 455.

§ 4731. [4437.] Adjustment of Property by County Superintendent.

At the time of declaring any territory to be added to the limits of a school district embracing an incorporated city, as provided in the last preceding section, the county superintendent shall make an equitable adjustment of all property, including current funds and taxes, and of all debts and liabilities between the districts involved, and shall certify his action to the board of county commissioners. Before making said adjustment, he shall give not less than ten days' written notice to the directors of each district affected by such change, fixing the time and place of the hearing before him. [L. '09, p. 269, § 2.]

§ 4732. [4438.] Hearing—Procedure as to Adjustment.

At such hearing the county superintendent shall hear testimony offered by any person or school district interested therein pertaining to the value and amount of any school property, of whatever nature, including current funds and taxes, involved in the proposed action, the assessed value of all taxable property in said districts, the nature, amount and value of all bonded, warrant and other indebtedness of each school district affected by the action, including all legal uncompleted obligations then existing; and whenever the territory so added to the school district embracing such incorporated city, shall include a part only of the school districts from which such territory shall be taken, he shall consider the amount of outstanding indebtedness, of each of said school districts, incurred for current expenses, the amount incurred for

permanent improvements and the location of such improvements, for the purpose of making such equitable adjustment of all property, debts and liabilities among the districts involved. He shall make a full report of his findings and terms of adjustment, and the decision of said county superintendent shall be final unless appealed from in the manner provided by law, in which case, the decision of the board of county commissioners shall be final. [L. '09, p. 270, § 3.]

§ 4733. [4439.] Corporate Existence Continued Until Indebtedness Paid.

Whenever the territory so added to a school district, embracing an incorporated city, shall include the whole of the school district from which such territory was taken, such district shall retain its corporate existence so far as necessary for that purpose, until its indebtedness as determined by such adjustment shall have been paid in full, and the officers of the district embracing such incorporated city to which its territory shall have been added shall have the power, and it shall be their duty, to provide, by appropriate levies upon such old district or districts, for the payment of such indebtedness: Provided, that when such payment of indebtedness is fully made, the clerk of the district shall enter the fact upon the records of the district, and report the same to the county superintendent of schools. [L. '09, p. 270, § 4.]

CHAPTER XIV.

CONSOLIDATED AND JOINT DISTRICTS.

§ 4734. [4440.] Petition for Consolidated District, Requisites of.

Upon receipt of a petition signed by five heads of families requesting the consolidation of two or more adjoining districts in the same county, the county superintendent shall call a special election of the voters of such school districts at some convenient place, by posting written or printed notices in like manner as is provided for calling annual school district elections, and said notices shall state the object for which the election is called.

If a majority of the voters of each district shall vote to consolidate, the clerk of each district so proposing to consolidate, shall within ten days after the election notify the county superintendent of the holding of and the result of the election and the county superintendent shall, immediately after receipt of said notice organize and establish a consolidated school district and when such consolidated district shall have been established no new district shall be established out of any portion thereof, or any portion thereof changed to another district within five years from such consolidation. [L. '15, p. 646, § 1. Cf. L. '09, p. 271, § 1; L. '90, p. 378, § 61; L. '91, p. 255, § 19; 1 H. C., § 830; L. '97, p. 359, § 9; L. '03, p. 159, § 2.]

Cited in 69 Wash. 343; 72 Wash. 455; 74 Wash. 59.

Consolidation and Union Districts: See Remington's Digest, Schools, § 7-1; State ex rel. Harris v. Ward, 69 Wash. 342, 124

Pac. 913; State ex rel. Bell v. Thaanum, 74 Wash. 58, 132 Pac. 728.

Dissolution: See Remington's Digest, Schools, § 14-1; Consolidated School District No. 105 v. Jones, 69 Wash. 537, 125 Pac. 767.

§ 4735. [4441.] Board of Directors—How Constituted.

When two or more districts are consolidated by the provisions of this act, or where two or more districts are consolidated by the uniting of two or more incorporated cities or towns, as provided by law, all the directors of the several districts so consolidated shall constitute the board of directors of the new district so formed, and shall have all the powers and authority conferred by the laws of this state upon school district directors, until the next annual school election in said district, at which times there shall be elected three directors for said district, in the manner provided by law, who shall hold their respective offices as provided for the officers of new districts. [L. '09, p. 271, § 2.]

§ 4736. [4442.] When District not Entitled to Bonus.

Whenever, by reason of detachments of territory subsequent to the formation of a consolidated district, the boundaries of such district shall become practically coextensive with the boundaries of a district prior to the formation of such consolidated district, it shall be the duty of the county superintendent to report such fact to the superintendent of public instruction at the time of making his annual report, and said district shall no longer be entitled to the bonus hereinafter provided for consolidated districts. [L. '09, p. 271, § 3.]

§ 4737. [4443.] City Directors Constitute Board, When City Included.

When two or more districts are consolidated only one of which contains an incorporated city, the directors of the district which contains such incorporated city shall become the directors for the consolidated district as soon as the consolidation is legally completed. [L. '09, p. 271, § 4.]

§ 4738. [4444.] Change of Designation of Consolidated District.

The county superintendent of any county in which new districts are formed by the uniting of ten [two] or more districts, or by the incorporating of any city or town lying partly in two or more school districts, shall upon being notified of such action by the board of directors of such new district, proceed to designate such new district by a number not the same as that of either component district or of any existing district, and to make a record of the boundaries thereof, and he shall certify such facts to the board of county commissioners, to the county treasurer, and to the clerk of the new district formed. The county superintendent shall also divide such consolidated district into three directors' districts which shall each comprise as nearly as possible one-third of the population of the consolidated district, and thereafter one director shall be elected from among the qualified electors of each such directors' district by the qualified electors of the consolidated district. [L. '15, p. 647, § 2. Cf. L. '09, p. 272, § 5.]

§ 4739. [4445.*] Property Rights of Consolidated District—Election of Principal.

All school districts formed by the uniting of two or more districts, as provided for in this act, shall be entitled to the public property of

school districts so united and to all current funds in excess of outstanding indebtedness, other than bonded indebtedness, and the county superintendent shall transfer all such excess funds to the new district, in accordance with this provision and shall certify such transfer to the county treasurer: Provided, that for the purpose of apportionment the consolidated district shall be considered one district: Provided, further, that for the purpose of apportionment the consolidated district shall be credited with two thousand days' attendance in addition to actual attendance for each district, less one, so consolidated: Provided, further, that in order to be entitled to apportionment when two or more districts have consolidated, the board of directors of such district shall elect a superintendent or principal who shall be subject to all conditions, duties and powers fixed by the Code of Public Instruction for superintendents or principals in districts of the second class. [L. '19, p. 207, § 1; L. '09, p. 272, § 6. Cf. L. '90, p. 379, § 67; L. '91, p. 258, § 25; 1 H. C., § 836; L. '97, p. 361, § 13; L. '03, p. 163, § 6.]

§ 4740. [4446.] Component Districts Retain Their Corporate Existence.

Each school district composing said consolidated district shall retain its corporate existence so far as necessary for that purpose until its indebtedness has been paid in full, and the county commissioners shall have the power and it shall be their duty to provide by appropriate levies upon such old district or districts for the payment of such indebtedness: Provided, that when such payment of indebtedness is fully made the clerk of the district shall enter the fact upon the records of the district and report the same to the county superintendent of schools. [L. '09, p. 272, § 7. Cf. L. '97, p. 361, § 14.]

Cited in 66 Wash. 326.

Where two school districts are each indebted in excess of two per cent of their taxable property as shown by the last assessment, and are consolidated, and the consolidated district issues bonds in excess of three per cent of its taxable property, the issue is void, as being in

excess of the constitutional limitation of five per cent of the taxable property in the consolidated district, as each district under this section, is subject to taxation as a separate entity for the purpose of paying its prior indebtedness: State ex rel. Zylstra v. Clausen, 66 Wash. 324, 119 Pac. 797.

§ 4741. [4447.] Organization of Board and Election of Clerk.

When two or more school districts shall be united by the provisions of this act, the board of directors of the several districts shall, within thirty days thereafter, meet and organize the new board by the election of one of their number as president of the board. The board shall elect a clerk for said district, and the clerks of the several districts so united shall deliver to said clerk all books, papers and records belonging to their respective offices. The board may in its discretion require the superintendent, if there be one, of such consolidated district to act as clerk. The clerk of the new district thus formed shall immediately notify the county superintendent of the organization of the board of the new district. [L. '15, p. 647, § 3; L. '09, p. 273, § 8. Cf. L. '90, p. 380, § 68; L. '91, p. 258, § 26; 1 H. C., § 837; L. '97, p. 361, § 15; L. '03, p. 163, § 7.]

§ 4742. [4448.] Formation of Joint School Districts.

When the public good requires it, a school district may be formed of contiguous territory lying in two or more counties, and such districts shall be known as joint school districts. They shall be designated by a separate number for each county in which any portion of their territory may lie. [L. '09, p. 273, § 1. Cf. L. '95, p. 100, § 1; L. '97, p. 361, § 16.]

Cited in 72 Wash. 456, 457.

§ 4743. [4449.] Petition for Joinder of Districts.

For the purpose of forming such joint districts, a petition shall be presented, drawn and signed as prescribed for the formation of other school districts, and a copy of such petition shall be presented to the county superintendent of each county affected by the formation of such proposed joint district. [L. '09, p. 273, § 2.]

§ 4744. [4450.] Notice and Hearing of Petition.

The superintendents of all counties affected by the formation of the proposed joint district shall confer and shall mutually agree upon the time and place of investigating said petition, and upon such agreement each shall notify the school electors of the district or districts of his county affected by the formation of the proposed joint district, by posting notices as required in the formation of other school districts, one of which notices shall be posted upon the schoolhouse door of each district affected by the formation of the proposed joint district, and one of which shall be posted in some conspicuous place in the territory which it is proposed to include in the proposed joint district, in each county; and at the time and place mentioned in said notices the several superintendents shall meet and jointly investigate all matters pertaining to the formation of the proposed joint district. [L. '09, p. 273, § 3.]

§ 4745. [4451.] Board of Directors, Appointment of.

If at the investigation provided for in the preceding section the several county superintendents shall mutually agree that said district should be formed, they shall appoint a board of directors to serve until the next regular election, and the directors appointed shall qualify within ten days. At the next regular election a board of directors shall be elected as provided in the case of other new districts. [L. '09, p. 274, § 4.]

§ 4746. [4452.] Certificate of Election, Where Filed.

Every director or clerk of the joint district shall file his certificate of election and oath of office with the county superintendent of the county in which the schoolhouse is located, and his signature with the treasurer of the same county. [L. '09, p. 274, § 5.]

§ 4747. [4453.] Vacancies.

Vacancies in the office of director of a joint district shall be filled by appointment by the county superintendent in whose county the officer vacating resided while serving, and a copy of such appointment, with the oath indorsed thereon, shall be filed in the office of each county superintendent. [L. '09, p. 274, § 6.]

§ 4748. [4454.] Transfers of Territory.

After a joint school district has been formed, all transfers of territory to and from said district shall be made by mutual agreement and joint action between the county superintendents of the several counties in which the territory of said joint district shall be embraced, and all notices of such transfers shall be signed by all superintendents in whose counties the territory of the joint district shall lie. [L. '09, p. 274, § 7.]

§ 4749. [4455.] Transcripts of Boundaries and Transfers—Maps.

The superintendents of the several counties affected by the formation of any joint school district shall make and keep a correct transcript of the entire boundary of such district, and shall certify the same to the county treasurer and county auditor of each county and all transfers of territory to or from such joint district shall likewise be certified to such officers, said certificates being signed by all county superintendents in whose counties any part of the territory of such joint district shall be located. A map of all joint districts formed under the provisions of this section shall be filed with the superintendent of public instruction within thirty days after the formation of such districts. Said maps shall indicate the number by which the district is designated in each county, and it shall also show the location of the schoolhouse in such district, if there be one. Said map shall be certified to by all county superintendents in whose counties any part of such joint district shall be embraced. [L. '09, p. 274, § 8.]

§ 4750. [4456.] Apportionment of Funds to Joint Districts.

For the purpose of the apportionment of state school funds the district shall be considered as belonging to the county in which the school building is located: Provided, that the county treasurer in whose county the schoolhouse is not located shall transfer quarterly all moneys to the treasurer of the county where the schoolhouse is located, and the same shall be placed to the credit of said joint district. [L. '09, p. 275, § 9.]

§ 4751. [4457.] Adjustment of Property of Joint Districts.

At the hearing for the formation of a joint school district, the county superintendents shall, in case the petition is granted, hear testimony offered by any person or school district interested therein, for the purpose of finding and determining the amount and value of all school property of whatever nature involved in the proposed action, the nature and amount and value of all bonded, warrant and other indebtedness of the original school district or districts out of whose territory such joint district is formed, including all legal uncompleted obligations then existing, and in so doing shall consider the amount of such outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvements, and the location of such improvements, and shall make an equitable adjustment of all property, debts and liabilities among the districts involved.

They shall make a full record of all such findings and terms of adjustments and the decision of said county superintendents shall be final. [L. '09, p. 275, § 10.]

Cited in 72 Wash. 456, 457.

Under this section, there is no appeal from the decision of two county school superintendents creating a joint school

district from the territory of two counties: State ex rel. School District etc. v. Board of County Commrs., 72 Wash. 454, 130 Pac. 749.

§ 4752. [4458.] Levy to Pay Indebtedness.

When a joint school district is formed in the manner provided by this chapter, it shall be the duty of the board of county commissioners to provide by appropriate levies on the property of such joint district, in the manner provided by law, for the payment of such indebtedness as may be imposed upon it by the decision of the county superintendents. [L. '09, p. 275, § 11.]

§ 4753. [4459.] Reports to Superintendents of Each County.

All reports from joint districts shall be made in full to the county superintendent of each county affected thereby: Provided, that any county superintendent may order the segregation of any items of such report so as to show separately the numbers or amounts from each county affected thereby. [L. '09, p. 276, § 12; L. '03, p. 165, § 8½.]

Cited in 74 Wash. 57.

CHAPTER XV.

UNION HIGH SCHOOL DISTRICTS.

§ 4754. [4460.] Petition for Formation of—Statements by District Clerks.

Whenever the residents of two or more adjacent or contiguous school districts in the same county may wish to unite for the purpose of establishing a union high school, the clerks of the districts, by order of the boards of directors, shall, upon a written or printed petition of five or more heads of families of their respective districts, each submit in writing a statement of the proposed union of such districts together with the question of the advisability of the formation of such union school district to the county superintendent of schools, who shall within fifteen days report in writing to the said clerk his approval or disapproval, his action to be based upon an investigation made by him to determine whether or not either school district so applying already maintains or is capable itself of maintaining a high school without uniting with another district, or with other districts, or whether or not the educational and other conditions of the districts desiring to so unite are such as to insure the maintenance of a high school in fact according to the provisions of this chapter. [L. '09, p. 276, § 1.]

Cited in 74 Wash. 59.

§ 4755. [4461.] Election on Question of Formation.

If the county superintendent shall approve of the formation of the proposed union high school district each of said clerks shall call a meeting of the voters of such school districts at some convenient place by posting written or printed notices in like manner as is provided for calling annual school district elections. If a majority of the voters of each district shall vote to unite for the purposes herein stated, the clerk of

each district so proposing to unite shall, within ten days after the election, notify the county superintendent of the holding of and the result of the election, and the county superintendent shall, immediately after the receipt of said notices, designate such union high school district as "Union High School District No. —, — county," and shall so notify the clerks of the several districts so uniting. [L. '09, p. 276, § 2.]

Submission of Question to Popular § 10; Peth v. Martin, 31 Wash. 1, 71
Vote: See Remington's Digest, Schools, Pac. 549.

§ 4756. [4462.] Organization of Board of Directors.

The boards of directors of the several districts so voting to unite shall constitute the board of directors of such union high school district, and shall within ten days after the elections at which the districts voted to unite meet and organize by electing one of their number president of the board, and selecting their clerk for such union high school district, and the clerk and president chosen at such meeting shall hold their respective offices until the next annual school district election and until their successors are elected and qualified; and the election of president and clerk shall occur annually thereafter, on the second Saturday next succeeding the date at which the newly elected school district officers shall enter upon the discharge of their duties: Provided, that in union districts consisting of three or more school districts the board of directors of said union district shall be composed of the chairman of the several boards of directors of the districts comprised in such union district. [L. '09, p. 277, § 3.]

§ 4757. [4463.] Notice of Formation.

The clerk of the union high school district shall within ten days after the organization of the district, by the election of a president and clerk, notify the county superintendent of the organization of said district, and the county superintendent shall also, within ten days after receiving notice of the organization of the district, notify the county treasurer and county auditor of the fact of its organization, together with the numbers of the constituent districts and the names of the directors and clerk. [L. '09, p. 277, § 4.]

§ 4758. [4464.] Enlargement of District.

After the formation of a union high school district the boundaries of the same may be enlarged in the manner prescribed for the formation of the said union high school district: Provided, that the board of directors of the union high school district shall not be reorganized but that the chairman of the district, or the chairmen of the districts, so united to the union high school districts shall be added to the board of directors of the union high school until the next ensuing annual school election. [L. '09, p. 277, § 5.]

§ 4759. [4465.] Grades Taught—Entrance Requirements.

The directors of such union districts shall determine what grade or grades above the grammar grade of the state common school course of study shall be pursued and maintained in such schools: Provided, that the course of study for all high school grades shall not be inconsistent

with the laws of this state; and shall be such as the superintendent of public instruction shall approve. If local conditions admit of it the directors of any union high school district may, at their discretion, admit pupils residing in such union district, belonging to a grade lower than the high school grades, but no pupil belonging to a grade lower than the seventh shall ever be admitted to any such union high school. The teacher or teachers of such union high schools shall keep such records and make such reports as are required of teachers in the districts composing such union districts, and shall make such other reports as may be required by the superintendent of public instruction. [L. '09, p. 278, § 6.]

§ 4760. [4466.] Powers of Board and Clerks—Duties.

The board of directors and clerk provided for in the preceding section, shall, in all matters relating to the union high schools of such district, possess all the powers herein provided for other school district officers, including the power to recommend special levies of taxes for the purpose of furnishing transportation to and from school and other additional school facilities for the union district, or for the payment of teachers' wages, or for the purchase of fuel, supplies, globes, maps, charts, books of reference or other appliances for teaching, or for any or all of these purposes. They shall discharge all the duties and be governed by the laws herein provided for school district officers. [L. '09, p. 278, § 7.]

§ 4761. [4467.] Apportionment of School Funds.

Each union high school district shall be entitled to and shall receive apportionments from the state annual school fund in the manner provided by law for the apportionments from the state annual fund to other school districts. [L. '09, p. 278, § 8.]

§ 4762. [4468.] Appeals from Formation of District.

In case any resident taxpayer shall feel aggrieved at the formation of a union high school district, or at the refusal of the county superintendent to approve of its formation, he shall be entitled to an appeal as provided in this act. [L. '09, p. 279, § 9.]

§ 4763. [4469.] Withdrawal from Union District.

When five or more years have elapsed from the date upon which two or more school districts united for the purpose of forming a union high school district, such union may be dissolved, if at a special election called by the board of directors of such union high school district for that purpose a majority of three-fifths of the votes cast at said election are in favor of dissolution. The liabilities and assets of the union high school district so dissolved shall be justly apportioned by the county superintendent among the various districts composing the union high school district. [L. '13, p. 643, § 1; L. '09, p. 279, § 10.]

Cited in 74 Wash. 59.

CHAPTER XVI.

DISCONTINUANCE AND ALTERATION OF DISTRICTS.

§ 4764. [4470.*] Causes for Discontinuance.

In case any school district shall have less than an average daily attendance of four pupils or shall not have maintained at least the minimum amount of school required by law during the last preceding school year, or in case of territory which is not now a part of any school district, or in which there are no children of school age, the county superintendent shall have power to attach such territory to some contiguous school district or school districts without being petitioned to do so: Provided, that if any school district so disorganized shall have any outstanding bonds, warrants or other indebtedness the assessable property to such district shall be holden for the payment of such indebtedness. [L. '19, p. 208, § 2. Cf. L. '09, p. 279, § 1.]

§ 4765. [4471.] Alteration of Boundaries—Notice to Assessor.

In all cases involving the alteration of school district boundaries, the county auditor shall certify the action of the county superintendent or the county commissioners to the county assessor. [L. '09, p. 279, § 2.]

See *infra*, § 11116, boundaries to correspond with road districts.

§ 4766. [4471½.] Minimum Size of District.

In forming new districts, or transferring territory from one district to another, or changing boundaries of districts, no school district shall contain less than four sections of land, unless said district can support six months' school per year after such change of territory: Provided, that the county superintendent may establish a district with less than four sections on a petition signed by eighty per cent of all the heads of families of the proposed district, by and with the consent of the superintendent of public instruction. [L. '09, p. 280, § 3. Cf. L. '93, p. 142, § 1; L. '97, p. 358, § 6; L. '99, p. 306, § 1; L. '01, p. 371, § 2.]

Former laws cited in 40 Wash. 250.

CHAPTER XVII.

COUNTY SUPERINTENDENTS.

§ 4767. [4472.] Superintendent—Election—Term—Oath—Deputy—Clerical Assistance—Vacancies.

A county superintendent of schools shall be elected in each county of the state at each general election, whose term of office shall begin on the first Monday in September next succeeding his election and continue for two years and until his successor is elected and qualified. He shall take the oath of office and shall give an official bond in a sum to be fixed by the board of county commissioners. He may appoint a deputy, who shall qualify in the same manner as the county superintendent, and perform the duties of the office, subject, however, to revision by the county superintendent: Provided, that in any county having more than one hundred school districts, the county superintendent, with the approval of the board of county commissioners, may appoint such clerical assistance as

may be necessary to perform the work of his office properly. The county commissioners of each county shall fill any vacancy that may occur in the office of county superintendent until the next general election. [L. '09, p. 280, § 1. Cf. Cd. '81, § 3170; L. '90, p. 355, § 10; 1 H. C. §§ 238, 775; L. '97, p. 368, § 30; L. '99, p. 311, § 5; L. '03, p. 171, § 13.]

Former laws cited in 24 Wash. 429; 84 Wash. 84.

See *infra*, § 9934, approval and filing of bond.

See *supra*, § 4205 et seq., salaries specified.

A county superintendent holding a teachers' institute is a mere licensee under this section, and the district is not liable for the dangerous condition of an elevator used by an employee of such licensee: *Smith v. Seattle School District No. 1*, 112 Wash. 64, 191 Pac. 858.

Where a county superintendent of schools was elected for a term to begin on the second Monday in January next succeeding his election and continue for

two years and until his successor is elected and qualified, and upon a change of the law during his term making the term "begin on the first Monday in August next succeeding his election," he is entitled to hold the office until the qualification of his successor for the term beginning in August, although thereby his term is made greater than two years: *State ex rel. Meredith v. Tallman*, 24 Wash. 426, 64 Pac. 759.

§ 4768. [4473.] Qualifications.

No person shall be eligible to hold the office of county superintendent of schools who shall not at the time of his election or appointment have taught in the public schools of this state two school years of nine months each, and who shall not at the time of such election or appointment hold a first grade or higher certificate. [L. '09, p. 280, § 2. Cf. L. '97, p. 368, § 31.]

§ 4769. [4474.] Proof of Qualifications to be Filed.

The county auditor shall not place the name of any person upon the official ballot as a candidate for the office of county superintendent of schools unless such person shall have filed in the office of the county auditor, at least twenty days before the date at which the election is to be held, proof of having taught in the schools of the state one school year of nine months, together with a copy of the certificate required by this act. [L. '09, p. 280, § 3. Cf. L. '97, p. 369, § 32.]

This section does not harmonize with the preceding section.

§ 4770. [4475.] Powers and Duties.

Each county superintendent shall have the power and it shall be his duty—

First. To exercise a careful supervision over the common schools of his county, and to see that all the provisions of the common school laws are observed and followed by the teachers, supervisors and school officers.

Second. To visit the schools in his county, counsel with directors and teachers, and assist in every possible way to advance the educational interests of his county.

Third. To distribute promptly all reports, laws, forms, circulars, and instructions which he may receive for the use of the schools and the teachers, and to execute the instructions and decisions of the superintendent of public instruction, as provided by law.

Fourth. To enforce the outline course of study adopted by the state board of education, or the course of study adopted by any other lawful

authority, and to enforce the rules and regulations required in the examination of teachers.

Fifth. He shall prepare an outline course of study for the books adopted in districts of the third class when the needs of the county demand: Provided, that said outline course of study shall be in harmony with the course adopted by the state board of education of this state.

Sixth. To keep on file and preserve in his office the biennial reports of the superintendent of public instruction and of the county superintendent of his county.

Seventh. To keep in good and well-bound books, to be furnished by the county commissioners, records of his official acts.

Eighth. To preserve carefully all reports of school officers and teachers, and at the close of his term of office to deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county auditor.

Ninth. To administer oaths and affirmations to school directors, teachers and other persons, on all official matters connected with or relating to schools, but he shall not make or collect any charge or fee for so doing.

Tenth. To keep in a suitable book an official record of all persons under contract to teach in the schools of his county showing the number of the school district, the date of the contract, the names of the contracting parties, and the date of the expiration of the teacher's certificate and the grade thereof, the salary paid, and the date of commencing school, with the length of term in weeks, which data shall be immediately reported to the county auditor.

Eleventh. To make an annual report to the superintendent of public instruction on the first day of August of each year, for the school year ending June 30th, next preceding. The report shall contain an abstract of the reports made to him by the district clerks, and such other matters as the superintendent of public instruction shall direct. And it shall be the duty of the county commissioners and county auditor in every county wherein the county superintendent is about to retire from office to withhold the warrant of his salary for the month of July until they shall have received a certificate from the superintendent of public instruction that the annual report of such county superintendent has been made in a satisfactory manner; and it shall be the duty of the superintendent of public instruction to transmit such certificate to the auditor immediately upon receiving such satisfactory report.

Twelfth. To keep in his office a full and correct transcript of the boundaries of each school district in the county, including joint districts. In case the boundaries of said districts are conflicting or incorrectly described, he shall change, harmonize and describe them, and at their next regular meeting he shall certify his action to the county commissioners of his county, and shall file with them a complete transcript of the boundaries of all school districts affected by his action, which shall be entered upon the journal of said board and become a part of their records. The county superintendent shall, on request, furnish the district clerks with descriptions of the boundaries of their respective districts.

Thirteenth. To appoint school district officers in districts of the second and of the third class, to fill vacancies caused by death, resignation, failure to hold election, failure to qualify before the day for taking office, and absence from the district for a period of ninety days or failure to attend four consecutive meetings of the board without a reasonable excuse; to appoint school officers for any new districts: Provided, that when any new district is organized, such of the school officers of the old district as reside within the limits of the new one shall be such school officers of the new one, and the vacancies in the old district shall be filled by appointment.

Fourteenth. To apportion school funds as provided in Chapter XXVII of this title.

Fifteenth. To grant such temporary certificates and to conduct such examination of teachers and make such records thereof as may be prescribed by law: Provided, that he shall give ten days' notice of such examination by publication in some newspaper of general circulation published in his county, or if there be no newspaper, then by posting up handbills, or otherwise.

Sixteenth. To hold teachers' institutes according to law, and to conduct such other meetings of the teachers of his county as may be for the best interests of the schools.

Seventeenth. To hold each year, if he deem it advisable, one or more directors' meetings, the expense of which shall be audited and paid by the county commissioners: Provided, that such expense shall not exceed the sum of one hundred dollars in any one year.

Eighteenth. To suspend any teacher who may be teaching in his county, against whom he files charges, and in case of such suspension he shall immediately notify the superintendent of public instruction of his action, and shall clearly and fully state his reasons for said action.

Nineteenth. To furnish registers and clerks' record-books to all districts of his county upon a requisition from the school district clerk, and he shall receive pay for such books by warrants drawn against the said school district by the county auditor. At the end of each quarter of the fiscal year he shall turn over to the treasurer of his county all moneys derived from the sale of such books, together with a detailed statement of the sources from which said funds were derived. He shall also at the same time send a copy of said statement to the superintendent of public instruction.

Twentieth. To forthwith enforce the provisions of section 4836, *infra*, and to notify the superintendent of public instruction whenever any school board of such county shall fail to comply with the provisions required. [L. '09, p. 281, § 4. Cf. L. '90, p. 355, § 11; L. '91, p. 240, § 3; 1 H. C., § 776; L. '97, p. 369, § 33; L. '99, p. 311, § 6; L. '03, p. 171, § 14.]

Former laws cited in 10 Wash. 198, 199; 36 Wash. 409; 84 Wash. 84.

There was an error in the reference in this section, but § 4836 was evidently intended.

§ 4771. [4476.] Reports of Teachers and Officers—Records.

The county superintendent shall require all reports of school district officers, teachers and others to be made promptly as required by law. He shall see that the teacher's register is kept in accordance with law

and the instructions of the superintendent of public instruction, and that the records of the school district clerks are properly kept. He shall require the oath of office of all school district officers to be filed in his office, and shall furnish a directory of all such officers to the county treasurer, upon blanks furnished by the superintendent of public instruction, as soon as the election or appointment of such officers is determined and their oaths placed on file. [L. '09, p. 284, § 5. Cf. L. '97, p. 371, § 34.]

§ 4772. [4477.] Office—When Open.

He shall keep his office open for the transaction of official business such days each week (at least one day each week) as the duties of the office may require, and shall keep posted on the door of his office a notice of said office days and hours of such days. [L. '09, p. 284, § 6. Cf. L. '97, p. 371, § 35.]

§ 4773. [4478.] Office at County Seat—Office Supplies.

The county commissioners shall provide the county superintendent with a suitable office at the county seat, and all necessary blanks, books, stationery, postage, printing and other expenses of his office shall be paid by the county treasurer out of the county funds upon a sworn statement made quarterly and allowed by the county commissioners: Provided, that, as to the necessity for the printing and issuance of circulars of information pertaining to the schools of his county, for the use of schools, school officers and teachers, the county superintendent shall determine. [L. '09, p. 284, § 7. Cf. L. '90, p. 359, § 14; L. '91, p. 244, § 5; 1 H. C., § 799; L. '97, p. 372, § 37; L. '01, p. 376, § 7.]

§ 4774. [4479.] Traveling Expenses.

For all actual and necessary travel in the performance of their official duties and in attendance on the convention of county superintendents, called by the superintendent of public instruction, county superintendents shall be allowed actual traveling expenses. [L. '09, p. 285, § 8. Cf. L. '90, p. 361; 1 H. C., § 782; L. '97, p. 372, § 38; L. '01, p. 377, § 8; L. '03, p. 174, § 15.]

Former laws cited in 14 Wash. 255; 21 Wash. 84; 35 Wash. 176.

Laws of 1901, page 377, § 8 [superse-
ded by the above section], authorizing
county superintendents to charge five
cents mileage in counties of the first to
the tenth classes inclusive and ten cents
mileage in all counties having a higher
class number than the tenth, does not

violate Article I, § 12, of the state Con-
stitution, which prohibits class legisla-
tion: *Henry v. Thurston County*, 31 Wash.
638, 72 Pac. 488.

Meaning of term "necessary travel"
as used with respect to mileage al-
lowance. *Ann. Cas.* 1918D, 934.

CHAPTER XVIII.

DISTRICT OFFICERS—GENERAL PROVISIONS.

§ 4775. [4480.] Directors—Election—Qualifications.

Directors of school districts shall be elected at the regular annual school elections. No person shall be eligible to the office of school director who is not able to read and write the English language. [L. '09, p. 285, § 1. Cf. L. '90, p. 364, § 25; 1 H. C., § 790; L. '93, p. 265, § 2;

L. '97, p. 373, § 39; L. '99, p. 313, § 7; L. '01, p. 45, § 2; L. '01, p. 377, § 9; L. '03, p. 175, § 16.]

Former laws cited in 4 Wash. 663.

See *supra*, § 3975, effect of change of county lines.

See *infra*, § 5269, exception as to ballots.

§ 4776. [4481.*] Powers and Duties of Board of Directors.

Every board of directors, unless otherwise specially provided by law, shall have power and it shall be its duty:

First: To employ for not more than one year, and for sufficient cause to discharge teachers, and to fix, alter, allow and order paid their salaries and compensation. The directors, except in districts of the first class, shall make with each teacher employed by them a written or printed contract, which shall be in conformity with the laws of this state, and every such contract shall be made in duplicate, one copy of which shall be retained by the school district clerk, and the other shall be delivered to the teacher after having been approved and registered by the county superintendent as by law required.

Second: To enforce the rules and regulations prescribed by the superintendent of public instruction and the state board of education for the government of schools, pupils and teachers, and to enforce the course of study lawfully prescribed for the schools of their districts.

Third: To rent, repair, furnish and insure schoolhouses, to employ janitors, laborers and mechanics.

Fourth: To cause all schoolhouses to be properly heated; lighted and ventilated, and to cause all school premises to be maintained in a cleanly and sanitary condition.

Fifth: To purchase personal property in the name of the district and to receive, lease, issue and hold for their district any real or personal property.

Sixth: To suspend or expel pupils from school who refuse to obey the rules thereof, and they shall exclude from school all children under six years of age.

Seventh: To provide free text-books and supplies to be loaned to the pupils of the school, when in their judgment the best interests of their district will be subserved thereby, and to prescribe such rules and regulations as they shall deem necessary to preserve such books and supplies from unnecessary damage, also to provide for the expenditures of a reasonable amount for suitable commencement exercises.

Eighth: To require all pupils to be furnished with such books as may have been adopted by the lawful authority of this state, as a condition to membership in the schools.

Ninth: To exclude from schools and school libraries all books, tracts, papers and other publications of an immoral or pernicious tendency.

Tenth: To authorize the schoolroom to be used for summer or night schools, or for public, literary, scientific, religious, political, mechanical and agricultural meetings, under such regulations as the board of directors may adopt.

Eleventh: To provide and pay for transportation of children to and from school whether such children live within or without the district

when in their judgment the best interests of their district will be subserved thereby, but the directors shall not be compelled to transport any pupil living within two miles of the schoolhouse. When children are transported from one school district to another the board of directors of the respective districts may enter into a written contract providing for a division of the cost of such transportation between the districts.

Twelfth: To establish and maintain night schools. [L. '19, p. 208, § 3. Cf. L. '15, p. 144, § 1. Cf. L. '09, p. 285, § 2; L. '90, p. 364, § 26; 1 H. C., § 791; L. '97, p. 373, § 40; L. '01, p. 45, § 3; L. '01, p. 378, § 10; L. '03, p. 175, § 17; L. '07, p. 611, § 5.]

Cited in 112 Wash. 67, 69; 113 Wash. 627.

Former laws cited in 36 Wash. 410, 426, 434; 43 Wash. 238, 241.

District Boards—Meetings: See Remington's Digest, Schools, § 20; Splaine v. School District, 20 Wash. 74, 54 Pac. 766.

§ 4777. [4482.*] Schools to Display National Flag—Exercises.

Every board of directors of the several school districts of this state shall procure a United States flag, which shall be replaced with a new one whenever the same becomes tattered, torn or faded, and shall cause said flag to be displayed upon or near each public school building during school hours, except in unsuitable weather, and at such other times as to said board may seem proper, and shall cause appropriate flag exercises to be held in every school at least once in each week at which exercises the pupils shall recite the following salute to the flag: "I pledge allegiance to my flag and to the republic for which it stands. One nation indivisible with liberty and justice for all." [L. '19, p. 210, § 4. Cf. L. '15, p. 246, § 1. Cf. L. '09, p. 286, § 3; L. '97, p. 426, § 180.]

§ 4778. Failure to Discharge Flag Duties.

Any member of any board of directors of any school in the state, or any person employed by any board of directors of any school district, willfully refusing or neglecting to comply with section 4777, shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not to exceed \$10.00. Providing that any person so convicted may be discharged from further service by the said school board. [L. '19, p. 211, § 5.]

§ 4779. [4483.] Liability for and Payment of Debts.

Every school district shall be liable for any debts legally due, contracted under the provisions of this act, and for judgments against the district, and such district shall pay such judgment or liability out of the proper school funds to the credit of the district. [L. '09, p. 287, § 4. Cf. L. '90, p. 365, § 27; 1 H. C., § 792; L. '97, p. 374, § 41.]

CLAIMS AGAINST DISTRICT AND ACTIONS: See Remington's Digest, Schools, §§ 40—43.

§ 40. Presentation and Allowance of Claims: Van Dyke v. School District, 43 Wash. 235, 86 Pac. 402.

See, also, Williams v. School Dist. No. 189, 104 Wash. 659, 177 Pac. 635.

§ 41. Actions by or Against District—

Process and Appearance: Downs v. Board of Directors, 4 Wash. 309, 30 Pac. 147.

Where an order discharging a principal of schools has been reversed on his appeal to the county superintendent, and the school board, by indirection, sought a reversal by offering a different employment compelling the principal to work under a "superintendent" who was formerly a teacher under him, the principal is under

no obligation to take a second appeal whether the action of the board be considered another dismissal or an offer of new employment: *Williams v. School District No. 189*, 104 Wash. 659, 177 Pac. 635.

§ 42. — **Pleading:** *Rand, McNally & Co. v. Hartranft*, 29 Wash. 591, 70 Pac. 77.

§ 43. — **Evidence and Trial:** *Holt v. School Dist. No. 71*, 102 Wash. 442, 173 Pac. 335; *Bruenn v. North Yakima School Dist. No. 7*, 101 Wash. 374, 172 Pac. 569; *Kelley v. School Dist. No. 71*, 102 Wash. 343, 173 Pac. 333.

§ 4780. [4484.*] **Tuition Charged Adults and Pupils of Other Districts.**

Any board of directors shall have power to make arrangements with adults wishing to attend school, or with the directors of another district, for the attendance of such children, in the school of either district as may be best accommodated therein: Provided, that in case such arrangements are not made or children from school districts not adjoining desire to attend school in their district they may charge reasonable tuition for such attendance: Provided further, that all such money collected by any school district officer for the use of the district shall, within thirty days after the date of its collection, be turned over to the county treasurer and placed to the credit of the district: Provided further, that the board of directors of any school district in the state in which a high school is maintained, and which lies adjacent to the boundary of a school district in another state in which no high school is maintained, may make arrangements with the officers of the district of the other state for the attendance of any high school pupils residing in such outside district upon the payment of tuition therefor: Provided, that the provisions of this section shall not apply unless the laws of the other state permit its districts to extend similar privileges to pupils resident in the state of Washington. In the event that any pupils residing in a Washington school district, which maintains no high school and which is adjacent to the school district of another state, shall desire to attend high school in such district in the other state, the board of directors of the Washington district shall have power to arrange for, and pay tuition for their attendance in the district of the other state and to pay such expense from the funds of the district. Provided further, the reimbursement of a high school district for cost of educating high school pupils for a non-high school district, as provided for in this act, shall not be deemed a tuition charge as affecting the apportionment of current state school funds provided for in section 4877 of this code. [L. '21, p. 150, § 1; L. '09, p. 287, § 5. Cf. L. '90, p. 365, § 28; L. '91, p. 248, § 10; 1 H. C., § 793; L. '97, p. 375, § 42; L. '99, p. 314, § 8.]

§ 4781. [4485.] **By-laws.**

Any board of directors shall have power to make such by-laws for their own government, and the government of the common schools under their charge, as they deem expedient, not inconsistent with the provisions of this act, or the instructions of the superintendent of public instruction or the state board of education. [L. '09, p. 287, § 6. Cf. L. '90, p. 366, § 29; 1 H. C., § 794; L. '97, p. 375, § 43.]

§ 4782. [4486.] **May Convey Property and Transact Business.**

The board of directors of each school district shall have custody of all school property belonging to the district, and shall have power, in

the name of the district, to convey by deed all the interest of their district in or to any schoolhouse or lot directed to be sold by vote of the district and all conveyances of real estate made to the district shall vest title in the district; said board, in the name of the district, shall have power to transact all business necessary for maintaining school and protecting the rights of the district. [L. '09, p. 287, § 7. Cf. L. '90, p. 366, § 30; L. '91, p. 249, § 11; 1 H. C., § 795; L. '97, p. 375, § 44.]

§ 4783. [4487.*] Pecuniary Interest in Contracts Prohibited.

It shall be unlawful for any director to have any pecuniary interest, either directly or indirectly in the purchase of school sites or in the erection of schoolhouses, or in the warming, ventilating, furnishing, repairing or insuring of the same, or to be in any manner interested in or connected with the furnishing of supplies for the maintenance of schools, or to receive or accept any compensation or reward for services rendered as director or be employed for hire by said district or by any person having a contract with said district: Provided, that nothing in this section shall be construed to prevent a director elected as clerk from acting as purchasing agent for his district, or for receiving such compensation for performing the duties of school district clerk as are now or may hereafter be provided by law: Provided further, that the actual expenses of directors incurred in going to and returning from and while in attendance upon any directors' meeting or other meeting called or held in compliance with this code, also like expenses of superintendents or other school representatives, chosen by the directors attending any conferences or meetings or upon any urgent school business, called by the state superintendent or authorized by the directors, may be paid by the district. [L. '19, p. 211, § 6; L. '09, p. 287, § 8. Cf. L. '90, p. 366, § 31; 1 H. C., § 796; L. '97, p. 376, § 45.]

Cited in 32 Wash. 118.

Contracts of District: See Remington's Digest, Schools, §§ 25-1—27. **Capacity of District to Contract in General:** Seattle School District v. Seattle, 63 Wash. 245, 115 Pac. 173.

See, also, State ex rel. Dysart v. Gage, 107 Wash. 282, 181 Pac. 855.

§ 26. — Individual Interest of Officers: Miller v. Sullivan, 32 Wash. 115, 72 Pac. 1022.

§ 27. — Remedies of Parties: Criswell v. Directors School District, 34 Wash. 420, 75 Pac. 984.

§ 4784. [4488.] Limit of Indebtedness.

It shall be unlawful for any board of directors to contract indebtedness against their district in any one year in any sum or sums exceeding the aggregate of the amount due to said district during the year from state funds, the amount of school district tax levied for the year and the estimated receipts from other sources, unless said indebtedness be authorized by a vote of the electors of said district. [L. '09, p. 288, § 9. Cf. L. '93, p. 266, § 3; L. '97, p. 376, § 46.]

See Const., Art. VIII, § 6.

§ 4785. [4489.] Books, Papers, etc., Delivered to Successor.

Every school officer shall immediately deliver to his successor in office all books, papers and moneys pertaining to his office. [L. '09, p. 288, § 10. Cf. L. '90, p. 380, § 69; 1 H. C., § 829; L. '97, p. 383, § 60.]

§ 4786. [4490.] Oath of Office.

Every person elected or appointed to any office mentioned in this chapter shall, before entering upon the discharge of the duties thereof, take an oath or affirmation to support the Constitution of the United States and the state of Washington, and to promote the interest of education, and to faithfully discharge the duties of his office according to the best of his ability. In case any officer has a written appointment or commission, his oath or affirmation shall be indorsed thereon and sworn to before any officer authorized to administer oaths. School officers are hereby authorized to administer all oaths or affirmations pertaining to their respective offices without charge or fee. All oaths of office as herein provided shall, when properly made, be filed with the county superintendent of schools. [L. '09, p. 288, § 11. Cf. L. '90, p. 380, § 70; 1 H. C., § 828, L. '97, p. 383, § 61.]

§ 4787. [4491.] Signature to be Filed With County Auditor.

Every school district director or clerk shall, on assuming the duties of his office, place his signature, certified to by some school district officer, on file in the office of the county auditor. [L. '09, p. 289, § 12. Cf. L. '90, p. 380, § 70; 1 H. C., § 828; L. '97, p. 383, § 61.]

Cited in 15 Wash. 406.

The provisions of this section, prior to amendment, making it unlawful for a county treasurer to pay a warrant when the signatures are not registered are intended for the protection, not of the public at large, but of the county and the

school districts therein, and no action will lie against a treasurer and his sureties, by the holder of a forged school district warrant, who claims to have purchased same on the strength of such treasurer's indorsement: *Roberts v. Prescott*, 15 Wash. 462, 46 Pac. 642.

§ 4788. [4492.] Right of Eminent Domain—Limit.

The board of directors of any school district of this state may proceed to condemn and appropriate sufficient land for a schoolhouse site not to exceed five acres in extent; such condemnation proceedings shall be in accordance with the laws of this state providing for appropriating private property for public use. [L. '09, p. 289, § 13.]

See *supra*, §§ 906—920, eminent domain by school districts.

§ 4789. [4493.*] Approval of Plans, etc., of Buildings.

Whenever any board of directors of school districts of the third class shall be authorized, by the electors of their district, to erect a school building, it shall be the duty of such board, before entering into any contract for the erection of any buildings, to obtain the approval of the county superintendent of the county in which the building is to be erected, of the plans and specifications for the building to be erected, said superintendent to give special attention to the provisions made therein for heating, lighting and ventilation. [L. '19, p. 212, § 7; L. '09, p. 289, § 14. Cf. L. '07, p. 370, § 2.]

This section was obviously included in this chapter by the legislature by mistake. See *infra*, § 5207 for the general provision.

Cited in 97 Wash. 209.

The directors are authorized to build schoolhouses only when authorized by a

vote of the district: *Stimson Timber Co. v. Mason County*, 97 Wash. 205, 166 Pac. 251.

CHAPTER XIX.

DIRECTORS OF DISTRICTS OF THE FIRST CLASS.

§ 4790. [4494.] Board—How Constituted—Election—Vacancies.

The directors of school districts of the first class shall consist of five members who shall be known as the board of directors. They shall be elected by ballot by the qualified electors of the district, and shall hold their office for a term of three years and until their successors are elected and qualified.

When a district of the second or third class shall become a district of the first class the existing directors shall serve until the annual election preceding the expiration of the term for which they were elected and shall appoint two additional directors who shall serve until the next annual school election in said district. At such annual election three directors shall be elected, one for one year, one for two years and one for three years.

In case vacancies are to be filled, and the successor or successors are to be elected to fill an unexpired term or terms, the ballot shall specify the term for which each such director is to be elected. [L. '09, p. 289, § 1.]

§ 4791. [4495.] Time of Holding Election.

The regular district election in each district of the first class shall be held on the first Saturday of December in each year, and such election shall be held in the manner provided in Chapter XXXVII of this title. [L. '09, p. 290, § 2. Cf. L. '90, p. 387, § 3; 1 H. C., § 859; L. '97, p. 387, § 77; L. '03, p. 220, § 2; L. '05, p. 260, § 1.]

§ 4792. [4496.] Oath and Term of Office—Officers of Board.

All persons elected as members of the board of directors of districts of the first class shall, within ten days thereafter, appear before the officer authorized to administer oaths, take and subscribe the usual oath of office and deliver the same to the county superintendent of schools; in case any person elected shall fail so to do, his election shall be void and the vacancy occasioned thereby shall be filled by the board as hereinafter provided. The term of office of persons so elected shall begin on the first Monday of the month of January following their election. At the first meeting of the members of the board in the month of January of each year, they shall elect a president and vice-president from among their number who shall serve for a term of one year or until their successors are elected and qualified. In the event of the temporary absence or disability of both the president and vice-president, the board of directors may elect a president pro tempore who shall discharge all the duties of president during such temporary absence or disability. They shall also at their regular meeting in the month of January in each year elect a secretary at such salary as they may deem just; said secretary shall not be a member of the board of directors, and may be removed by the board at any time. [L. '09, p. 290, § 3.]

§ 4793. [4497.] Vote, How Taken.

The election of the officers of the board of directors, the city superintendent, the secretary, teachers, janitors and all other officers of such

district shall be by viva voce vote upon a call of the roll of all the members, and no person shall be declared elected unless he receives a majority vote of all the members of the board. [L. '09, p. 290, § 4.]

§ 4794. [4498.] Duties of President.

It shall be the duty of the president to preside at all meetings of the board, and to perform such other duties as the board may prescribe. [L. '09, p. 290, § 5.]

§ 4795. [4499.] Vice-president—Duties.

It shall be the duty of the vice-president to perform all the duties of president in case of his absence or disability. [L. '09, p. 291, § 6.]

§ 4796. [4500.*] Secretary—Duties.

It shall be the duty of the secretary to be present at all meetings of the board, to keep an accurate journal of the proceedings, to take charge of its books and documents, to countersign all warrants for school money drawn upon the county treasurer by order of the board; he may be authorized by the board to act as business manager, purchasing agent, superintendent of buildings and janitors, and charged with the special care of school buildings and other property of the district; he shall also perform such other duties as the board may direct. [L. '19, p. 212, § 8; L. '09, p. 291, § 7.]

§ 4797. [4501.] Secretary—Bond and Oath of Office—Annual Report.

Before entering upon the discharge of his duties, the secretary of the board shall give bonds in such sum as the board of directors may fix from time to time, but for not less than five thousand dollars (\$5,000), with good and sufficient sureties, and shall take and subscribe an oath or affirmation, before a proper officer that he will support the Constitution of Washington and faithfully perform the duties of his office. He shall, from time to time, as he may be required by the board, make a complete and detailed record of his transactions as secretary, which shall be combined with his annual report, to be published in the manner determined by the board. [L. '09, p. 291, § 8.]

§ 4798. [4502.] Meetings of Board—Special Meetings.

The regular meetings of the board of directors shall be held monthly or oftener at such a time as the by-laws of the board may prescribe, but special meetings may be held from time to time as circumstances may demand, at the call of the president or on petition of a majority of the members of the board, and all meetings shall be open to the public unless otherwise specially ordered. [L. '09, p. 291, § 9. Cf. L. '90, p. 389, § 13; 1 H. C., § 869; L. '97, p. 390, § 86.]

Former laws cited in 3 Wash. 156.

§ 4799. [4503.] Office of Board.

The board of directors shall maintain an office where all regular meetings shall be held, and all records, vouchers and other important papers belonging to the board may be preserved, and shall at all times

be open for inspection of resident taxpayers. [L. '09, p. 291, § 10. Cf. L. '90, p. 389, § 14; 1 H. C., § 870; L. '97, p. 390, § 87.]

§ 4800. [4504.] Payment of Claims—Signing of Warrants.

The moneys of such school districts shall be paid out only upon warrants signed by the president, or a majority of the board of directors and countersigned by the secretary: Provided, that when, in the judgment of the board of directors, the warrants issued by the district monthly shall have reached such numbers that the signing of each warrant by the president personally imposes too great a task on the president, the board of directors, after auditing all payrolls and bills as provided by section 4803, may authorize the issuing of one general certificate to the county treasurer, to be signed by the president, authorizing said treasurer to pay all the warrants specified by date, number, name and amount, and the funds on which said warrants shall be drawn. And the secretary of said board shall be authorized to draw and sign said warrants. [L. '09, p. 292, § 11.]

§ 4801. [4505.] Vacancies.

The board of directors shall have power to fill, by election, any vacancy which may occur in its body, but the election to fill such vacancy shall be valid only until the next regular district election, and the ballots and returns shall be designated as follows: "To fill unexpired term." [L. '09, p. 292, § 12. Cf. L. '90, p. 390, § 16; 1 H. C., § 872; L. '97, p. 390, § 89; L. '07, p. 40, § 3.]

§ 4802. [4506.] Quorum—Compulsory Attendance—Effect of Absences.

A majority of all members of the board of directors shall constitute a quorum, but a less number in attendance at any regular meeting shall have, and a quorum at any special meeting shall have, power to compel the attendance of absent members, in such manner and under such penalties as the board may see fit to prescribe; and the absence of any member from four consecutive regular meetings of the board, unless on account of sickness or by resolution of the board, shall vacate his position in the board, which fact shall be passed upon by the board of directors and spread upon their records. [L. '09, p. 292, § 13. Cf. L. '90, p. 390, § 17; 1 H. C., § 873; L. '97, p. 390, § 90.]

§ 4803. [4507.] Auditing Committee—Expenditures — Annual Examination of Accounts.

All accounts shall be audited by a committee to be styled the "auditing committee," and no expenditure greater than three hundred dollars shall be voted by the board except in accordance with a written contract, nor shall any money or appropriation be paid out of the school fund except on a recorded affirmative vote of a majority of all members of the board: Provided, that nothing herein shall be construed to prevent the board from making any repairs or improvements to the property of the district through their shop and repair department; and the accounts and the records of said board shall at all times be subject to the inspection and examination of the county superintendent of said county, whose

duty it shall be, annually, to examine said records and check said accounts, and report in writing to the board of county commissioners the nature and state of said accounts, and any facts that may be required concerning said records. [L. '09, p. 292, § 14.]

§ 4804. [4508.] Must Advertise for Bids, When.

When, in the opinion of the board, the cost of any furniture, supplies, building, improvements or repairs will equal or exceed the sum of three hundred dollars, it shall be the duty of the board to give due notice by publication, in at least one daily newspaper published within said district, and if there be no daily, then in one or more weekly papers, in three regular consecutive issues, of the intention to receive bids therefor; and the board shall determine the specifications for such bids which shall be public: Provided, that the board may, without giving such notice, make improvements or repairs to the property of such district through their shop and repair department. [L. '09, p. 293, § 15.]

Former laws cited in 34 Wash. 429.

Cited in 102 Wash. 373; 113 Wash. 625, 626, 627.

After a school board has duly advertised for bids for the erection of a schoolhouse, under Ballinger's Code, § 3366, it may make alterations in the specifications reducing the cost of the building, making proper deductions on

account of work eliminated and additions for extras, and thereupon enter into a contract with the lowest bidder, without readvertisement, so long as the general plan of the building remains substantially the same, and the parties act in good faith: *Criswell v. Directors School District*, 34 Wash. 420, 75 Pac. 984.

Amended Act.

§ 4805. [4509.*] Powers of Board.

Every board of directors of a school district of the first class shall, in addition to the general powers enumerated in Chapter XX (XVIII) of this title have the power:

First: To employ for a term of not exceeding three years a city superintendent of schools of the district, and for cause to dismiss him; and to fix his duties and compensation.

Second: To prescribe a course of study and a program of exercises which shall not be inconsistent with the course of study prepared by the state board of education for the use of the common schools of this state.

Third: To make necessary by-laws for more effectively carrying out the provisions of this act and for facilitating the work of the board, as required by law.

Fourth: To adopt and enforce such rules and regulations as may be deemed essential to the well-being of the schools, and to establish and maintain such grades and departments, including night, high, kindergarten, manual training and industrial schools and schools and departments for the education and training of any class or classes of defective youth, as shall, in the judgment of the board, best promote the interests of education in that district.

Fifth: To employ, and, for cause, to dismiss teachers and janitors; to determine the length of time over and above eight (8) months that school shall be maintained: Provided, that for purposes of apportionment no district shall be credited with more than one hundred and eighty-three

days' attendance in any school year; to fix the time for annual opening and closing of schools and for the daily dismissal of primary pupils before the regular time for closing schools.

Sixth: To employ a business manager, attorneys, an architect, inspectors of construction, superintendents of buildings and janitors, and a superintendent of supplies and other employees, and to prescribe their duties and fix their compensation.

Seventh: To employ, and for cause dismiss one or more assistant city superintendents and to define their duties and fix their compensation.

Eighth: To employ, and for cause dismiss, supervisors of instruction, and to define their duties and fix their compensation.

Ninth: To maintain a shop and repair department, and to employ a foreman and the necessary help for the maintenance and conduct thereof.

Tenth: To provide free text-books and supplies for all children attending school, when so ordered by a vote of the electors; or if the free text-books are not voted by the electors, to provide books for children of indigent parents, on the written statement of the city superintendent that the parents of such children are not able to purchase them.

Eleventh: To require of the officers or employees of the district to give a bond for the faithful discharge of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all bonds required of all such officers or employees to be paid by the district.

Twelfth: To prohibit all secret fraternities and sororities among the students in any of the schools of the said districts.

Thirteenth. To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting the safety and welfare of the public schools of the district; he or authorized deputies shall make monthly inspections of each school in the district and report the condition of the same to the board of education and board of health: Provided, however, that children shall not be required to submit to vaccination against the will of their parents or guardian. [L. '19, p. 213, § 9. See next section.]

This section was amended by the next section, but the amendment is subjected to referendum and suspended until the general election in November, 1922.

Former laws cited in 43 Wash. 449; 84 Wash. 85.

Chapter XX [XVIII] substituted for "Article IV, Chapter IV," which was evidently an error, "Article IV, Chapter II" being probably intended [Chapter XVIII herein]. See, also, §§ 4817, 4829, *infra*, where similar errors were made.

This section does not authorize religious instruction: *State ex rel. Dearle v. Frazier*, 102 Wash. 369, 173 Pac. 35.

Nor a free clinic for children of poor people: *McGilvra v. Seattle School District No. 1*, 113 Wash. 619, 194 Pac. 817.

The school board directors of a high school have the power under this section, to enforce rules forbidding pupils in the school from joining secret fraternal societies, upon pain of loss of all privileges of the school except that of attending classes: *Wayland v. Hughes*, 43 Wash. 441, 86 Pac. 642, 7 L. R. A. (N. S.) 352.

Mandamus will not issue to obtain an apportionment of school funds on account of five days' attendance of school held during the prescribed vacation period, in violation of this section, prior to its amendment: *State ex rel. School District No. 301 v. Preston*, 84 Wash. 79, 146 Pac. 175, 149 Pac. 352.

Acquisition, Use and Disposition of Property in General: See *Remington's Digest, Schools*, §§ 21-1, 22; *Sorenson v. Perkins & Co.*, 72 Wash. 16, 129 Pac. 577; *Nichols v. School District*, 39 Wash. 137, 81 Pac. 325.

*Referred Act.***§ 4805-1. [4509.*] Powers of Board.**

Every board of directors of a school district of the first class shall, in addition to the general powers enumerated in Chapter XX [XVIII] of this title have the power:

First. To employ for a term of not exceeding three years a city superintendent of schools of the district, and for cause to dismiss him, and to fix his duties and compensation.

Second. To prescribe a course of study and a program of exercises which shall not be inconsistent with the course of study prepared by the state board of education for the use of the common schools of this state.

Third. To make necessary by-laws for more effectively carrying out the provisions of this act and for facilitating the work of the board, as required by law.

Fourth. To adopt and enforce such rules and regulations as may be deemed essential to the well-being of the schools, and to establish and maintain such grades and departments, including night, high, kindergarten, manual training and industrial schools and schools or departments for the education and training of any class or classes of defective youth, as shall, in the judgment of the board, best promote the interests of education in that district.

Fifth. To employ, and, for cause, to dismiss teachers and janitors; to determine the length of time over and above eight (8) months that school shall be maintained: Provided, That for purposes of apportionment no district shall be credited with more than one hundred and eighty-three days' attendance in any school year; to fix the time for annual opening of schools and for the daily dismissal of primary pupils before the regular time for closing schools.

Sixth. To employ a business manager, attorneys, an architect, inspectors of construction, superintendents of buildings and janitors, and a superintendent of supplies and other employees, and to prescribe their duties and fix their compensation.

Seventh. To employ, and for cause dismiss one or more assistant city superintendents and to define their duties and fix their compensation.

Eighth. To employ, and for cause dismiss, supervisors of instruction, and to define their duties and fix their compensation.

Ninth. To maintain a shop and repair department, and to employ a foreman and the necessary help for the maintenance and conduct thereof.

Tenth. To provide free text-books and supplies for all children attending school, when so ordered by a vote of the electors; or if the free text-books are not voted by the electors, to provide books for children of indigent parents on the written statement of the city superintendent that the parents of such children are not able to purchase them.

Eleventh. To require of the officers or employees of the district to give a bond for the faithful discharge of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all bonds required of all such officers or employees to be paid by the district.

Twelfth. To prohibit all secret fraternities and sororities among the students in any of the schools of the said districts.

Thirteenth. To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting the safety and welfare of the public schools of the district; he or authorized deputies shall make inspections of each school in the district and report the condition of the same to the board of education and board of health: Provided, however, that a parent or guardian having control or charge of any child enrolled in any public school in districts of the first class of the state may file annually with the principal of the school in which he is enrolled, a statement in writing, signed by such parent or guardian, stating that he will not consent to the physical examination of his child, and thereupon such child shall be exempt from any physical examination: Provided, further, that whenever such practicing physician or graduate nurse shall in good faith have reason to believe that such child is suffering from a contagious or infectious disease, such child may be examined for such contagious or infectious disease and if found so infected shall be sent home and such parent or guardian shall be notified of the reason therefor, and then such child shall not be permitted to return to school until the school authorities are satisfied that such child is not suffering from such contagious or infectious disease, and: Provided, further, that no child shall be required to submit to vaccination without the written consent of his parent or guardian, and: Provided further, that no form of vaccination, inoculation or other medication shall hereafter be made a condition precedent in this state for admission to or attendance in any public school maintained by a district of the first class or for the employment of any person as teacher in any such school or in any other capacity in connection therewith: Provided, further, that no provision of this act shall be construed as preventing the quarantining or exclusion of persons suspected of having, or who have been exposed, to contagious diseases. [L. '21, p. 679, § 1. Cf. L. '19, p. 213, § 9; L. '09, p. 293, § 16.]

This section subjected to referendum and suspended until November, 1922.

§ 4806. Milk for School Children.

The board of directors of any public school in any city of the first class may cause to be furnished free of charge, in a suitable individual sterilized receptacle on each and every school day to each child in attendance under the age of fourteen years desiring the same, not less than one-half pint of pure whole milk during the lunch hour at the noon intermission. The cost of supplying such milk shall be paid for and in the same manner and out of the same fund as the other items of expense incurred in the conduct and operation of said school. [L. '21, p. 755, § 1.]

§ 4807. [4510.] Annual School Census.

The board of directors shall annually in May of each year, cause to be taken an enumeration of all persons between the ages of five and twenty-one years residing in the district, said enumeration shall be made

on blanks or books provided by the district and shall contain such items as the superintendent of public instruction shall require, including the following: The names of all persons, male and female, between the ages of five and twenty-one years residing in the district on the first day of May last past; the date of birth of such child; the names and residences of the parents or guardians of all such children. The census shall be taken by the secretary and such enumerators as he shall select, subject to the approval of the board or its proper committee. The enumerators shall receive such compensation as the board may deem just. Each enumerator shall verify by oath the correctness of his report. The secretary of the district shall report to the county superintendent of schools on or before the fifteenth day of the ensuing July, the total number of males and the total number of females enumerated, together with a complete list containing the detailed information herein required of all defective youth residing in said district. [L. '09, p. 295, § 17.]

See § 4842, enumerated by district clerk.

§ 4808. [4511.] Sale of School Property.

The board of directors shall have power to sell any of the property of the district which is no longer required for school purposes at public or private sale upon such terms as they may direct if the value thereof be less than two thousand dollars. The question of the sale of school property which may be found by the board of directors to be unsuitable for school purposes, and to be of greater value than two thousand dollars, shall be submitted to a vote of the electors of the district, either at a general election or at a special election called to be held for that purpose, as may be directed by the board of directors, and if a majority of the voters of the district voting thereon shall be for the sale of the property the directors may make the sale at public auction. The sale must be made for cash and good title will be conveyed by deed of the school district, executed by the president or the vice-president and the secretary of the board. [L. '09, p. 296, § 18.]

§ 4809. [4512.] Estimate for Annual Tax Levy—Limit of Expenditures.

The board of directors shall annually, at a meeting next preceding the annual tax levy for state and county purposes, report to the board of county commissioners an estimate of the amount of funds, in addition to estimated receipts from the state and county apportionments for said district, required for the support of the schools, for the purchase of school sites, the erection and furnishing of school buildings, the payment of interest upon all bonds issued for school purposes, and the creation of a sinking fund for the payment of such indebtedness, if any, and the county commissioners are hereby authorized and required to levy and collect such additional amount of funds, the same as other taxes: Provided, that for the purpose of the purchase of school sites and the erection of buildings the board of directors of a district of the first class in cities having a population of fifty thousand or less, may annually expend a sum not exceeding fifty thousand dollars; in cities having a population greater than fifty thousand and less than one hundred thousand, a sum not exceeding one hundred thousand dollars; in cities having a population greater than

one hundred thousand and less than two hundred thousand, a sum not exceeding two hundred thousand dollars, and for every additional fifty thousand of population beyond two hundred thousand, a further sum of fifty thousand dollars: And provided further, that when any greater expenditure shall be required for said purposes, in any one current school year, the question shall be submitted to a vote of the electors of the district at the time and place the board of directors may appoint. The board of directors shall, previous to such election, designate in one daily paper published in the district, if there be one, if not, then in such weekly papers as may be selected by the board, the place, or places where such election shall be held, the locality of the site or sites required and the proposed cost of the buildings to be erected thereon. [L. '09, p. 296, § 19. Cf. L. '90, p. 394, § 30; 1 H. C., § 886; L. '97, p. 393, § 97; L. '99, p. 318, § 14; L. '05, p. 263, § 5; L. '07, p. 41, § 4.]

Former laws cited in 3 Wash. 155, 156; 32 Wash. 274; 39 Wash. 140.

See Const., Art. VIII, § 6, limit of indebtedness.

This section was partially repealed by L. '15, p. 170, § 24 (Rem. Code, § 9208-24).

This section, being a special law, controls sections 11229, 11230, 11234, a general law relating to the annual levy of taxes in school districts: Goodwin v. Carr, 78 Wash. 193, 138 Pac. 662.

264, 73 Pac. 394; Goodwin v. Carr, 78 Wash. 193, 138 Pac. 662.

School Taxes—Levy and Assessment: See Remington's Digest, Schools, § 36; State ex rel. Evers v. Byrne, 32 Wash.

— **Assessment and Collection of Taxes on Change of Boundaries:** See Remington's Digest, Schools, § 37; School District v. Commrs. of King County, 3 Wash. 154, 28 Pac. 376.

§ 4810. [4513.] Limit of Tax Levy for School Purposes.

The tax levied for school purposes in districts of the first class shall in no one year exceed one (1) per cent of the assessed value of all the taxable property in the district: Provided, that when any greater expenditure shall be deemed necessary in any one current school year by the directors, the question shall be submitted to a vote of the electors of the district at the time and place appointed by the board of directors; and notice thereof shall be given as provided in section 4809, which notice shall specify the amount of taxes proposed to be raised in excess of the said one (1) per cent, and if a majority of the electors voting thereon at said election shall be in favor of such additional tax, the entire amount so authorized shall be levied and collected. No levy, however, shall exceed two (2) per cent of all the taxable property of said district. [L. '09, p. 297, § 20. Cf. L. '90, p. 394, § 31; 1 H. C., § 887; L. '97, p. 394, § 98; L. '03, p. 191, § 1; L. '07, p. 42, § 5.]

See *infra*, § 4934, state levy.

See *infra*, § 4937, county levy, limit.

See *infra*, § 4939, district levy.

See *infra*, § 11104, exemptions.

See *infra*, § 11235, school tax not to exceed ten mills in cities of over ten thousand inhabitants.

CHAPTER XX.

DIRECTORS OF DISTRICTS OF THE SECOND CLASS.

§ 4811. [4514.] Election—Term of Office.

Directors of school districts of the second class shall consist of three members. They shall be elected by ballot by the qualified electors of the district and shall hold their office for a term of three years and until their successors are elected and qualified. In case vacancies are to be filled and a successor or successors to be elected to fill an unexpired term or terms, the ballot shall specify the term for which each director is to be elected. [L. '09, p. 297, § 1.]

§ 4812. [4515.] Time of Holding Election.

The regular district election in each district of the second class shall be held on the first Saturday in March of each year, and such election shall be held in the manner provided in Chapter XXXVII of this title. [L. '09, p. 298, § 2.]

§ 4813. [4516.] Vacancies—How Filled.

In case the electors of any district of the second class shall neglect or fail to elect directors as hereinbefore provided, the county superintendent may declare vacant the office of any director at the expiration of his term; and in case of a vacancy in the board of directors from any cause, the county superintendent, in conjunction with the other directors if there be two shall fill such vacancy by appointment until the fourth Monday following the next annual election. [L. '09, p. 298, § 3.]

§ 4814. [4517.] Oath of office.

All persons elected as members of the board of directors of districts of the second class shall, within ten days thereafter, appear before an officer authorized to administer oaths, take and subscribe the usual oath of office and deliver the same to the county superintendent of schools, and in case any person elected shall fail so to do, his election shall be void and the office shall be deemed vacant. [L. '09, p. 298, § 4.]

§ 4815. [4518.] Organization of Board.

The term of office of directors of districts of the second class shall begin on the fourth Monday next succeeding their election, on which day the directors shall meet at the hour of 2 o'clock P. M., and shall at once organize by electing one of their members as chairman of the board. They shall also elect a person to act as clerk who may or may not be a member of the board of directors. The chairman and clerk shall both immediately enter upon the discharge of their duties and shall serve for a period of one year: Provided, that if any such clerk shall fail to discharge his duties in accordance with law, the board of directors may, at any time, remove such clerk and elect another person to fill the unexpired term. [L. '09, p. 298, § 5.]

§ 4816. [4519.] Regular and Special Meetings of Board.

The regular meetings of the board of directors shall occur on the first Friday of each month, and they may hold such other special or adjourned

meetings as they may from time to time determine, or as may be specified in their by-laws. Special meetings may be called by the chairman or by any two members of the board. [L. '09, p. 299, § 6.]

§ 4817. [4520.] Board to Provide Supplies.

Every board of directors of districts of the second class, in addition to the powers and duties enumerated in Chapter XX [XVIII], of this title, shall have the power and it shall be their duty to provide and pay for such materials, supplies and libraries, as may be necessary for the schools, and to purchase such maps, charts and other apparatus as may be deemed necessary for the use of their schools. [L. '09, p. 299, § 7.]

See note to § 4805, *supra*.

§ 4818. [4521.] Estimate for Annual Tax Levy—Limits of Levy.

The board of directors shall annually at a meeting preceding the annual tax levy for state and county purposes, report to the board of county commissioners an estimate in detail of the amount of funds which will be required by their district for all purposes for the ensuing year, and the county commissioners are hereby authorized and required to levy and collect such amount, after deducting the estimated receipts from the state and county apportionment for said districts, said estimate to be furnished by the county superintendent of schools. The levy in any one year shall not exceed one (1) per cent of the assessed value of all the taxable property of the district: Provided, that when any greater expenditure in any one current school year shall be deemed necessary, the question shall be submitted to a vote of the electors of the district at the time and place and in the manner provided for calling special elections. The notice of such election shall specify the amount of taxes proposed to be raised in excess of the said one (1) per cent and if a majority of the electors voting thereon at said election shall be in favor of such additional tax, the entire amount so authorized shall be levied and collected. No tax, however, shall exceed two (2) per cent of all the taxable property of said district. In case any board of directors shall fail to make and report the said estimate to the board of county commissioners on or before the first day of September, it shall be the duty of the county school superintendent to make such estimate, which will be accepted in lieu of the directors' estimate. [L. '09, p. 299, § 8.]

See notes to § 4809.

This section was partially repealed by L. '15, p. 170, § 24 (Rem. Code, § 9208-24).

Cited in 78 Wash. 195.

§ 4819. [4522.] Schoolhouses — Building — Removal — Selection and Change of Site.

The board shall build or remove schoolhouses, purchase or sell lots or other real estate when directed by a vote of the district to do so and where the district shall possess a schoolhouse upon a site owned by such district the board may by a unanimous vote of all the members thereof purchase or lease additional real estate adjacent to such site: Provided, that a schoolhouse already built on a site which has been selected by a majority vote of the legal school electors of a district shall not be re-

moved to a new site without a two-thirds vote of the school electors voting at an annual or special election; nor shall a schoolhouse site that has been selected by a majority vote of the legal school electors, but upon which no schoolhouse has been built, be changed except by a two-thirds vote of the legal school electors voting at an annual or special election as hereinbefore provided. [L. '15, p. 337, § 1. Cf. L. '09, p. 300, § 9.]

§ 4820. [4523.] Time of Employing Teachers.

No board of directors shall employ any teacher or teachers whose term or terms of service begin after the first Monday in August, until after the directors elected at the annual school election in said year shall have entered upon the discharge of their duties. [L. '09, p. 300, § 10.]

§ 4821. [4524.] Superintendent—Duties—Election—Term.

In all districts of the second class the board of directors shall elect a superintendent, or a principal who shall hold a valid teacher's certificate. The said superintendent, or principal shall have supervision over the several departments of the school and the board of directors may contract with him for a term of one year, or a term of two years as may be deemed best in their judgment. [L. '09, p. 300, § 11.]

Cited in 104 Wash. 661.

After the direct action of a school board in discharging a principal of schools had been reversed by the county superintendent, the board cannot designate a subordinate teacher as "superintendent" of schools and require the principal to work

under him, and it is immaterial that this section provides for the election of a superintendent or principal to have charge of the schools, the position and not the name being material: Williams v. School District No. 189, 104 Wash. 659, 177 Pac. 635.

§ 4822. [4525.] Minimum Term.

In all districts of the second class the minimum school term for each year shall be six months. [L. '09, p. 300, § 12.]

CHAPTER XXI.

DIRECTORS OF DISTRICTS OF THE THIRD CLASS.

§ 4823. [4526.] Election—Term of Office.

Directors of school districts of the third class shall consist of three members. They shall be elected by ballot by the qualified electors of the district, and shall hold their office for a term of three years and until their successors are elected and qualified. At the first annual election in all new districts three directors shall be elected for one, two and three years respectively, and the ballot at such election shall specify the term for which each is to be elected. At each election after the first, one director shall be elected for a term of three years. In case vacancies are to be filled and a successor or successors to be elected to fill an unexpired term or terms, the ballots shall specify the term for which each director is to be elected. [L. '09, p. 300, § 1.]

§ 4824. [4527.] Time of Holding Election.

The regular district election in each district of the third class shall be on the first Saturday in March of each year, and such election shall

be held in the manner provided in Chapter XXXVII of this title. [L. '09, p. 301, § 2.]

§ 4825. [4528.] Vacancies.

In case the electors of any district of the third class shall neglect or fail to elect directors as hereinbefore provided, the county superintendent may declare vacant the office of any director at the expiration of his term; and in case of a vacancy in the board of directors from any cause, the county superintendent shall fill such vacancy by appointment until the fourth Monday following the next annual election. [L. '09, p. 301, § 3.]

§ 4826. [4529.] Oath of Office.

All persons elected as members of the board of directors of districts of the third class shall, within ten days thereafter, appear before an officer authorized to administer oaths, take and subscribe the usual oath of office and deliver the same to the county superintendent of schools, and in case any person elected shall fail so to do, his election shall be void and the office shall be deemed vacant. [L. '09, p. 301, § 4.]

§ 4827. [4530.] Organization of Board.

The term of office of directors of districts of the third class shall begin on the fourth Monday next succeeding their election, on which day the directors shall meet at the hour of 2 o'clock P. M., and shall at once organize by electing one of their members as chairman and another as clerk, who shall each immediately enter upon the discharge of his duties, and shall serve for the period of one year: Provided, that if any such clerk shall fail to discharge his duties in accordance with law, the board of directors may, at any time, remove such clerk and elect another of their number to fill the unexpired term. [L. '09, p. 301, § 5.]

§ 4828. [4531.] Regular and Special Meetings.

A regular meeting of each board of directors of districts of the third class shall be held on the first Saturday of February, May, August and November, and they may hold such other special or adjourned meetings as they may from time to time determine, or as may be specified in their by-laws. Special meetings may be called by the chairman or by any two members of the board. [L. '09, p. 302, § 6.]

§ 4829. [4532.] Board to Provide Supplies.

Every board of directors of districts of the third class shall, in addition to the powers and duties enumerated in Chapter XX [XVIII], of this title, have power and it shall be their duty to provide and pay for such materials, supplies and libraries, as may be necessary for the schools, and to purchase such maps, charts and other apparatus as may have the written approval of the county school superintendent. [L. '09, p. 302, § 7.]

See note to § 4805, *supra*.

§ 4830. [4533.] Election of Principal, When—Grades.

In all districts where the number of children of school age is sufficient to require the employment of more than one teacher, the board shall designate one of such teachers as principal, and such principal shall have general supervision over the several departments of such school. The school or schools in such districts shall be graded in such a manner as the directors thereof shall deem best suited to the conditions of such district. [L. '09, p. 302, § 8.]

§ 4831. [4534.] Election of Superintendent, When.

The directors of any districts wherein schools are maintained in two or more buildings shall elect a superintendent who may be a teacher in the schools of such district and such superintendent shall have general supervision over the schools in such district in accordance with the rules and regulations of the board of directors. [L. '09, p. 302, § 9.]

§ 4832. [4535.] Report of Principal.

It shall be the duty of the principal or superintendent of any school maintaining two or more departments to report to the superintendent of public instruction such facts relating to the grading, course of study, enrollment, attendance and other matters pertaining to such schools as he may require on blanks for that purpose. [L. '09, p. 302, § 10.]

§ 4833. [4536.] Time of Employing Teachers.

No board of directors shall employ any teacher or teachers whose term or terms of service begin after the first Monday in August, until after the directors elected at the annual school election in said year shall have entered upon the discharge of their duties. [L. '09, p. 302, § 11.]

§ 4834. [4537.] Estimate for Annual Tax Levy—Limit of Levy.

The board of directors shall annually at a meeting preceding the annual tax levy for state and county purposes, report to the board of county commissioners an estimate in detail of the amount of funds which will be required by their district for all purposes for the ensuing year, and the county commissioners are hereby authorized and required to levy and collect such amount, after deducting the estimated receipts from the state and county apportionment for said districts. The levy in any one year shall not exceed one (1) per cent of the assessed value of all the taxable property of the district: Provided, that when any greater expenditure in any current school year shall be deemed necessary, the question shall be submitted to a vote of the electors of the district at the time and place and in the manner provided for calling special elections. The notice of such election shall specify the amount of taxes proposed to be raised in excess of the said one (1) per cent and if a majority of the electors voting thereon at said election shall be in favor of such additional tax, the entire amount so authorized shall be levied and collected. No tax, however, shall exceed two (2) per cent of all the taxable property of said district. In case any board of directors

shall fail to make and report the said estimate to the board of county commissioners on or before the first day of September, it shall be the duty of the county school superintendent to make such estimate which will be accepted in lieu of the directors' estimate. [L. '09, p. 303, § 12.]

This section was partially repealed by L. '15, p. 170, § 24 (Rem. Code, § 9208-24).

§ 4835. [4538.] School Sites and Schoolhouses—Building and Removal.

The board shall build or remove schoolhouses, purchase or sell lots or other real estate, when directed by a vote of the district to do so: Provided, that a schoolhouse already built on a site which has been selected by a majority vote of the legal school electors of a district shall not be removed to a new site without a two-thirds vote of the school electors voting at an annual or special election; nor shall a schoolhouse site that has been selected by a majority vote of the legal school electors, but upon which no schoolhouse has been built, be changed except by a two-thirds vote of the legal school electors voting at an annual or special school election as hereinbefore provided. [L. '09, p. 303, § 13.]

See note to § 4789.

Cited in 97 Wash. 209.

§ 4836. [4539.] Plans and Specifications for Schoolhouses—Approval by Superintendent.

Whenever any board of directors shall be authorized by the electors of their district, to erect a school building, it shall be the duty of such board, before entering into any contract for the erection of any buildings, to obtain the approval of the county superintendent, of the plans and specifications for the building to be erected, including also the heating, lighting, ventilating and safety thereof. [L. '09, p. 304, § 14.]

This section was obviously included in this chapter by the legislature by mistake. See *supra*, § 5162, for the provision relating to third class districts.

CHAPTER XXII.

EXTENDING USE OF SCHOOL BUILDINGS.

§ 4837. [4539-1.] Use for Public Purpose.

That school boards in each district of the second class and third class may provide for the free, comfortable and convenient use of the school property to promote and facilitate frequent meetings and association of the people in discussion, study, improvement, recreation and other community purposes, and may acquire, assemble and house material for the dissemination of information of use and interest to the farm, the home and the community, and facilities for experiment and study, especially in matters pertaining to the growing of crops, the improvement and handling of livestock, the marketing of farm products, the planning and construction of farm buildings, the subjects of household economics, home industries, good roads, and community vocations and industries; and may call meetings for the consideration and discussion of any such matters, employ a special supervisor, or leader, if need be, and provide

suitable dwellings and accommodations for teachers, supervisors and necessary assistants. [L. '13, p. 395, § 1.]

Power of school authorities to permit use of buildings for other than religious or school purposes. **Ann. Cas.** 1916C, 485; 31 **L. B. A. (N. S.)** 588; 50 **L. B. A. (N. S.)** 1182.

Power of public authorities to authorize or prohibit religious worship in school buildings. **Ann. Cas.** 1914B, 303.

§ 4838. [4539-2.] Buildings for Public Purposes.

That each school district of the second or third class, by itself or in combination with any other district or districts, shall have power, when in the judgment of the school board it shall be deemed expedient, to reconstruct, remodel, or build schoolhouses, and to erect, purchase, lease or otherwise acquire other improvements and real and personal property, and establish a communal assembly place and appurtenances, and supply the same with suitable and convenient furnishings and facilities for the uses mentioned in section 4837. [L. '13, p. 396, § 2.]

§ 4839. [4539-3.] Commission to Pass Upon Plans.

That plans of any district or combination of districts for the carrying out of the powers granted by this act shall be submitted to and approved by the board of supervisors composed of seven members, as follows: The state superintendent of public instruction; the head of the Extension Department of Washington State College; the head of the Extension Department of the University of Washington; the county superintendent of schools of the county in which such facilities are proposed to be located; these four to choose a fifth member from such county, and a sixth and a seventh member, one of whom shall be a woman, from the district or districts concerned. [L. '13, p. 396, § 3.]

§ 4840. [4539-4.] Expenditures—Limitations.

No real or personal property or improvements shall be purchased, leased, exchanged, acquired or sold, nor any schoolhouses built, remodeled or removed, nor any indebtedness incurred or money expended for any of the purposes of this act except in the manner provided by law for the purchase, lease, exchange, acquisition and sale of school property, the building, remodeling and removing of schoolhouses and the incurring of indebtedness and expenditure of money for school purposes. [L. '13, p. 396, § 4.]

CHAPTER XXIII.

DISTRICT CLERK.

§ 4841. [4540.] Notice to Superintendent of Change of Clerk or Chairman.

Every school district clerk in districts of the second and the third class shall within ten days after any change in the office of chairman or clerk, notify the county superintendent of such change in the organization of the board. [L. '09, p. 304, § 1. Cf. L. '03, p. 177, § 19.]

§ 4842. [4541.] Duties Enumerated.

The duties of the district clerk shall be as follows:

First. To attend all meetings of the boards of directors; but if he shall not be present the board of directors shall select one of their number to act as clerk, who shall certify the proceedings of the meeting to the clerk of the district, to be recorded by him. He shall keep his records in a book to be furnished by the board of directors, and he shall preserve copies of all reports made to the county superintendent, and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successor.

Second. To keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the district clerk must present his record-book for public inspection, and shall make a statement of the financial condition of the district and of the action of the directors, and such record must always be open for public inspection.

Third. To take annually in May of each year, an exact census of all children and youth between the ages of five and twenty-one years who were bona fide residents of the district on the first day of May of that year. He shall designate the name and sex of each child, and the date of its birth; the number of weeks it has attended school during the school year, and its postoffice address. Parents or guardians must be required to sign a certified statement of the correctness of this report: Provided, that Indian children not living under the guardianship of white persons, or who have not severed their tribal relations shall not be included in said census. He shall also list separately all defective youth between the ages of five and twenty-one and give such information concerning them as may be required.

Fourth. To make to the county superintendent on or before the fifteenth day of July his annual report verified by affidavit upon blanks to be furnished by the superintendent of public instruction. It shall contain such items of information as said superintendent of public instruction shall require, including the following: A full and complete report of all children enumerated; the number of schools or departments taught during the year; the number of children, male and female, enrolled in the school, and the average daily attendance; the number of teachers employed, and their compensation per month; the number of days school was taught during the past school year, and by whom; and the number of volumes, if any, in the school district library; the number of schoolhouses in the district, and the value of them; the aggregate value of all school furniture and apparatus belonging to the district, and the clerk shall keep on file a duplicate copy of said report.

Fifth. To carry out all orders of the board of directors made at any regular or special meeting, and to keep an accurate account of all expenses incurred by him in his district in keeping the schoolhouse in repair, in providing for necessary janitor work, and in providing school supplies, and for other expenses incurred by him on account of the school, which accounts must be audited by the board of directors, and paid out of the district school fund.

Sixth. To give the required notice of all annual or special elections; also to give notice of the regular and special meetings of the board of directors as herein authorized.

Seventh. To report to the county superintendent at the beginning of each term of school the name of the teacher and the proposed length of the term, and to supply the teacher with the school register furnished by the county school superintendent.

Eighth. To sign all warrants ordered to be issued by the board of directors and to report to the county treasurer on or before the first Monday of each calendar month all the warrants drawn by the directors of his district, giving date, number and fund on which each warrant is drawn. [L. '09, p. 304, § 2. Cf. L. '90, p. 367, § 34; L. '91, p. 250, § 12; 1 H. C., § 799; L. '93, p. 266, § 5; L. '97, p. 377, § 49; L. '99, p. 315, § 10; L. '07, p. 371, § 3.]

See supra, § 4807, enumeration of school children by board of directors.

§ 4843. [4542.*] Compensation—Allowance of.

The district clerk of districts of the second class shall receive three dollars per day for the time actually and necessarily spent in taking the census and making his report, and he shall receive such other reasonable compensation for other services as the directors shall allow, said accounts to be audited and paid by the directors out of the funds of the district: Provided, that a director elected as clerk in a third class district may be allowed not to exceed sixty dollars per year for taking the census and making his report, for performing his other duties as clerk and for rendering such other services for the district as the director shall approve: Provided, further, that no account for services rendered by any district clerk shall be audited or allowed by any board of directors, or any warrant issued for the payment of any such accounts, until he shall have filed with the board of directors a certificate of the county superintendent of his county that all reports required by law have been properly made; and it shall be the duty of the county superintendent to make and transmit to the clerks of such districts as have made all reports required by law, on or before the first Saturday of the month of August of each year, the certificate required by this section. [L. '19, p. 437, § 1; L. '09, p. 306, § 3. Cf. L. '90, p. 369, § 35; L. '91, p. 252, § 13; 1 H. C., § 800; L. '97, p. 379, § 50.]

CHAPTER XXIV.

TEACHERS.

Certification of, see § 4966 et seq.

§ 4844. [4543.] Qualifications—Must have Certificate or Diploma.

No person shall be accounted as a qualified teacher within the meaning of the school law, who is not the holder of a valid teacher's certificate or diploma issued by lawful authority of this state. [L. '09, p. 306, § 1. Cf. L. '90, p. 369, § 37; L. '91, p. 252, § 14; 1 H. C., § 802; L. '97, p. 380, § 51; L. '07, p. 613, § 6.]

Cited in 32 Wash. 667; 48 Wash. 487;
102 Wash. 380.

Teachers: See Remington's Digest,
Schools, §§ 48—53.

§ 48. Contracts of Employment—Authority to Bind Successors or to Make Contracts Extending Beyond Officer's Term: Taylor v. School District No. 7, 16 Wash. 365, 47 Pac. 758; Splaine v. School District, 20 Wash. 74, 54 Pac. 766.

See, also, Williams v. School Dist. No. 189, 104 Wash. 659, 177 Pac. 635.

A teacher's contract providing that the teacher shall forfeit pay for the two summer months when excused "at his own request" upon two months' notice to the board, leaves excuse from work optional with the teacher: Norton v. State, 104 Wash. 248, 176 Pac. 347.

§ 49. — Performance or Breach: Mackenzie v. State, 32 Wash. -657, 73 Pac. 889; Caldwell v. School District No. 301, 85 Wash. 70, 147 Pac. 637.

§ 50. — Remedies for Enforcement: State ex rel. Brown v. McQuade, 36 Wash. 579, 79 Pac. 207.

§ 51. Removal and Discharge—In General: Kennedy v. School District, 20 Wash. 399, 55 Pac. 567; State ex rel. Caffrey v. Superior Court, 72 Wash. 444, 130 Pac. 747.

§ 52. — Actions for Damages or Compensation: Splaine v. School District, 20 Wash. 74, 54 Pac. 766; Kester v. School District No. 34, 48 Wash. 486, 93 Pac. 907.

§ 53. — Pleading and Evidence: Kennedy v. School District, 20 Wash. 399, 55 Pac. 567; Fitzgerald v. School District, 5 Wash. 112, 31 Pac. 427.

Warrants, Orders and Certificates of Indebtedness: See Remington's Digest, Schools, § 32; State ex rel. Starrett v. James, 14 Wash. 82, 44 Pac. 116; State ex rel. Dunn v. Dorsey, 19 Wash. 120, 52 Pac. 1065.

§ 4845. Right Restricted to Citizens—Permits to Aliens.

No person, who is not a citizen of the United States of America, shall teach or be permitted or qualified to teach in any common school or high school in this state: Provided, however, that the superintendent of public instruction may grant to aliens a permit to teach in the common and high schools of this state; providing such teacher has all the other qualifications required by law, has declared his or her intention of becoming a citizen of the United States of America, and that five years and six months have not expired since such declaration was made. Such permits shall at all times be subject to revocation by and at the discretion of the superintendent of public instruction. [L. '19, p. 82, § 1.]

§ 4846. Want of Patriotism.

No person, whose certificate or diploma authorizing him or her to teach in the public schools of this state shall have been revoked on account of his or her failure to endeavor to impress on the minds of his or her pupils the principles of patriotism, or to train them up to the true comprehension of the rights, duty and dignity of American citizenship, shall teach or be permitted or qualified to teach in any public school in this state, and no certificate or diploma shall be issued to such person. [L. '19, p. 82, § 2.]

See *infra*, § 4855, to teach patriotism.

§ 4847. Violations of Act.

Any person teaching in any school in violation of this act, and any school director knowingly permitting any person to teach in any school in violation of this act, shall be guilty of a misdemeanor. [L. '19, p. 82, § 3.]

§ 4848. [4544.] Annual Report to County Superintendent.

Every teacher who shall be teaching at the close of the school year, or who shall teach the last term of any school year, in any school district,

shall make a report to the county superintendent immediately upon the close of such school year or term for the entire time taught in said school district since the beginning of the school year. Copies of all reports made by teachers shall be furnished to the clerk of the district, to be by him filed in his office. No board of directors shall draw any order or warrant for the salary of any teacher for the last month of his or her service, until the reports herein required shall have been made, and the same approved by the county superintendent: Provided, that in all schools acting under the direction of the city superintendent the report of such superintendent shall be accepted by the county superintendent and the directors, in lieu of the teacher's reports, and that when there is no city superintendent, the report of the principal shall be accepted in lieu of the teacher's report. [L. '09, p. 307, § 2. Cf. L. '90, p. 370, § 38; L. '91, p. 253, § 15; 1 H. C., § 803; L. '97, p. 380, § 52; L. '03, p. 178, § 20.]

§ 4849. [4545.] Must Keep Register.

Every teacher shall keep a school register in the manner provided for, and no board of directors shall draw any order or warrant for the salary of any teacher for the last month of his service in the school at the end of any term or year, until they shall have received a certificate from the district clerk countersigned by the county superintendent that the said register has been properly kept, the summaries made and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done. [L. '09, p. 307, § 3. Cf. L. '90, p. 370, § 39; 1 H. C., § 804; L. '97, p. 381, § 53.]

§ 4850. [4546.] Shall Enforce Course of Study and Regulations.

Teachers shall faithfully enforce in the schools the course of study and regulations prescribed, and shall furnish promptly all information relating to the schools which may be requested by the county superintendent. [L. '09, p. 307, § 4. See references to last section; L. '97, p. 381, § 54; L. '99, p. 317, § 11.]

§ 4851. [4547.] Shall be Employed Only on Written Order of Board.

No teacher shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless the holder of a legal teacher's certificate in full force and effect for the full period covered by said contract. [L. '09, p. 307, § 5. See references supra; L. '97, p. 381, § 55.]

Right of teacher to compensation as
dependent on validity of contract

or appointment. **Ann. Cas.** 1913C,
732; **Ann. Cas.** 1917A, 254.

§ 4852. Discrimination Prohibited.

It shall be unlawful for any board of school directors in fixing the compensation of any teacher in the public schools of this state to discriminate between male and female teachers on account of sex: Provided, that this act shall not affect any contract entered into prior to the date of passage thereof. [L. '19, p. 55, § 1.]

§ 4853. [4548.] Holidays.

No teacher shall be required to teach school on Saturdays, Labor Day, Thanksgiving Day and the day immediately following Thanksgiving Day, Christmas, New Year's, Washington's Birthday, Memorial Day, or Fourth of July: Provided, that no reduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught. [L. '09, p. 308, § 6; L. '07, p. 98, § 1. Cf. L. '90, p. 371, § 40; 1 H. C., § 805; L. '97, p. 381, § 56; L. 99, p. 317, § 12; L. '03, p. 178, § 21.]

Right of teacher to compensation while school is closed. 6 A. L. B. 742; 50 L. B. A. 371.

§ 4854. [4549.] May Suspend Pupils.

Every teacher shall have the power to hold every pupil to a strict accountability in school for any disorderly conduct on the way to and from school, or on the grounds of the school, or during the intermissions or recess; to suspend from school any pupil for good cause: Provided, that such suspension shall be reported to the directors as soon as practicable for their decision. [L. '09, p. 308, § 7. Cf. L. '90, p. 371, § 41; 1 H. C., § 806; L. '97, p. 381, § 57.]

Power to expel or suspend pupil from school. 15 Ann. Cas. 404; Ann. Cas. 1918A, 400.

§ 4855. [4550.] Teach Morality and Patriotism.

It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice, temperance, humanity and patriotism; to teach them to avoid idleness, profanity and falsehood; to instruct them in the principles of free government, and to train them up to the true comprehension of the rights, duty and dignity of American citizenship. [L. '09, p. 308, § 8. Cf. L. '90, p. 371, § 42; 1 H. C., § 807; L. '97, p. 381, § 58.]

See, also, § 4846, *supra*.

Cited in 102 Wash. 380.

§ 4856. [4551.] Application for Carnegie Fund Authorized.

The board of regents of the University of Washington and the board of regents of the State College of Washington are authorized to apply for participation by the said University and State College of Washington in the fund of the Carnegie foundation for the advancement of teaching, and from time to time to make application for allowances for such persons as may be eligible to receive the same under the rules laid down by the board of trustees of the Carnegie foundation for the advancement of teaching. [L. '09, p. 53, § 1.]

CHAPTER XXV.

SCHOOL DISTRICT FINANCES.

Apportionments, see *infra*, § 4871 et seq.

School revenues, see *infra*, § 4932 et seq.

Bonds, see *infra*, § 4941 et seq.

§ 4857. [4552.] Duties of County Auditor—Districts of Third Class.

The duties of the county auditor hereinafter defined shall relate only to districts of the third class unless otherwise expressly provided. [L. '09, p. 308, § 1.]

§ 4858. [4553.] Shall Audit Accounts of School Districts.

The county auditors of the several counties of this state shall audit all accounts of the several school districts of their respective counties, the same as other accounts are audited with the other departments of the county. [L. '09, p. 308, § 2.]

§ 4859. [4554.] Auditor to Countersign and Register Warrants.

He shall countersign and register warrants for the payment of all teachers' salaries, supplies, apparatus, and accounts against the districts upon the written order of the majority of the members of the school board of each district. [L. '09, p. 308, § 3.]

See *supra*, § 4116 et seq., payments of warrants.

Cited in 103 Wash. 679.

The fact that warrants were not registered and countersigned before delivery, as required by this section, and section

4864, does not prevent their subsequent countersigning and registration: *Woodworth v. School District No. 2*, 103 Wash. 677, 175 Pac. 321.

§ 4860. [4555.] Teacher must Qualify Before Issuance of Warrant.

No warrant shall be countersigned and registered for the payment of any teacher who is not qualified within the meaning of the law of this state, nor unless a written contract be filed with the county superintendent in accordance with the provisions of the law. [L. '09, p. 308, § 4.]

See notes to last section.

§ 4861. [4556.] Orders for Supplies—Approval of Superintendent.

No warrants for maps, charts and apparatus shall be countersigned and registered until the order shall have been approved by the county superintendent. [L. '09, p. 309, § 5.]

§ 4862. [4557.] Final Report to be Made Before Payment of Last Month's Salary.

He shall not countersign and register the warrant in payment of the last month's salary of teachers in districts of the third class until he shall receive due notice from the county superintendent that the teacher's final report has been made to the said county superintendent. [L. '09, p. 309, § 6.]

§ 4863. [4557-1.] School Warrants to be Registered.

He shall cause all school warrants of the districts issued by him to be registered in the treasurer's office and retain the vouchers on file in his office. [L. '11, p. 377, § 1.]

§ 4864. [4557-2.] Register of Warrants in Auditor's Office.

He shall register in his own office, and present to the treasurer for registration in the office of the county treasurer, all warrants of the first and second class districts received from secretaries or clerks thereof before delivery of the same to claimants. [L. '11, p. 377, § 1.]

See notes to § 4859.

Cited in 103 Wash. 679.

§ 4865. [4557-3.] Check and Entry.

He shall check the redeemed warrants of each school district after each monthly settlement with the treasurer, enter the date redeemed in his school warrant register, and certify as to the correctness of the treasurer's reports to such school districts. [L. '11, p. 377, § 1.]

§ 4866. [4557-4.] Annual Report.

He shall make an annual report to the county superintendent of schools on or before the fifteenth day of July in such form as may be prescribed by the superintendent of public instruction. [L. '11, p. 378, § 1.]

§ 4867. [4558.] County Treasurer as Treasurer of School Districts—Duties.

The county treasurer of each county of this state shall be ex-officio treasurer of the several school districts of their respective counties, and it shall be the duty of each county treasurer:

First. To receive and hold all moneys belonging to such school districts, and to pay them out only on warrants legally issued.

Second. To certify to the county superintendent of common schools and the auditor of his county, quarterly of each year at the time of the state apportionment, the amount of all school funds in his possession subject to apportionment on the last day of the preceding month, which certificate shall specify the source or sources from which said moneys were derived.

Third. To make annually, on or before the fifteenth day of July, a report to the county superintendent and auditor of his county, which report shall show the amount of school funds on hand at the beginning of the school year last past belonging to each school district; the amount of funds placed to the credit of each school district during the school year ending June 30th, last past, and the sources from which said funds were derived; the amount of warrants registered during the year, the amount of funds disbursed upon warrants of each school district during the year; the amount of funds remaining in his possession at the close of the school year subject to be paid out upon warrants, and the fund to which said moneys belong; also the amount of all unpaid warrants or bonds appearing upon his register at the close of the school year.

Fourth. He shall register all school warrants presented to him by the county auditor in a book to be known as the "Treasurer's School District Warrant Register," which register shall show the date issued, number of warrant, to whom issued, amount and purpose, date registered, date advertised, interest if any accruing on said warrant, total as redeemed,

date redeemed and to whom paid. If the district has money in the fund on which the warrant is drawn no indorsement on the warrant is necessary, but if there be no money to the credit of the fund on which the warrant is registered he shall indorse on said warrant the following: "This warrant bears interest at — per cent per annum from — until called for payment. — County Treasurer, By — Deputy." All warrants shall be paid in the order of their presentation to the county treasurer; and it is hereby made the duty of the county treasurer to advertise, at least quarterly, all warrants which he is prepared to pay, in the same manner in which he is required to advertise county warrants, and after the date fixed in said notice, warrants shall cease to draw interest.

Fifth. He shall prepare and submit to the secretary of each district of the first class, and to the clerk of each district of the second and third class in his county a written report of the state of the finances of such district on the first day of each month, which report shall be submitted not later than the seventh day of said month, certified to by the county auditor, which report shall contain the balance on hand the first of the preceding month, the funds paid in, warrants paid with interest thereon, if any, the number of warrants issued and not paid, and the balance on hand.

Sixth. After each monthly settlement with the county commissioners the treasurer of each county shall submit a statement of all canceled warrants of districts of the first or second class to the secretary or clerk of such district, which statement shall be verified to the county auditor. The canceled warrants of each district shall be preserved separately and shall at all times be open to inspection by the secretary or clerk or by any authorized accountant of such district.

Seventh. He shall remit all moneys derived from the sale of school registers, and school clerks' record-books to the state treasurer, as other moneys are required to be remitted, and the state treasurer shall place such moneys to the credit of the general fund of the state. [L. '11, p. 386, § 1. Cf. L. '09, p. 309, § 1; L. '90, p. 380, § 71; L. '91, p. 258, § 27; 1 H. C., § 819; L. '93, p. 268, § 8; L. '97, p. 381, § 59. Also, L. '97, p. 400, § 114, and L. '97, p. 390, § 88; L. '07, p. 614, § 8.]

Former laws cited in 10 Wash. 198, 199.

See supra, § 4116 et seq., payment of warrants.

See infra, § 7302, rate of interest on warrants.

Rights and Remedies of Holders: See Remington's Digest, Schools, § 33; Roberts v. Prescott, 15 Wash. 462, 46 Pac. 642; Seattle National Bank v. School District, 20 Wash. 368, 55 Pac. 317; Woodworth v. School Dist. No. 2, 103 Wash. 677, 175 Pac. 321.

Other Revenue: See Remington's Digest, Schools, §§ 38, 39; Sheldon v. Purdy, 17 Wash. 135, 49 Pac. 228. **Rights and Remedies of Taxpayers:** Miller v. Sullivan, 32 Wash. 115, 72 Pac. 1022; Criswell v. Directors School Dist. No. 24, 34 Wash. 420, 75 Pac. 984.

Disposition of Proceeds of Taxes and

CHAPTER XXVI.

CHAP. XXVI]

COUNTY BOARDS OF EDUCATION.

4870

§ 4868. [4559.] Who shall Constitute—Appointment—Term—Vacancies.

There shall be in each county of this state a county board of education, which shall consist of five (5) members, including the county superintendent of common schools, who shall be ex-officio chairman of the board; the other members of said board shall be appointed by the county superintendent on the first Monday of September following his election and shall hold office for a term of two years: Provided, that in the event of a vacancy in said board from any cause the county superintendent shall fill the same for the remainder of the school year by appointment. [L. '09, p. 311, § 1.]

§ 4869. [4560.] Qualification and Compensation of Members.

Every member of the county board of education shall be the holder of a valid teacher's certificate for this state, and the members other than the county superintendent shall receive five dollars per day for the time spent in the performance of their official duties, and they shall also receive actual necessary traveling expenses, and the same shall be paid out of the funds of the county. [L. '09, p. 311, § 2.]

County Boards and Officers: See Remington's Digest, Schools, §§ 16—19. **Eligibility of Women to Hold Office:** Russel v. Guptill, 13 Wash. 360, 43 Pac. 340.

§ 17. — Compensation: School District v. Cole, 4 Wash. 395, 30 Pac. 448; Cox v. Holmes, 14 Wash. 255, 44 Pac. 262; Henry v. Thurston County, 31 Wash. 638, 72 Pac. 488.

§ 18. — Term of Office: State ex rel. Meredith v. Tallman, 24 Wash. 426, 64 Pac. 759.

§ 19. — Hearing Appeals: State ex rel. Barnard v. Board of Education, 19 Wash. 8, 52 Pac. 317, 67 Am. St. Rep. 706, 40 L. R. A. 317.

§ 4870. [4561.] Duties of Board.

Every county board of education shall have power and it shall be its duty:

First. To grade the manuscripts of the pupils who take the state examination for the purpose of securing eighth grade, or grammar school certificates.

Second. To adopt text-books for use in the public schools of school districts of the second division, as defined in Chapter XXIX of this title, of said county.

Third. To assist the county superintendent in the preparation of manuals, courses of study, rules and regulations for the circulating libraries, and to perform such other duties as may be required by him.

Fourth. To adopt rules and regulations for the schools of the county, not inconsistent with the code of public instruction or with the rules and regulations of the state board of education or the superintendent of public instruction. [L. '09, p. 311, § 3.]

CHAPTER XXVII.

APPORTIONMENTS.

§ 4871. [4562.] Apportionments Quarterly.

The superintendent of public instruction shall apportion to the several counties of the state on or before the twentieth day of July, October, January, April, May and June of each year such current state school funds as have been certified by the state auditor to be in the hands of the state and county treasurers. [L. '11, p. 613, § 1. Cf. L. '09, p. 312, § 1.]

Cited in 79 Wash. 288; 84 Wash. 82.

§ 4872. [4563.] Apportionment Based on Attendance.

For the purpose of the apportionment the superintendent of public instruction shall base his calculations upon the days' attendance as shown by the several county superintendents' last annual reports filed in his office. [L. '09, p. 413, § 2.]

See supra, § 4614, pupils attending model training school.

Cited in 84 Wash. 82.

School Funds—Apportionment and Disposition: See Remington's Digest, Schools, § 5; School District v. Fairchild, 10 Wash. 198, 38 Pac. 1029; State ex rel. Tanner v. Cheetham, 23 Wash. 666, 63 Pac. 552; School District v. Bryan, 51 Wash. 498,

99 Pac. 28, 20 L. R. A. (N. S.) 1033; State ex rel. School District No. 3 v. Preston, 79 Wash. 286, 140 Pac. 350; State ex rel. School District No. 301 v. Preston, 84 Wash. 79, 146 Pac. 175, 149 Pac. 352.

§ 4873. [4564.] Same—Minimum Credit of Attendance.

The basis of the apportionment to each county shall be on the total days of attendance in the several districts of the county: Provided, that each school district shall be credited with at least two thousand days' attendance. [L. '09, p. 312, § 3.]

§ 4874. [4565.] Attendance of Nonresidents, Where Credited.

If a pupil attends any public school of the state, outside of his resident district, up to the ninth grade, during the time the resident district maintains a school of the grade in which the pupil belongs, the attendance shall be credited to the district in which the pupil resides, unless mutually agreed otherwise by the directors of the two districts. [L. '09, p. 312, § 4.]

§ 4875. [4566.] Clerk may Claim Attendance of Pupils Going to Another District, When.

The clerk of any district whose resident pupils are attending school in another district may notify the clerk of the district where such pupils attend, when the school of said pupils' resident district will be in session, and of the grades that will be maintained, and he must file a duplicate copy of said notice with the county superintendent. He must name the pupils in his notice, and it shall be the duty of the district clerk so notified, on or before the thirtieth day of June, to certify to the clerk of the resident district the actual number of days' attendance at school of such pupils during the time that a school of the grade to which the pupil or pupils properly belong was in session in their resident district.

And in case said clerk shall fail or refuse to furnish such information to the clerk of the resident district, then it shall be the duty of the county superintendent to grant to the district to which the attendance belongs the maximum number of days claimed by the clerk of the said district. Without the notice herein required by the clerk of the resident district, all claims to attendance will be forfeited. [L. '09, p. 312, § 5.]

See *supra*, § 4614, attendance at model training school.

§ 4876. [4567.] Private Schools must Report Attendance.

It shall be the duty of the principal or head of every private school on or before the thirtieth day of June of each year to make a sworn report to the clerk of the district in which any pupil attending such private school resides of the actual days' attendance in said private school of each such pupil attending said private school during the preceding school year. The report shall include such pupils only as are between six and twenty-one years of age and whose parents or guardians actually reside in the school district where the said pupil resides and each district in making up the attendance of said district for the purpose of apportionment shall be entitled to the days' attendance so reported. [L. '13, p. 518, § 1. Cf. L. '09, p. 313, § 6.]

Cited in 79 Wash. 288.

§ 4877. [4568.] Attendance at High School Counted One and a Half.

For purposes of apportionment of current state school funds the attendance of all pupils in high schools shall be counted as one and one-half times the actual attendance; but in order to receive the benefit of this provision no tuition can be charged any high school pupil regardless of where his residence may be in this state, if there be no high school in the pupil's resident district. [L. '09, p. 313, § 7.]

§ 4878. [4569.] Attendance at Parental Schools and School for Defectives, How Counted.

For purposes of apportionment of current school funds the attendance of pupils in parental schools where food and lodging are furnished the pupils shall be counted as three times the actual attendance, and in schools for defectives five times the actual attendance shall be allowed. [L. '09, p. 313, § 8.]

§ 4879. [4570.] Night Schools.

In night schools authorized by the laws of this state an evening's attendance shall be counted as a half-day's attendance without maximum age limit. [L. '09, p. 313, § 9.]

§ 4880. [4571.] Bonus for High School Grades.

In addition to the regular quarterly apportionments as provided by law, the superintendent of public instruction shall apportion annually to each high school the sum of one hundred (\$100) dollars for each grade above the grammar grades maintained in such school. In order to receive the bonus of one hundred dollars the district must have maintained a high school in fact during the preceding school year, and must have

maintained an average daily attendance in each grade of at least four students. [L. '09, p. 313, § 10.]

§ 4881. [4572.] Apportionment to Districts by County Superintendent.

It shall be the duty of the county superintendent to apportion within ten days after receiving the certificate of apportionment of the superintendent of public instruction, such state annual school funds as are subject to apportionment to the several districts entitled to receive the same in accordance with the instructions of the superintendent of public instruction. He shall also at the same time apportion in the manner provided in section 4938, of this act, the county school funds that may be in the hands of the county treasurer of his county. He shall certify the result of the apportionments to the county treasurer, and also notify each clerk of the amount apportioned to his district. [L. '09, p. 314, § 11.]

§ 4882. [4573.*] Credit for Attendance During Closure.

When the school board of any district is obliged to close the schools by order of the board of health or health officer on account of the prevalence of influenza or other contagious or infectious disease, or when it is impossible to maintain the schools on account of any circumstances over which the school board has no control, the state superintendent of public instruction and the county superintendent shall allow such district its regular apportionment of funds without deduction for the time so lost, the amount to be determined on the basis of the total days' attendance in the district for the last prior year in which no such interruption occurred: Provided, that in all districts holding school during the school year of 1918-1919 and subsequent years whose enrollment shows an increase over that of the preceding year, the days' attendance for the school year 1918-1919 and subsequent years shall be ascertained for the purpose of the apportionment of school funds, by multiplying the average daily attendance of the school month showing the highest attendance by the number of days in the school session of the preceding year. [L. '19, p. 88, § 1. Cf. L. '09, p. 314, § 12.]

§ 4883. [4574.] Apportionment Withheld, When.

Whenever any school board shall neglect or refuse to comply with the provision of section 4836, it shall be the duty of the county superintendent to withhold the entire apportionment accruing to said district until such time as full compliance with requirements thereof has been made. [L. '09, p. 314, § 13.]

The reference was to a section not in existence, but § 4836 was probably intended.

Cited in 79 Wash. 288.

CHAPTER XXVIII.

INSTITUTES.

§ 4884. [4575.*] Teachers' Institutes.

Whenever the number of school districts in any county is twenty-five or more, the county superintendent must arrange for holding a teachers' institute for at least three days in any manner which he believes will be of the greatest benefit to his teachers. [L. '19, p. 215, § 10; L. '09, p. 315,

§ 1. Cf. L. '90, p. 381, § 72; 1 H. C., § 38; L. '97, p. 394, § 99; L. '99, p. 319, § 15; L. '03, p. 179, § 25.]

Cited in 112 Wash. 67.

§ 4885. [4576.] Joint Institutes.

County superintendents of contiguous counties may by mutual arrangements hold a joint institute, the expenses to be shared in proportion to the departments (rooms) maintained in the counties as shown by the county superintendent's last annual report. [L. '09, p. 315, § 2. See references to last section.]

§ 4886. [4577.] All Teachers must Attend.

Every teacher holding a valid certificate, and employed in a public school in a county where an institute is held, must attend such institute during its whole time. [L. '09, p. 315, § 3.]

§ 4887. [4578.] Superintendent of Certain Cities may Hold Institutes.

In districts employing more than one hundred teachers, the city superintendent may, in his discretion, hold a teachers' institute of two, three, four of [or] five days in such district, said institute when so held by the city superintendent to be in all respects governed by the provisions of this code relating to teachers' institutes held by county superintendents. [L. '09, p. 315, § 4.]

§ 4888. [4579.] Time of Holding Institute—Teachers to Receive Pay.

Each county superintendent shall determine the time for holding the teachers' institute. [L. '09, p. 315, § 5; Ex. Sess., L. '09, p. 52, § 1.]

§ 4889. [4580.*] Compensation of Teacher Continued—District Credited With Attendance.

When the institute is held during the time when a teacher is employed in teaching, his pay shall not be diminished by reason of his attendance when certified by the county superintendent, and in addition to the actual attendance earned by the district, an additional attendance shall be credited to the district, determined by multiplying the average daily attendance for the term by the number of days the teacher attended the institute: Provided, not to exceed three days for each teacher shall be credited for attendance at institute in any one year. [L. '19, p. 215, § 11. Cf. L. '09, p. 315, § 6. Cf. L. '90, p. 381, § 75; 1 H. C., § 841; L. '97, p. 394, § 102.]

§ 4890. [4581.] Institute Fund Created.

All examination fees shall be paid by the county superintendent or the city superintendent to the county treasurer, who shall place them to the credit of the proper institute fund hereby created. [L. '09, p. 316, § 7. Cf. L. '97, p. 394, § 103.]

§ 4891. [4582.] Appropriations to Fund by County Commissioners.

Each county superintendent or city superintendent shall, prior to the holding of the annual teachers' institute, make an estimate of the neces-

sary expenses thereof; and the county commissioners must, thereupon, and prior to the date of holding said institute, place at the disposal of the proper superintendent out of the county current expense fund such an amount, not to exceed two hundred thousand dollars, as in addition to the amount then in the hands of the county treasurer in the institute fund, will meet the superintendent's estimate. [L. '09, p. 316, § 8.]

§ 4892. [4583.] Expenses of Institute—Vouchers—Report.

The county or city superintendent must keep an accurate account of the actual expenses of the institute with vouchers for same and make a complete report to the county auditor, which shall be placed on file in his office as a part of the regular files. [L. '09, p. 316, § 9. Cf. L. '90, p. 381, § 76; 1 H. C., § 843; L. '97, p. 394, § 104.]

CHAPTER XXIX.

TEXT-BOOKS AND INSTRUCTION.

§ 4893. [4584.] Districts Classified.

For the purpose of this chapter the school districts of the state of Washington shall be and they are hereby divided into and shall consist of two divisions, viz.: School districts of the first division and school districts of the second division, and the school districts of the first division shall consist of all school districts maintaining a four-year accredited high school. Every other school district of the state shall be a school district of the second division. [L. '09, p. 316, § 1. Cf. L. '01, p. 8, § 1.]

§ 4894. [4585.] Text-book Commission—Oath, Term of Office, Duties, etc.

The text-books for use in the public schools of each school district of the first division shall be selected by the text-book commission of such school district. The text-book commission of such school district shall consist of five persons, including the city superintendent, or, if there be none, then the principal of the high school, who shall be ex-officio chairman of the commission, and two members of the city board of school directors of the districts, to be designated by such board, and one of whom shall be ex-officio secretary of the commission, and two lawfully qualified teachers engaged in teaching in such school district, to be appointed by the board of school directors of the district. Each member of the text-book commission shall take the oath to faithfully discharge the duties of his office. The term of office of the text-book commission shall be one year and until their successors are appointed and qualified. Said text-book commission shall have power to select text-books for use in the public schools of the school district for which it is appointed, and it shall be the duty of the board of directors to require the introduction and use of all text-books lawfully adopted for use in their respective districts. The text-books selected by the commission shall cover such branches and studies as are required to be taught by the lawfully adopted course of study, and as are required to be taught by the laws of the state of Washington. Any text-book selected for use in the schools of the district shall continue in use until displaced or replaced by order of the text-book commission, and no text-book selected or introduced into the schools by

the text-book commission shall be displaced or replaced within three years from the date of its introduction into the schools. But nothing in this act or any other law shall be so construed as to prevent the text-book commission of any school district of the first division from using or introducing at any time, any supplementary or additional books which may from time to time be deemed necessary in order to maintain the highest standard of excellence in the schools of the district. [L. '09, p. 316, § 2. Cf. L. '01, p. 8, § 2.]

Former laws cited in 36 Wash. 422, 432.

Text-books—Contracts for: See Remington's Digest, Schools, § 56; Rand, McNally & Co. v. Royal, 36 Wash. 420, 78

Pac. 1103; Wagner v. Royal, 36 Wash. 428, 78 Pac. 1094.

Adoption of text-books for public schools. 36 L. R. A. 277.

§ 4895. [4585.] Notice of Intention to Select Text-books.

The text-book commission of each school district of the first division shall, between the first day of April and the first day of July of each year, when any text-books are to be selected by such commission, publish an advertisement in a newspaper of general circulation published in the county, or if there be no such newspaper published in the county, then in any newspaper published and having a general circulation in the state, to the effect that the commission will, on a day therein named, select text-books for the use of the schools in such districts, and invite proposals for the furnishing of such books, the proposals to state an exchange and a retail price at which the proposer will furnish books for the schools of the district during the period of their use in such schools. [L. '09, p. 317, § 3. Cf. L. '01, p. 9, § 3.]

§ 4896. [4587.] Course of Study—Approval by State Superintendent.

It shall be the duty of the superintendent or principal of each school in all districts of the first division to prepare and issue, under the direction of the board of school directors of the district, a course of study for his schools, which course of study must, before going into effect, be approved by the state superintendent of public instruction. Such course of study shall conform to the manual, or general outline, prescribed by the state superintendent of public instruction, and all examinations and promotions under the same shall be based upon the minimum credits in each study, as prescribed by the state superintendent of public instruction in his general manual or outline course of study. [L. '09, p. 318, § 4. Cf. L. '01, p. 10, § 4.]

§ 4897. Promotion of Good Citizenship.

The study of American history and American government is hereby declared to be indispensable to good citizenship and an accurate understanding of our institutions, and a proper appreciation of national ideals. [L. '19, p. 50, § 1.]

§ 4898. Courses in American History and Government.

The state board of education shall prescribe as a course of study in the high schools of this state, American history and American government, and shall require as a prerequisite for graduation from any of said high

schools one full school year of study of American history and American government. [L. '19, p. 50, § 2.]

§ 4899. Victory and Admission Day—Schools to Observe.

The 11th day of November each year, or the Friday preceding when such 11th of November falls upon a nonschool day, shall be suitably observed in all of the common and high schools of the state and shall be known as "Victory and Admission Day." [L. '21, p. 171, § 1.]

§ 4900. Program of Exercises.

For the proper observance of this day, it shall be the duty of each teacher in the public schools of this state, or principal in charge of the school building, to prepare and, in co-operation with the pupils in his charge, present a program of exercises of at least sixty minutes in length, setting forth the part taken by the United States and the State of Washington in the World War for the years 1917 and 1918, and the principles for which the allied nations fought, and the heroic deeds of American soldiers and sailors, the leading events in the history of our state and of Washington Territory, the character and struggles of the pioneer settlers and other topics tending to instill a loyalty and devotion to the institutions and laws of our state. [L. '21, p. 171, § 2.]

§ 4901. Aid in Observance.

It is hereby made the duty of the state superintendent of public instruction and of the county superintendent of schools, by advice and suggestions, to aid in the suitable observance of "Victory and Admission Day." [L. '21, p. 172, § 3.]

§ 4902. [4588.] Second Division Districts—Selection of Books—Advertisement for Proposals.

The county board of education in each county of this state shall, between the first day of April and the first day of July of each year when any text-books are to be selected, publish and advertise in a newspaper of general circulation in said county to the effect that said county board of education will on a day named therein select text-books for the use of all the school districts of the second division in said county, and invite proposals for the furnishing of such books, the proposals to state an exchange price, a wholesale price and a retail price at which the proposer will furnish books for the schools of all districts of the second division during the period of their use in the schools of such districts. Any text-books selected for use in the schools shall remain in use until the same shall be displaced or replaced by the county board of education; but no book selected and introduced into the schools shall in any event be changed within five years from the date of introduction. The county board of education or the officers of any school district of the second division, shall have power to select, introduce and use additional and supplementary books at any time, when they deem it necessary, in order to establish and maintain the highest standard of excellence in their schools. The superintendent of public instruction shall have power and it shall be his duty to prescribe a uniform course of study for all schools of the second

division: Provided, that any publisher or publishers of school-books furnishing books under the provisions of this act to any district or districts of this state shall deposit with the superintendent of public instruction, a copy of any and all books so furnished. [L. '09, p. 318, § 5. Cf. L. '01, p. 11, § 6.]

Selection or Adoption and Change: Co. v. Royal, 36 Wash. 399, 78 Pac. 1096; See Remington's Digest, Schools, § 57; Eaton & Co. v. Royal, 36 Wash. 435, 78 Pac. 1093. Rand, McNally & Co. v. Hartranft, 32 Wash. 378, 73 Pac. 401; Westland Pub.

§ 4903. [4589.] Superintendent to Sell Text-books.

Whenever any text-book adopted by lawful authority is sold within any county at a price greater than the retail price agreed upon at the time of the adoption, it shall be the duty of the company having the contract to furnish any such book, to furnish the county superintendent upon his written demand a sufficient number of copies of said book to supply the schools in the districts in which the price charged is greater than the agreed price. It shall be the duty of the county superintendent to handle said books without charge and to remit to the book company the full retail price of such books after deducting the necessary charges for all transportation. [L. '09, p. 319, § 6.]

§ 4904. [4590.] Compensation of Text-book Commission.

Each member of the text-book commission in school districts of the first division shall receive as compensation for his services, the sum of three dollars for each day during which he is in attendance upon the meetings of the text-book commission, and such compensation shall be paid from the funds of the school district. [L. '09, p. 319, § 7. Cf. L. '01, p. 12, § 7.]

§ 4905. [4591.] District Lying in More Than One County, Control of.

In all joint districts of the second division, that is to say, in all school districts of the second division situated in more than one county, such joint school district shall, for the purpose of this act, be held and deemed to be a school district within the said county in which the schoolhouse is located, and for all purposes of this act it shall be under the control and jurisdiction of the county board of education of that county. [L. '09, p. 319, § 8. Cf. L. '01, p. 12, § 8.]

CHAPTER XXX.

VOCATIONAL TRAINING AND COMPULSORY ATTENDANCE.

§ 4906. Vocational Training Boards—State and Federal.

For the purpose of this act the person or persons designated by the board of school directors in districts of the first class and of the second class and the county superintendent of schools or person or persons designated by him acting for districts of the third class shall be known as permit officers. The state board for vocational education shall be referred to as the state board and the federal board for vocational education shall be referred to as the federal board. [L. '19, p. 420, § 1.]

§ 4907. Minors Excepted from Compulsory Attendance.

All minors of the state residing or employed in school districts of the state in which part-time schools are maintained, as hereinafter provided, shall attend school until the age of eighteen (18) years unless (1) they are graduates from a four year high school course or its equivalent, (2) they are in a part-time school and are employed in accordance with the terms of any state or federal act regulating the employment of such minors under the age of eighteen (18) years, (3) shall have been excused from school attendance in accordance with the provisions of this act. [L. '19, p. 420, § 2.]

§ 4908. Employment Permits to Minors.

Any minor fourteen years of age and under eighteen years of age who has completed the eighth grade or who in the judgment of the superintendent of schools for districts of first and second class or of the county superintendent for districts of the third class can not profitably pursue further regular school work as evidenced by statements filed with such superintendent; and any minor fifteen years of age and under eighteen years of age may apply to the board of school directors or the permit officer for the district where such minor resides for permission to leave school and to enter upon employment and if upon investigation said board of school directors or permit officer finds that the needs of the family or the welfare of such minor require it, and if in the judgment of such board of school directors or permit officer such minor may legally engage in such employment the said board of school directors or permit officer shall issue an employment permit which shall state the age of the minor as shown by the school register, the grade attained in school, and the person, firm or corporation which is to employ the minor. The board of school directors or the permit officer shall have power and in all cases, of reasonable doubt it shall be their duty to require additional proofs of the age of minors seeking permission to leave school and enter upon employment. The term "employment" as used in this act shall be interpreted to include such home occupation, home study or private instruction under the supervision and direction of a responsible parent or guardian as may be approved by the board of school directors or permit officers. [L. '19, p. 420, § 3.]

§ 4909. Duties of Employer of Minors.

Any person, firm or corporation employing any minor under the age of eighteen years, except during vacation, shall require the permit as set forth in section 4908 from the minor it proposes to take into its employment and shall keep such permit on file during the employment of such minor and shall within ten (10) days after the beginning of such employment, report to the board of school directors or the permit officer upon blanks furnished by him or them, the fact of such employment, and upon the termination of the employment of such minor shall return such permit to the proper school authorities within ten (10) days after the termination of such employment. [L. '19, p. 421, § 4.]

§ 4910. Records of Permits.

For districts of the first and second class the boards of school directors or person or persons designated by them and for districts of the third class the county superintendent shall keep a record of all permits issued and the data contained in such permits and shall submit to the superintendent of public instruction duplicate copies of such records on the first day of October, January, April, and July of each year and the superintendent of public instruction shall in turn furnish a copy of such records to the state commissioner of labor. [L. '19, p. 422, § 5.]

§ 4911. Establishment of Part-time Schools—Vocational Training.

Boards of school directors in all organized school districts, upon the written request of twenty-five (25) or more adult bona fide residents of such districts, may, within one year from date of such request, establish part-time schools or classes when there are fifteen (15) or more minors over fourteen years of age and under eighteen years of age resident or employed in such districts and who are not in attendance upon a regular full-time school and who would, by the provisions of this act, be required to attend such part-time schools or classes. All part-time schools or classes established under this act shall be held at least four hours per week during the weeks when the public schools of the district are in session, and such schools or classes shall be conducted between the hours of eight A. M. and five P. M. on school days, or between the hours of eight A. M. and twelve-thirty P. M. on Saturdays. It shall be the duty of the board of school directors in organizing part-time schools or classes which are to participate in federal funds available for the encouragement of vocational education to provide equipment, instruction and courses of study in accordance with the plans of the state board approved by the federal board. [L. '19, p. 422, § 6.]

§ 4912. Required Attendance of Minors—Penalty.

Whenever a part-time school or class is established and maintained in accordance with this act by the district in which any minor under eighteen years of age resides or in which he is employed, the parent, guardian or other person having control or charge of such minor shall cause him or her to attend such part-time school or class at least four hours per week during the time the public schools of the district where such school or class is located are in session, unless (1) such minor is in attendance upon a regular full-time day school supported by either public or private funds, or (2) shall have completed a four-year high school course, or its equivalent or (3) is in attendance upon a part-time school maintained in accordance with the provisions of this act, and approved by the state board although not qualifying for reimbursement, or (4) shall have been excused by the board of school directors or permit officer for the district in which such minor resides upon a certificate of a reputable physician or the recognized medical authority of the district stating that such attendance upon the part-time school or class would be injurious to the health of such minor, or (5) shall have been excused under the provisions of section 4908. Any parent, guardian or other person having control or charge of any such minor and failing to comply with the

provisions of this act shall be liable upon conviction to be punished by a fine of not less than five dollars (\$5), or more than twenty-five dollars (\$25) for each such offense, or by imprisonment in the county or city jail not less than one day nor more than ten days or both such fine and imprisonment at the discretion of the court. [L. '19, p. 423, § 7.]

§ 4913. School Attendance—Hours of Labor.

Whenever the number of hours for which minors less than eighteen years of age may be employed shall be fixed by federal or state law the hours of attendance upon a part-time school or class organized in accordance with the terms of this act shall be counted as a part of the number of hours fixed for legal employment by federal or state law. [L. '19, p. 423, § 8.]

§ 4914. Employers to Permit School Attendance—Penalty.

Any person, firm or corporation employing a minor less than eighteen years of age, except during vacation, shall permit the attendance of such minor upon a part-time school or class for at least four hours per week whenever such part-time school or class shall have been established in the district where such minor resides or may be employed, and any person, firm or corporation employing any minor less than eighteen years of age contrary to the provisions of this act shall be subject to a fine of not less than ten dollars (\$10) and not more than five hundred dollars (\$500) for each offense, or by imprisonment in the county or city jail not less than one day and not more than ten days or by both such fine and imprisonment at the discretion of the court. [L. '19, p. 424, § 9.]

§ 4915. Application of Act.

The requirement of attendance upon part-time schools or classes provided for in this act shall not apply to minors who were regularly and legally employed during the school year ending June 30, 1919. [L. '19, p. 424, § 10.]

§ 4916. Rules and Regulations.

The state board shall establish rules and regulations governing the organization, courses and maintenance of part-time schools or classes and shall prescribe the form of the necessary blanks to enable the districts to carry out the provisions of this act. [L. '19, p. 424, § 11.]

§ 4917. Reimbursement of Expense.

Whenever any part-time schools or classes shall have been established in accordance with the provisions of this act and the rules and regulations established by the state board and shall have been approved by the state board, the district shall be entitled to reimbursement from federal funds available for the provisions of vocational education for the expenditures made for the salaries of teachers of such part-time schools or classes and such reimbursements shall be apportioned by the state board. [L. '19, p. 424, § 12.]

§ 4918. Enforcement of Attendance.

The officer charged by law with the responsibility for enforcement of attendance upon regular public schools of children over eight (8) years

of age shall also be charged with the responsibility for the enforcement of attendance upon part-time schools or classes of minors over fourteen (14) and under eighteen (18) years of age in accordance with the provisions of this act. [L. '19, p. 425, § 13.]

§ 4919. Acceptance of Federal Act.

The state of Washington hereby accepts all the provisions and benefits of an act passed by the senate and house of representatives of the United States of America in congress assembled, entitled "An act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure," and approved February 23, 1917. [L. '19, p. 454, § 1.]

§ 4920. Custodian of Moneys Appropriated.

The state treasurer is hereby designated and appointed custodian of all moneys received by the state from the appropriations made by the said act of congress and is authorized to receive and to provide for the proper custody of the same and to make disbursements therefrom in the manner provided in said act and for the purposes therein specified. He shall also, upon the order of the state board for vocational education, pay out any moneys appropriated by the state of Washington for the purpose of carrying out the provisions of this act. [L. '19, p. 455, § 2.]

§ 4921. Powers of State Board for Vocational Education.

The state board of education is hereby designated as the state board for vocational education and shall have authority to administer any legislation enacted by the legislature of the state of Washington in pursuance of the aims and purposes of said act of congress in so far as the provisions of said act of congress may apply to the administration of vocational education in and for the state of Washington. It shall have power to administer the funds provided by the federal government, and by the state of Washington under the provisions of this act and of all acts passed by the legislature of the state of Washington for the promotion of vocational education in agricultural subjects, trade and industrial subjects and home economics subjects. It shall have full authority to formulate plans for the promotion of vocational education in such subjects as are an integral part of the public school system of the state of Washington and to provide for the preparation of the teachers of such subjects. It shall have authority to fix the compensation of such officials and assistants as it may deem necessary to administer the provisions of this act for the state of Washington and to pay such compensation and other necessary expenses of administration from funds appropriated for this purpose. It shall have authority to make investigations relating to vocational education; to promote and aid in the establishment, by school districts or institutions, of schools, departments or classes giving training in agricultural subjects, trade and industrial subjects and home economics subjects and to co-operate with such school districts or institutions in the maintenance of

said schools, departments or classes. It shall have power to prescribe qualifications of the teachers, directors and supervisors of such vocational subjects in said schools, departments or classes and have full authority to provide for the certification of said teachers, directors and supervisors. It shall direct and control all instrumentalities and courses prescribed and established under its authority for the preparation of teachers, directors and supervisors of such subjects and it shall have power to maintain such classes under its own direction and control. It shall also establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers. The state board for vocational education shall have power to make any necessary rules and regulations to carry out any provisions of this act. [L. '19, p. 455, § 3.]

§ 4922. Executive Officer of Board.

The superintendent of public instruction shall be the chief executive officer of the state board for vocational education and shall appoint, with the approval of said board, the necessary experts, assistants and employees to carry out the provisions of this act. [L. '19, p. 456, § 4.]

§ 4923. Establishment of Vocational Schools — Reimbursement for Expenditures.

The board of directors of any organized school district or any educational institution of less than college grade under public supervision or control may establish and maintain vocational schools or classes giving instruction of less than college grade in agriculture, trades and industries, or in home economics, and whenever such schools or classes shall have met the standards, courses and requirements established and prescribed or approved by the state board for vocational education, as approved by the federal board of vocational education, such district or institution shall be entitled to share in the distribution of the federal funds available under the provisions of the federal acts providing for vocational education and also in any state funds appropriated for the promotion of vocational education. Whenever any such schools or classes shall have been organized as herein provided the district or institution maintaining the same shall be entitled to reimbursement for moneys expended for the salaries of teachers of vocational courses approved by said state board for vocational education not to exceed fifty per cent of the total moneys so expended and such reimbursement shall be made to such school districts or institutions from the fund obtained by adding, to the federal funds available for the promotion of vocational education, any fund or funds set aside for this purpose by the state board for vocational education from moneys under its administrative control. Such reimbursements shall be apportioned under the direction of the state board for vocational education. [L. '19, p. 457, § 5.]

§ 4924. Classification of Schools.

For the purposes of this act vocational schools or classes may be established, (1) as all-day schools or classes giving instruction in agricultural, home economics or trade and industrial subjects; (2) as part-

time schools or classes giving instruction as prescribed by the state board for vocational education to promote civic and vocational intelligence; (3) as evening school classes giving instruction supplemental to the daily employment. [L. '19, p. 457, § 6.]

§ 4925. Moneys for, How Raised—Tax Levy Authorized.

Any school district organizing vocational schools, departments or classes in accordance with the terms of this act, and in accordance with the rules, regulations and courses prescribed or approved by the state board for vocational education may raise and expend moneys for the purpose of organizing and maintaining such vocational schools or classes in the same manner in which moneys are raised and expended for other school purposes, provided that in the event that the amount of money which can be legally so raised shall be insufficient to organize and maintain such schools, departments or classes, authority is hereby granted to the school directors of such district to increase the school levy not to exceed one mill above the limit otherwise provided for in the several classes of districts; and the amount so raised in excess of the said limit shall be used exclusively for the purpose of organizing and maintaining vocational schools, departments or classes as herein provided. [L. '19, p. 458, § 7.]

CHAPTER XXXI.

COUNTY CIRCULATING LIBRARIES.

§ 4926. [4592.] County Superintendent Authorized to Establish.

The county superintendent of each county of this state may establish a circulating library for the use and benefit of the pupils of the common schools of such county. [L. '09, p. 320, § 1. Cf. L. '03, p. 180, § 27.]

See *infra*, §§ 8226—8246, public libraries and museums.

§ 4927. [4593.] Tax Levy for Library Fund.

At the time fixed for the levy of the county tax, the county commissioners of each county may levy a tax sufficient to carry into effect the provisions of section 4926: Provided, that said tax shall not exceed one-tenth of one mill on each dollar of the assessed valuation of the said county. The proceeds of said tax shall, when collected, constitute a circulating school library fund for the payment of all bills created by the purchase of books and fixtures by the county superintendent. [L. '09, p. 320, § 2.]

§ 4928. [4594.] Bills Against Fund to be Certified.

The county commissioners shall allow no bill or bills against said fund until it shall have been certified to be correct by the county superintendent. [L. '09, p. 320, § 3.]

§ 4929. [4595.] Sufficient Funds Before Purchasing Books.

The county superintendent shall purchase no books or fixtures for such circulating library until there shall be to the credit of the circulating school library fund sufficient money to pay the purchase price thereof. [L. '09, p. 320, § 4.]

§ 4930. [4596.] Approval of Books.

No book shall be placed in a county circulating library unless it has been recommended by the state board of education, or the superintendent of public instruction. [L. '09, p. 320, § 5.]

§ 4931. [4597.] County Superintendent—Duties.

It shall be the duty of the county superintendent to purchase the books and to enforce such rules and regulations for their distribution, use, care and preservation as he may deem necessary. [L. '09, p. 320, § 6.]

CHAPTER XXXII.**SCHOOL REVENUES.****§ 4932. [4598.] Source of Funds.**

The principal of the common school fund shall remain permanent and irreducible. The said fund shall be derived from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals or other property from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating timber, stone, minerals and other property from school and state lands, other than those granted for specific purposes, and all moneys other than rental, recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be, granted to the state for the support of common schools and such other funds as may be provided by legislative enactment. [L. '09, p. 320, § 1. Cf. L. '90, p. 373, § 50; 1 H. C., § 815; L. '97, p. 397, § 109.]

This section is a copy of part of Const., Art. IX, § 3.

§ 4933. [4599.] Loss of Funds by Defalcation, etc.

All losses to the permanent common school or any other state educational fund, which shall be occasioned by defalcation, mismanagement or fraud of the agents or officers controlling or managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the particular fund sustaining such loss, upon which not less than six per cent annual interest shall be paid. [L. '09, p. 321, § 2. See references to next section.]

This section is a copy of part of Const., Art. IX, § 5.

§ 4934. [4600.*] Current Funds—Annual Tax, Levy and Limit of.

The interest accruing on said permanent school fund, together with all rentals and other revenues derived therefrom, and from lands and other property devoted to the common school fund, shall be exclusively applied to the current use of the common schools.

In addition thereto it shall be the duty of the state board of equalization, annually, at the time of levying taxes for state purposes, to levy a tax sufficient to produce a sum which, when added to the amount of money derived from interest and other income from the state permanent school fund during the preceding school year, shall equal twenty dollars for each child of school age residing in the state as shown by the last reports of the several county superintendents to the superintendent of public instruction.

The funds provided by this section shall be known as the current state school fund. [L. '20, p. 15, § 1. Cf. L. '09, p. 321, § 3; L. '90, p. 373, § 51; 1 H. C., § 816; L. '97, p. 398, § 110. See also references to next section.]

Former laws cited in 10 Wash. 201; 13 Wash. 321.

School tax not to exceed eight mills, except in cities of ten thousand, where it shall not exceed ten mills: See *infra*, § 11235.

§ 4935. [4601.] Collection of Tax.

The tax levy authorized by the preceding section, shall be certified to the several county auditors in the same manner as other state taxes are required to be certified, and shall be collected and retained as other public funds, by the county treasurers, until paid out in the manner prescribed by law.

The county treasurer shall certify to the state auditor the amount of money so collected. It shall be the duty of the state auditor, within thirty (30) days after the date at which the county treasurers are required to transmit state funds to the state treasurer, to certify to the superintendent of public instruction the amount of all current state school funds in the hands of the state treasurer and county treasurers subject to apportionment. In the event that there shall be an excess over the amount apportioned in the hands of the county treasurer, the amount shall be transmitted forthwith to the state treasurer. In the event that there shall not be in the hands of the county treasurer sufficient to pay the amount apportioned to his county, the deficiency shall be paid by the state treasurer. [L. '09, p. 322, § 4. Cf. L. '90, p. 374, § 54; L. '91, p. 253, § 16; 1 H. C., § 817; L. '95, p. 122, § 1; L. '97, p. 398, § 111; L. '99, p. 320, § 19; L. '01, p. 380, § 16; L. '07, p. 198, § 1.]

§ 4936. [4602.] County Tax, Levy and Limit of.

The county commissioners of the several counties of the state of Washington shall annually, at the time of making the tax levy for county purposes, levy a tax on all property subject to taxation in their county, sufficient to produce the sum of ten dollars for each child of school age therein, as is shown by the certificate of the county superintendent herein-after mentioned: Provided, that such tax on said property shall in no case exceed five mills on each dollar, at the assessed valuation; such tax to be used for the support and maintenance of the public schools in such county. [L. '09, p. 322, § 5.]

§ 4937. [4603.] Tax Levy Based on School Census.

It shall be the duty of the county superintendent of each county in the state of Washington, between the fifteenth day of August and the first day of September of each year, to file with the county auditor of this [his] county a certificate showing the number of children of school age in each district in his county, as is returned to him by the several school districts therein, and said certificate shall be the basis upon which said tax levy, as mentioned in section 4936, shall be made by the county commissioners of the several counties of the state of Washington. [L. '09, p. 323, § 6.]

§ 4938. [4604.] Apportionments of Funds to Districts.

At the same time that the state school funds are apportioned to the different districts, as provided in Chapter XXVII, of this title, the whole of the money derived under section 4936 shall be apportioned as follows: Two-thirds thereof shall go to the different districts of each county in proportion to the number of days of attendance in each district for the preceding school year, and one-third thereof shall go to the different districts of each county in proportion to the number of teachers employed in such district for the preceding school year: Provided, that where a district employed a second or additional teacher for a term less than eight months such district shall receive one-eighth of an apportionment for each teacher for each month she is actually employed. [L. '09, p. 323, § 7.]

§ 4939. [4605.] District may Levy Tax.

In addition to the school revenues provided by sections 4934 and 4937, for the support of the common schools of this state, a tax may be levied upon all taxable property in each school district of this state, in the manner provided by law, and the funds thereby created shall be known as the "School District Fund."

The "School District Fund," together with the apportionment from the "Current State School Fund" and the county apportionments, shall constitute the "General School Fund" of each school district. [L. '09, p. 323, § 8.]

See supra, § 4810, levy in first class district.

See supra, § 4818, levy in second class district.

See supra, § 4834, levy in third class district.

See infra, § 4947, bond interest levy.

§ 4940. [4606.*] Fines, Penalties and Forfeitures — Prohibition Law Fines and Bail.

Except as otherwise provided by law, all sums of money derived from fines imposed for violation of orders of injunction, mandamus and other like writs, or for contempt of court, and the net proceeds of all fines collected within the several counties of the state for breach of the penal laws, and all funds arising from the sale of lost goods and estrays, and from penalties and forfeitures, shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued, and shall be by him transmitted to the state treasurer, who shall place the same to the credit

of the current state school fund. He shall indicate in such entry the source from which such money was derived: Provided, however, that fifty per cent (50%) of all fines collected for the violation of any of the provisions of Initiative Measure No. 3 enacted by the people November 3, 1914, shall be turned in to the county treasurer of the county wherein such violation occurred, to be kept as a special fund by said county treasurer and to be used for the purpose of obtaining evidence in other cases pertaining to the violation of the provisions of said Initiative Measure No. 3 enacted by the people November 3, 1914, said fund to be drawn upon by vouchers by the sheriff of the county wherein the said violation occurred and approved by the prosecuting attorney and a majority of the board of county commissioners of said county. A forfeiture of bail shall be construed as a fine. If at the end of any fiscal year there remains any surplus in said fund same shall be turned into the state current school fund. [L. '19, p. 57, § 1; L. '09, p. 323, § 9. Cf. L. '90, p. 383, § 89; 1 H. C., § 820; L. '97, p. 400, § 113; also, L. '95, p. 124.]

Cited in 94 Wash. 413.

This section supersedes all prior statutes covering the same subject matter; since otherwise there would be nothing

left upon which the section could operate: Slayden v. Carr, 94 Wash. 412, 162 Pac. 529.

CHAPTER XXXIII.

BONDS.

§ 4941. [4607.*] Directors may Borrow Money and Issue Bonds.

The board of directors of any school district provided for in this act, or hereafter created in this state may borrow money and issue negotiable coupon bonds therefor to any amount not to exceed five (5) per cent of the taxable property in such district, as shown by the last assessment-roll for county and state purposes previous to the incurring of such indebtedness; except that in incorporated cities the assessment shall be taken from the last assessment for city purposes, for the purpose of funding outstanding indebtedness, or bonds heretofore issued, or issued under the provisions of this act, or for the purchase of a schoolhouse site or sites for buildings or playgrounds authorized by law, erecting one or more schoolhouses, an administration building and all other buildings authorized by law and providing the same with all necessary furniture, apparatus or equipment, or for any or all of these purposes, when authorized by vote of the district so to do, as provided in the next section: Provided, that the bonds so issued shall bear a rate of interest not to exceed six (6) per cent per annum, interest payable annually or semi-annually, payable and redeemable at such time as may be designated in the bonds. All school district bonds shall be payable within a period of not to exceed twenty-three years from date, except when issued by districts of the first class for the purpose of acquiring buildings or playground sites, or for erecting buildings of a permanent character, in which case they shall be made payable in semi-annual or annual installments, beginning the third year over any period not exceeding forty years from date: And provided further, that from and after July 1, 1919, all bonds issued by any school district shall be issued in serial form. [L. '21, p. 554, § 1; L. '19, p. 216, § 12; L. '09, p. 324, § 1. Cf. L.

'90, p. 45, § 1; 1 H. C., § 2697; L. '97, p. 401, § 117; L. '03, p. 310, § 1; L. '07, p. 195, § 1; L. '07, p. 613, § 7½.]

Former laws cited in 1 Wash. 307; 4 Wash. 302, 396; 28 Wash. 339.

See Const., Art. VIII, § 6, limit of indebtedness.

Cited in 109 Wash. 39, 40, 42, 45.

Power to Incur Indebtedness and Expenditures: See Remington's Digest, Schools, § 30; Stanley v. McGeorge, 17 Wash. 8, 48 Pac. 736; Wolfe v. School District No. 2, 58 Wash. 212, 108 Pac. 442, 137 Am. St. Rep. 1057, 27 L. R. A. (N. S.) 891.

A judgment on the merits to the effect that a school district was legally authorized by vote of the electors to issue bonds conditioned in compliance with the law then in effect, entered prior to the taking effect of Laws of 1919, p. 216, § 12, amending this section, is not an adjudication as to the right of the school district to issue and sell said bonds after the taking effect of the amendatory act which changed the requirements as to the conditions of the bond: State ex rel. School District No. 301 v. Clausen, 109 Wash. 37, 186 Pac. 319.

After the taking effect on June 12 of

Laws of 1919, p. 216, § 12, amending this section, the school district had no power to issue or sell bonds payable in ten years, in conformity to the former law, notwithstanding the issue was authorized by an election and adjudged by a court to be valid before the amendment of 1919 took effect, and this act did not impair the obligation of contracts: State ex rel. School District No. 301 v. Clausen, 109 Wash. 37, 186 Pac. 319.

A school district has no authority to render free medical services to pupils by maintaining a clinic for the treatment of school children of parents able to pay for regular medical services: McGilvra v. Seattle School Dist. No. 1, 113 Wash. 619, 194 Pac. 817.

Right of taxpayer, in absence of statute, to enjoin issuance or payment of school bonds. 36 L. R. A. (N. S.) 7.

§ 4942. [4608.] Bond Election—Notice.

The question whether bonds shall be issued, as provided in the preceding section, shall be determined at an election to be held in the manner prescribed by law for holding annual school elections. Notice therefor shall state the amount of bonds proposed to be issued, time they are to run, and purpose for which the money is to be used. The ballots must contain the words "Bonds, yes," or "Bonds, no." If a majority of the votes cast at such election are "Bonds, yes," the board of directors must issue such bonds: Provided, that the amount of bonds to be issued, together with any outstanding indebtedness of the district, exceeds one and one-half per cent of the taxable property in said district, then three-fifths of the votes cast at such election must be "Bonds, yes," before the board of directors are authorized to issue said bonds. The bonds shall be in such form as the board of directors may prescribe, and shall with the coupons, be signed by the board of directors and countersigned by the clerk of the school district: Provided, that in school districts of the first class said bonds with the coupons, shall be signed in the corporate name of the district by the president of the board of directors thereof and attested by the secretary of the board, except that said coupons may bear the lithograph signatures, only, of the said president and secretary; in districts of the first class the corporate seal of the said district shall be affixed to each bond by the secretary thereof. [L. '09, p. 324, § 2. Cf. L. '90, p. 46, § 2; 1 H. C., § 2698; L. '97, p. 402, § 118.]

Former laws cited in 4 Wash. 301, 303; 28 Wash. 339.

Submission of Question of Issue of Bonds to Popular Vote: See Remington's Digest, Schools, § 35; Luzader v. Sergeant, 4 Wash. 299, 30 Pac. 142; Holmes & Bull etc. Co. v. Hedges, 13 Wash. 696,

43 Pac. 944; Parkinson v. Seattle School District, 28 Wash. 335, 68 Pac. 875.

See, also, Lee v. Bellingham School Dist. No. 301, 107 Wash. 482, 182 Pac. 580.

§ 4943. [4609.*] Advertisement, Form and Registry of Bonds.

When authorized and empowered to issue bonds as provided in sections 4941, 4942, the board of directors shall, within thirty days after the date of election, certify the result to the county treasurer of the county to which said school district belongs. With directions to sell a part or all of the bonds so authorized. The treasurer shall publish notice of the bonds so designated in at least one weekly newspaper published at the county seat, if there be one, for four consecutive issues, and publish such other notices as the board of directors may require. Said notices must give the amounts of bonds to be sold, the time to run, where payable, the option, if any, of the district to redeem, also naming the hour and day for considering bids, and asking the bidders to name price and rates of interest at which they will purchase such bonds or any of them. Such bonds shall be issued in denominations of not less than one hundred nor more than one thousand (\$1,000) dollars, and shall contain upon their faces the date and series of issue, rate of interest, where payable, time to run, option, if any, of district to redeem and the printed or lithographed statement that said bond is issued under the provisions of this act, and that the whole indebtedness of said district does not exceed the constitutional limit. Each bond so issued must be registered by the county treasurer, in a book to be kept for that purpose, which must show the number and such data as is necessary to secure a complete record of such bond, the series and amount of such bond, the person to whom the same is issued, the number of the district issuing, together with the names of directors signing the same; and the said bond shall be indorsed by the treasurer, with his name and full statement of the person to whom sold, and when issued, together with the number and series of said bond: Provided, that in the case of joint school districts the bond or bonds shall be registered by the treasurer of each county in which any part of such school district shall lie. [L. '19, p. 217, § 13; L. '09, p. 325, § 3. Cf. L. '90, p. 46, § 3; 1 H. C., § 2699; L. '97, p. 402, § 119; L. '05, p. 264, § 6; L. '07, p. 196, § 2.]

Former laws cited in 28 Wash. 341.

Call for Bids: See Remington's Digest, School3, § 34; Parkinson v. Seattle School District No. 1, 28 Wash. 335, 68 Pac. 875. See, also, State ex rel. School Dist. No. 301 v. Clausen, 109 Wash. 37, 186 Pac. 319.

§ 4944. [4610.] Sale of Bonds—Duty of County Treasurer.

At the time named in said notice it shall be the duty of said board of directors to meet with the county treasurer at his office, and with him open said bids, and sell said bonds or any portion thereof to the person or persons making the most advantageous offer: Provided, the bonds shall never be sold below par, and the board of directors may reject any and all bids, and at any time within two years of the election at which authority was granted to issue and sell said bonds, the board of directors may proceed to readvertise the sale of such bonds or any portion thereof as often as may be necessary, until the whole thereof shall be sold; and such board may also require all persons bidding for such bonds, except the state of Washington, to deposit one per centum of the par value of the bonds bid for on depositing with the treasurer their bids, and if the bidder

fails to take and pay for the bonds for which he bid in case of their sale to him, the amount so deposited shall be forfeited to the school district; otherwise to be returned to such bidder, and a resale of such bonds so refused to be taken may be made as if the bid for the same had been rejected. Upon the sale of the bonds, the board of directors shall, within ten days, or as soon thereafter as practicable, deliver the bonds, properly executed, to the county treasurer, taking his receipt therefor. The county treasurer shall, upon payment of the price agreed upon, deliver the same to the person or persons to whom sold, and place the moneys arising from such sale to the credit of the general school fund of the district: Provided, that where the bonds have been sold for the purchase of schoolhouse site or sites, building one or more schoolhouses and providing same with all necessary furniture, apparatus or equipment, or for any or all of these purposes, he shall place the money derived from such sale to the credit of the building fund of the district, and such fund is hereby created. Fees for advertising shall be deducted from the proceeds: Provided, that if the board of directors and the person or persons to whom the bonds are sold agree that the delivery of said bonds shall be in installments, the county treasurer shall hold said bonds, and deliver to purchasers only on written order of the board of directors to deliver at specified time the bonds designated by number and series. [L. '11, p. 390, § 1. Cf. L. '09, p. 326, § 4; L. '90, p. 47, § 4; 1 H. C., § 2700; L. '97, p. 403, § 120; L. '05, p. 265, § 7; L. '07, p. 614, § 9.]

Former laws cited in 4 Wash. 398; 28 Wash. 342.

§ 4945. [4611.] May Exchange Warrants for Bonds.

If bonds issued under this chapter are not sold as herein provided, the holders of unpaid warrants drawn on the county treasurer by such district for an indebtedness existing at the date of the election may exchange said warrants at the face value thereof and accrued interest thereon for coupon bonds issued under this chapter, at not less than par value and accrued interest of such bonds at the time of the exchange; such exchange to be made under such regulations as may be provided by the board of directors of such district. [L. '09, p. 327, § 5.]

§ 4946. [4612.] Joint Districts.

For the purposes of this chapter a joint school district shall be deemed as belonging to the county in which the schoolhouse is located, if there be a schoolhouse, and if there be no schoolhouse, then it shall be deemed as belonging to the county in which the district owns a schoolhouse site that has been lawfully selected by the electors of the district. [L. '09, p. 327, § 6.]

§ 4947. [4613.*] Bond Interest Levy—Sinking and Redemption Fund.

The county commissioners must ascertain and levy annually, in addition to the school district tax, the tax necessary to pay the interest upon such bonds as it becomes due, and at the expiration of one-half of the time for which said bonds are to run, and annually thereafter, until full payment of said bonds is made, they shall levy, in addition to the tax required to pay the interest such amount for sinking fund to meet the

payments of said bonds at maturity, to be determined by dividing the amount of bonds outstanding by the remaining number of years to run, and the fund arising from such levy shall be kept as the bond redemption fund of said district, and each of said tax levies shall be a lien upon the property of said district, and must be collected in the same manner as the taxes for other school purposes: Provided, That the county treasurer, when authorized to do so by the board of directors of any school district, may invest any accumulated or other sinking fund of said district in general bonds or warrants of the state of Washington, or of any school district, city or county therein, if the maturity of the bonds precedes the maturity of the bonds for which said sinking fund is being accumulated, and all profits accruing from such investment and the fund so invested shall revert to the sinking or other fund of said district, and the county treasurer shall be custodian of all bonds or warrants purchased by and with the said sinking fund, until the same are redeemed: And provided further, that the county treasurer, when authorized to do so by the board of directors of any school district, may purchase and redeem any of the outstanding bonds of said district, paying for said bonds out of the accumulated sinking fund of the district; all revenues provided for in this section shall constitute a separate fund, to be known as the bond redemption fund. [L. '21, p. 555, § 2; L. '11, p. 391, § 2. Cf. L. '09, p. 327, § 7; L. '90, p. 48, § 5; 1 H. C., § 2701; L. '97, p. 403, § 121; L. '99, p. 321, § 20; L. '07, p. 197, § 3; L. '07, p. 615, § 10.]

§ 4948. [4614.] Levy in Joint Districts.

In case of a joint school district, the county commissioners of each and every county in which any part of such joint district shall lie, shall levy a tax as hereinbefore provided in section 4946 [4947], and the treasurer of each county in which the schoolhouse or schoolhouse site is not situated shall at least five days before the time at which said bonds or the interest thereon must be paid, according to the conditions of the issuance and sale thereof, transmit to the treasurer of the county in which the schoolhouse or schoolhouse site is situated (and to which the joint school district is construed to belong), all moneys in his possession derived from the tax provided for in this chapter; and the county treasurer receiving such money shall receipt in duplicate to the treasurer or treasurers remitting such funds for such money; and he shall also place the amount or amounts so received to the credit of the special bond fund or funds of the joint school district to which it properly belongs. [L. '09, p. 328, § 8.]

§ 4949. [4615.] Payment of Interest on Bonds.

The county treasurer must pay out of moneys belonging to the credit of the fund of the school district created by section 4947, the interest upon any bonds issued under this chapter by such school district when the same becomes due, at such place as may be designated in the coupons attached to said bonds, or upon the presentation at his office of said coupons, which must show the amount due and the number and series of the bond to which it belongs, and all coupons so paid must be imme-

diately reported to the school directors. [L. '11, p. 392, § 3. Cf. L. '09, p. 329, § 9. Cf. '90, p. 48, § 6; 1 H. C., § 2702; L. '97, p. 404, § 122.]

Section 6 of this act, changed to § 4946, is evidently an error, and § 7 (§ 4947, *supra*) was probably intended.

§ 4950. [4616.] Bonds Lithographed or Printed.

The school directors of any district must cause to be printed or lithographed, at the lowest rates, suitable bonds, with coupons attached, when the same become necessary, and pay therefor out of the moneys in the county treasury to the credit of the school district. [L. '09, p. 329, § 10. Cf. L. '90, p. 48, § 7; 1 H. C., § 2703; L. '97, p. 404, § 123.]

§ 4951. [4617.] Refunding of Bonds.

Whenever any school district in this state shall have heretofore, under any of the acts of the territorial or state legislatures then in force, lawfully issued any bonds, and the amount of said bonds so issued and negotiated did not, at the time of their issue, exceed the sum of five per centum of the taxable property of the said school district, it shall be lawful for the said school district to issue and exchange its bonds at a rate of interest not greater than that borne by the original issue of bonds, par for par, without any further vote of the school district than that theretofore had or required by existing law at the time of their issue, and said bonds shall, in all respects, conform to and be governed by the other provisions of this act. [L. '09, p. 329, § 11.]

§ 4952. [4618.] Same.

Whenever any bonds lawfully issued by any school district under the provisions of this act shall reach maturity and shall remain unpaid, or may be paid under any option provided in the bonds, the board of directors thereof shall have the power to fund the same by issuing coupon bonds conformable to the requirements of this act and exchange the same, par for par, for the outstanding bonds as aforesaid, without any further vote of the school district: Provided, that such bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, shall be redeemable within twenty years from the date of issue, and shall draw a rate of interest not to exceed six per centum per annum. [L. '09, p. 329, § 12. Cf. L. '90, p. 48, § 8; 1 H. C., § 2704; L. '97, p. 404, § 124.]

§ 4953. [4619.] Holders to Notify County Treasurer—Notice of Redemption.

Every holder of any of the bonds so issued as provided in this act shall within ten (10) days after he shall become the owner or holder thereof, notify the county treasurer of the county in which such bonds are issued of his ownership, together with his full name and postoffice address, and the county treasurer of said county shall, in addition to the published notice hereinafter provided for, deposit in the postoffice, properly stamped and addressed to each owner or holder of any such bonds subject to redemption or payment, a notice in like form, stating the time and place of the redemption of such bonds and the number of the bonds to be

redeemed, and in case any owners of bonds shall fail to notify the treasurer of their ownership as aforesaid, then a notice mailed to the last holder of such bonds shall be deemed sufficient, and any and all such notices so mailed as aforesaid shall be deemed to be personal notice to the holders of such bonds, and at the expiration of the time therein named shall have the force to suspend the interest upon any such bonds. [L. '09, p. 330, § 13. Cf. L. '90, p. 49, § 9; 1 H. C., § 2705; L. '97, p. 405, § 125.]

§ 4954. [4620.] Incidental Costs.

At any time after the issuance of such bonds, and in the discharge of the duties imposed upon said county treasurer, should any incidental expense, costs or charges arise, the said county treasurer shall present his claim for the same to the board of directors of the school district issuing such bonds, and the same shall be audited and paid in the same manner as other services are paid under the provisions of law. [L. '09, p. 330, § 14. Cf. L. '90, p. 50, § 10; 1 H. C., § 2706; L. '97, p. 405, § 126.]

Former laws cited in 4 Wash. 398.

§ 4955. [4621.] Notice of Bond Redemption—Cancellation.

Whenever the amount of any sinking fund created under the provisions of this act shall equal the amount, principal and interest of any bond then due, or subject under the pleasure or option of said school district to be paid or redeemed, it shall be the duty of the county treasurer of the county in which the school district issuing such bonds is located, to publish a notice in the official newspaper of the county, if such a one there be, and if not, then in a newspaper of general circulation, that the said county treasurer will within thirty (30) days from the date of such notice, redeem and pay any such bond then redeemable or payable, giving priority according to the date of issue numerically, and upon the presentation of any such bond or bonds the said treasurer shall pay the same; and in case that any holder of such bond or bonds shall fail or neglect to present the same at the time mentioned in said notice, or in the notice hereinbefore provided for, then the interest upon such bond or bonds shall cease and determine, and the treasurer of such county shall thereafter pay only the amount of such bond and the interest accrued thereon up to the day mentioned in said notice. When any bonds are so redeemed or paid, the county treasurer shall cause the same to be fully canceled, and write across the face of such bonds the words "redeemed," with the date of redemption, and shall file the same with the county auditor as vouchers for the sum so paid. When bonds are held by the state of Washington advertising as contemplated and prescribed in the section shall be deemed unnecessary. [L. '11, p. 393, § 4. Cf. L. '09, p. 330, § 15; L. '90, p. 50, § 11; 1 H. C., § 2707; L. '97, p. 405, § 127.]

CHAPTER XXXIV.

VALIDATION OF INDEBTEDNESS AND BONDS THEREFOR.

§ 4956. [4622.] Electors may Validate Indebtedness.

Any school district may validate and ratify the indebtedness of such school district, incurred for strictly school purposes, when the same together with all then outstanding legal indebtedness does not exceed five per centum of the value of the taxable property in such school district. The value of taxable property in such school district shall be ascertained as provided in Article VIII, section 6 of the Constitution of the state of Washington. [L. '09, p. 331, § 1. Cf. L. '95, p. 26, § 1; L. '97, p. 406, § 128.]

Former laws cited in 19 Wash. 120; 39 Wash. 141.

As first enacted, this section was a bonds for the purpose of erecting a high special act and had no reference to an school building: *Nichols v. School District*, 39 Wash. 137, 81 Pac. 325.

§ 4957. [4623.] Resolution of Board—Vote Necessary.

Whenever the board of directors of any school district shall deem it advisable to validate and ratify the indebtedness mentioned in the preceding section, they shall provide therefor by resolution, which shall be entered on the records of such school district, which resolution shall provide for the holding of an election for the purpose of submitting the question of validating and ratifying the indebtedness so incurred to the voters of such school district for approval or disapproval, and if at such election three-fifths of the voters in such school district voting at such election shall vote in favor of the validation and ratification of such indebtedness, then such indebtedness so validated and ratified and every part thereof existing at the time of the adoption of said resolution shall thereby become and is hereby declared to be validated and ratified and a binding obligation upon such school district, when the only grounds of the previous invalidity of such indebtedness so ratified and invalidated is that at the time of the attempted incurring thereof, the same together with all other then existing indebtedness of such school district, exceeded one and one-half per centum of the taxable property in such school district, as provided in Article VIII, section 6 of the Constitution of the state of Washington, and that such indebtedness was so attempted to be incurred without the assent of three-fifths of the voters of such school district voting at an election held for that purpose, as required by said Constitution. [L. '09, p. 331, § 2. Cf. L. '95, p. 27, § 2; L. '97, p. 406, § 129.]

§ 4958. [4624.] Clerk to Give Notice of Election.

At the time of the adoption of the resolution provided for in the preceding section, the board of directors shall direct the clerk or secretary of the board to give public notice of the time, place or places, and purpose of such election, and specifying the amount and general character of the indebtedness proposed to be ratified. Such clerk or secretary shall thereupon cause written or printed notices to be posted in at least five places in such school district, at least twenty days before such election. Said notice shall also be published for the same length of time in a daily newspaper, printed and published in such district, and if there be no such daily

newspaper, then in a weekly newspaper published in this state and of general circulation in the county where such school district is situated, in two regular issues of such weekly newspaper next preceding the day of such election. Said notices shall contain a copy of the resolution mentioned in the preceding section, the time of holding such election and location of polling place or places, a statement of the object of the election, and the form of the ballot adopted by the board to determine the question submitted to the voters. [L. '09, p. 332, § 3. Cf. L. '95, p. 29, § 4; L. '97, p. 408, § 131.]

§ 4959. [4625.] Election, How Held—Ballots, etc.

Elections hereunder shall be by ballot, and conducted in the manner provided for conducting annual school elections. The ballot must contain the words, "Validating and ratifying indebtedness, yes," or the words, "Validating and ratifying indebtedness, no." Ballots containing the words "Validating and ratifying indebtedness, yes," shall be counted in favor of validating and ratifying such indebtedness, and ballots containing the words, "Validating and ratifying indebtedness, no," shall be counted against validating and ratifying such indebtedness. As soon as the polls are closed at such election, the judge at each polling place shall count the votes, ascertain the result and certify the same and make return thereof, within two days after such election, to the board of directors of such district, by depositing the same, together with the ballots cast at such election, with the clerk or secretary of such board, and within five days after such election, or as soon as all the returns of election are deposited as herein provided, the board of directors of such district shall meet and canvass and declare the result, and shall cause to be entered a minute thereof on the records of such district. The qualifications of voters at such election shall be the same as prescribed for the election of school officers. [L. '09, p. 332, § 4. Cf. L. '95, p. 29, § 3; L. '97, p. 407, § 130.]

§ 4960. [4626.] Bonds—Issuance—Form—Seal—Proceeds.

If the indebtedness of such school district is validated and ratified, as provided in this chapter, by three-fifths of the voters voting at such election, the board of directors of such school district, without any further vote, may borrow money and issue negotiable coupon bonds therefor. Bonds so issued shall bear a rate of interest not to exceed six per cent per annum, interest payable semi-annually, payable and redeemable at such time and place as designated in the bonds, but not exceeding twenty years from date of issue. The bonds and coupons shall be in such form as the board of directors shall prescribe, and payable at such place as may be designated therein. In all school districts of the second or third class, said bonds, with the coupons, must be signed by the board of directors and countersigned by the clerk of the school district. In school districts of the first class said bonds, with the coupons, must be signed in the corporate name of the district, by the president of the board of directors thereof, and attested by the secretary of the board, except that the said coupons may bear the lithograph signatures of the said president and secretary. The seal of such district, if such district has a seal, shall be affixed to each bond by the secretary thereof. The moneys arising

from the sale of coupon bonds issued under this chapter shall be placed by the treasurer of the county in a special fund to the credit of such school district existing at the time of the adoption of the resolution mentioned in section 4957, not evidenced by negotiable bonds. [L. '09, p. 333, § 5. Cf. L. '95, p. 30, § 5; L. '97, p. 409, § 132.]

§ 4961. [4627.] Amount to be Issued—Advertisement of Sale, etc.

When authorized to issue bonds, as provided in this chapter, the board of directors shall at a meeting of such board, by resolution provide for the issuing of such bonds, prescribing their number, amount and term, and shall deliver a copy of said resolution to the county treasurer of the county in which such school district is situated or to which it belongs as provided in this act, who shall immediately advertise for sale said bonds, and the law relating to other school bonds shall govern, control and apply to bonds issued or sold under this chapter, except that bonds issued under this chapter shall not bear a greater rate of interest than six per cent per annum, and they may be sold in such amounts or blocks as the board of directors may direct, and such board may also require all persons bidding for said bonds, except the state of Washington, to deposit one per cent of the par value of the bonds bid for on depositing with the treasurer their bids, and if the bidder fails to take and pay for the bonds for which he bid, in case of their sale to him, the amount so deposited shall be forfeited to the school district, otherwise to be returned to such bidder and a resale of such bonds so refused to be taken may be made as if the bid for the same had been rejected, and the money arising from the sale of the bonds issued under this chapter shall be applied as provided in the preceding section. [L. '09, p. 334, § 6. Cf. L. '95, p. 30, § 6; L. '97, p. 410, § 133.]

§ 4962. [4628.] Warrants Exchanged for Bonds.

If bonds issued under this chapter are not sold as herein provided, the holders of unpaid warrants drawn on the county treasurer by such district for an indebtedness existing at the time of the adoption of the resolution mentioned in section 4957, may exchange said warrants at the face value thereof and accrued interest thereon for coupon bonds issued under this chapter, at not less than par value and accrued interest of such bonds at the time of the exchange; such exchange to be made under such regulations as may be provided by the board of directors of such district. [L. '09, p. 334, § 7. Cf. L. '95, p. 31, § 7; L. '97, p. 411, § 134.]

§ 4963. [4629.] County Treasurer Notified of Result—Money, How Applied Thereafter.

When the board of directors shall have canvassed and declared the result of the election as prescribed in section 4959, it shall, if the same shall have been in favor of validating and ratifying the indebtedness, immediately cause to be sent to the county treasurer of the county in which such district is situated, notice of the result of said election. The annual expense of such district shall not thereafter exceed the annual revenue thereof, and any officer of such district who shall knowingly aid in increasing the annual expenditure in excess of the annual revenue of such district, shall be deemed to be guilty of misdemeanor, and shall be punished

by a fine not exceeding five hundred dollars. If the indebtedness of such school district, excluding the bonded indebtedness existing before the adoption of said resolution, is not extinguished by the exchange of warrants for bonds, or by the proceeds of the sale of bonds, as herein provided, then it shall be the duty of the board of directors, thirty days before the regular annual tax levy, to certify the amount of such indebtedness remaining unpaid to the board of county commissioners of the county in which such school district is situated, and said board of county commissioners, at the time of making the regular annual tax levy, shall annually levy a special tax on the taxable property of the district not to exceed three mills on the dollar on the valuation of such taxable property, which shall be collected as other taxes are collected, and the proceeds of such tax shall be a special fund for the payment of the indebtedness of such district, not included in bonds, existing at the time of the adoption of the resolution mentioned in section 4957. [L. '09, p. 335, § 8. Cf. L. '95, p. 32, § 8; L. '97, p. 411, § 135.]

Former laws cited in 19 Wash. 120.

§ 4964. [4629½.] Indebtedness of District Merging—Election.

In case any school district has heretofore incurred, or shall hereafter incur, indebtedness for strictly school purposes in excess of one and one-half per cent, and less than five per cent of the assessed valuation of property in such district, and has heretofore, or shall hereafter, become merged in a district of the first class, the directors and clerk of the last-named district may, after such merger, cause to be submitted to the voters within the limits of the district which incurred the obligations, the question of validating and ratifying such indebtedness. The vote shall be taken and the question determined in the manner prescribed in sections 4957, 4958 and 4959. The directors of the district of the first class shall make provisions for payment of the indebtedness so validated by certifying the amount thereof to the county commissioners for a special levy, in the manner prescribed in section 4963: Provided, such district of the first class may pay a part, or all, of such validating indebtedness from any funds available or by issuing bonds therefor, under the following conditions: When such district of the first class has taken over property of any district without an adjustment and apportionment of property and of indebtedness, as provided in sections 4731 and 4732, the directors of the enlarged district shall make such adjustment and apportionment, as of the time of merger, and may pay such validated indebtedness to the extent that the value of the property received shall be found to exceed the total indebtedness of the district annexed. [L. '13, p. 416, § 1.]

§ 4965. Warrants Payable to School Directors.

Whenever any third class school district in any county of the sixth class of the state of Washington has issued, or caused to be issued, any warrants during the years 1918 and 1919, payable to any director of such school district for services actually rendered such school district, but which have not been paid because issued in violation of the law prohibiting a school director from being financially interested in any contract for services to the school district of which he is a director, such warrants are hereby

validated, and the county treasurer of the county in which any such school district is located is hereby authorized and directed to pay any such warrants from any of the general funds of such school district. [L. '21, p. 754, § 1.]

CHAPTER XXXV.

CERTIFICATION OF TEACHERS.

§ 4966. [4630.] Validating Certificates.

Nothing in this act shall be construed to invalidate the life diplomas granted under the laws of the territory of Washington, or to invalidate any certificate or diploma heretofore granted in accordance with the laws of the state of Washington, but the same shall continue in effect in accordance with the provisions of the laws under which they were granted: Provided, that any third grade certificate, second grade certificate, first grade primary certificate, or first grade certificate, or any renewal, or any permanent certificate, in full force and effect at the time of the taking effect of this act shall, for the purpose of renewal, or for securing a certificate of higher grade, or for securing a permanent certificate, or for any other purpose whatsoever, be of the same force and effect, and shall entitle the holder thereof to the same rights and privileges as he would be entitled to were he the holder of a certificate of like designation authorized by this act. [L. '09, p. 336, § 1. Cf. L. '90, p. 382, § 4; 1 H. C., § 849; L. '97, p. 412, § 136; L. '03, p. 181, § 30.]

Certification of Teachers: See Remington's Digest, Schools, §§ 44—46.

State ex rel. Gannon v. Hitt, 13 Wash. 547, 43 Pac. 638.

§ 44. **Certificate or License—In General:** Fitzgerald v. School District, 5 Wash. 112, 31 Pac. 427; Kimball v. School District, 23 Wash. 520, 63 Pac. 213.

§ 46. — **Requisite to Appointment or Employment:** Kimball v. School Dist. No. 122, Spokane County, 23 Wash. 520, 63 Pac. 213; MacKenzie v. State, 32 Wash. 657, 73 Pac. 889.

§ 45. — **Refusal to Issue Certificate:**

§ 4967. [4631.] Certificates Issued by Superintendent of Public Instruction.

All certificates and diplomas, except temporary certificates, and special certificates, shall be issued or countersigned by the superintendent of public instruction. [L. '09, p. 336, § 2.]

§ 4968. [4632.] Fees Paid into Institute Fund.

The fee for any teacher's certificate or any renewal thereof, or any life diploma, or other instrument issued by authority of the state of Washington, and authorizing the holder to teach in the public schools of the state shall be one dollar. The fee must accompany the application and cannot be refunded unless the application is withdrawn before it is finally considered. The county superintendent, or other officer authorized to receive such fee, shall within thirty days transmit the same to the treasurer of the county wherein such applicant is to teach or resides, to be by him placed to the credit of the institute fund of said city or county: Provided, that if any city collecting fees for the certification of teachers does not hold an institute separate from the county, then all such moneys shall be placed to

the credit of the institute fund. [L. '09, p. 336, § 3. Cf. L. '97, p. 415, § 142.]

§ 4969. [4633.] Age of Applicant.

No person who is less than eighteen years of age shall receive a certificate to teach in the state of Washington nor take the examination for the same; nor shall any person less than nineteen years of age receive any certificate other than a temporary, a third grade, or a second grade. [L. '09, p. 337, § 4.]

See *infra*, § 4983, age of applicant.

§ 4970. [4634.] Evidence of Moral Character.

Before registering any certificate, the county superintendent of the county in which application was made for certificate shall satisfy himself that the applicant is a person of good moral character and personal fitness. In the event of a refusal to register a certificate, the county superintendent shall immediately notify the superintendent of public instruction of his action and shall fully and clearly state his reasons therefor, and the person aggrieved shall have the right of appeal to the superintendent of public instruction, and shall have the further right of appeal to the state board of education. [L. '11, p. 50, § 1; L. '09, p. 337, § 5.]

§ 4971. [4635.] Credits.

Any person who receives credits of ninety per cent or over in any subject or subjects at any regular teachers' examination in this state shall not be required to take an examination again in such subject or subjects in order to receive any certificate for which the applicant may be eligible to apply, so long as he is actively engaged in educational work. The holder of any common school certificate shall be entitled to write on one or more subjects at any examination for the purpose of securing credits: and when sufficient credits have been earned the proper certificate shall be issued. [L. '09, p. 337, § 6.]

§ 4972. [4636.] Evidence of Successful Experience.

Whenever evidence of successful experience is a prerequisite to the issuance or renewal of a certificate, it shall be deemed sufficient for the applicant to file evidence, satisfactory to the officer authorized to issue or renew the certificate, of having taught the required number of months and of being a successful teacher. The aforesaid documentary evidence of successful teaching shall be kept on file in the office of the superintendent of public instruction. [L. '11, p. 51, § 2; L. '09, p. 337, § 7.]

§ 4973. [4637.] Optional Subjects.

The state board of education shall prepare a list of optional subjects for each grade above the second, from which the applicants for certificates above the second grade may select as provided for in section 4981. [L. '09, p. 337, § 8.]

§ 4974. [4638.] One Year's Study Renews Certificate.

Credits of ninety per cent or over on a valid certificate obtained by examination in any other state in which the examination questions are

prepared and answer papers graded by the state department of education may be accepted subject for subject in accordance with the rules and regulations prescribed by the state board of education. [L. '11, p. 51, § 3; L. '09, p. 337, § 9.]

§ 4975. [4639.] Subjects Indorsed on Certificate.

Every certificate issued by authority of the state of Washington shall have written or printed upon its face the subjects in which the holder has been examined, with standings in each, or the subjects or work upon which credits are given. [L. '09, p. 338, § 10.]

§ 4976. [4640.] Registration of Certificates.

All certificates issued by the superintendent of public instruction shall be valid and entitle the holder thereof to teach in any county of the state upon being registered by the county superintendent thereof, which fact shall be evidenced by him on the certificate in the words, "Registered for use in — county," together with the date of registry, and his official signature: Provided, that a copy of the original certificate or diploma duly certified by the superintendent of public instruction may be used for the purpose of registry and indorsement in lieu of the original. [L. '09, p. 338, § 11. Cf. L. '97, p. 416, § 147.]

§ 4977. [4641.] Examinations—Where and When Held.

An examination for the certification of teachers of the state of Washington for third, second, first grade primary and first grade certificates shall be held at the county seat of each county by the county superintendent in accordance with the rules and regulations of the state board of education, on the first Thursday of August, November, and March and the Friday and Saturday next following; and for professional and life certificates on the above-named days of August and March only. [L. '15, p. 482, § 1; L. '09, p. 338, § 1; L. '07, p. 142, § 1.]

§ 4978. [4642.] Papers Forwarded to State Superintendent.

The county superintendent shall within three days following the close of the examinations provided for in section 4977, transmit to the state superintendent of public instruction all papers written at such examination, together with such other reports as shall by him be required. The superintendent of public instruction shall keep all manuscripts on file for a period of at least sixty (60) days from the date of the examinations. [L. '15, p. 482, § 2; L. '09, p. 338, § 2. Cf. L. '97, p. 415, § 143.]

§ 4979. [4643.*] Common School Certificates and Diplomas Classified.

The certificates and diplomas granted by authority of the state of Washington, and authorizing the holders to teach in the public schools of this state shall be classified as follows:

First—Common school certificates and diplomas.

- (a) Second grade elementary certificates;
- (b) First grade elementary certificates;
- (c) Life certificates.

Second—City certificates.

- (a) City high school certificates;
- (b) City grammar school certificates;
- (c) City primary certificates.

Third—Certificates and diplomas of the higher institutions of learning.

- (a) Of the normal schools;
- (b) Of the State College of Washington;
- (c) Of the University of Washington.

Fourth—Temporary certificates.

Fifth—Special certificates. [L. '17, p. 201, § 1; L. '09, p. 339, § 1 (Art. III). Cf. L. '90, p. 358, § 12; L. '91, p. 243, § 4; L. '90, p. 383, § 85; 1 H. C., §§ 777, 850; L. '97, p. 412, § 137; L. '05, p. 105, § 2; L. '07, p. 96, § 1; L. '07, p. 616, § 11.]

§ 4980. Eligibility—Rights Under Existing Certificates.

On and after September first (1), 1918, no person shall be eligible to certification as a teacher in this state who has not completed the work of a four-year high school, or its equivalent: Provided, nothing in this act shall be construed to invalidate the life diplomas granted under the laws of the territory of Washington, or to invalidate any certificate or diploma heretofore granted in accordance with the laws of the state of Washington, but the same shall continue in effect in accordance with the provisions of the laws under which they were granted: Provided, That any third grade certificate, second grade certificate, first primary certificate or first grade certificate or professional certificate, or any renewal or any permanent certificate in full force and effect at the time of the taking effect of this act shall for the purpose of renewal, or for securing a certificate of higher grade, or for securing a permanent certificate, or for any other purpose whatsoever, be of the same force and effect, and shall entitle the holder thereof to the same rights and privileges as he would be entitled to under the provisions of the law relative thereto in force at the time such certificate or renewal was issued. [L. '17, p. 202, § 2.]

§ 4981. [4644.*] Qualifications for Certificates—Grades—Life Certificates.

On and after September first (1st), 1918, the common school certificates and diplomas issued by authority of the state of Washington, the period for which each shall be valid and the qualifications required of applicants for the same shall, in addition to the provisions hereinbefore set out, be as follows:

First. Second grade elementary school certificates: Applicant shall pass an examination in reading, grammar, penmanship and punctuation, history of the United States, geography, arithmetic, physiology and hygiene, orthography, and Washington State Manual, and in addition present satisfactory evidence of having had nine (9) weeks of professional training in an accredited institution of higher learning in which elementary teachers are trained. This certificate shall authorize the holder to teach in the elementary schools of this state, and shall be valid for two (2) years, but may be renewed twice, if, during the life of the certificate or a renewal thereof the holder has attended an accredited institution of higher education for nine (9) weeks in which elementary teachers are

trained and has done satisfactory work in three (3) subjects, and present a certificate in evidence thereof signed by the principal or president of such school.

Second. First grade elementary certificates: Applicant must have taught at least nine (9) months and must have had at least one year of professional training in an accredited institution of higher learning and shall have credits in the same subjects as for a second grade elementary certificate, and must also pass an examination in nature study, drawing, juvenile and general literature, agriculture, civics, physical geography, and music; but the state board of education may accept other subjects in lieu of two (2) of the above subjects at the request of the applicant, as provided in section 4973: Provided, grades of eighty-five (85) per cent and above earned in accredited institutions of higher learning in which teachers for the elementary schools are trained may be accepted by the state board of education in lieu of examinations in such subjects. This certificate shall authorize the holder to teach in any grade of elementary schools of this state and shall be valid for five (5) years, and may be renewed for a like period if application is made not later than ninety (90) days after certificate expires, and if, during the life of the certificate the holder has complied with the following provisions, to wit: An attendance of eighteen (18) weeks at an accredited institution of higher learning in which elementary teachers are trained during the life of the certificate when satisfactory work is done in at least three (3) subjects and certified to by the principal or president of such school.

Third. Life certificates: Applicant must file with the superintendent of public instruction evidence of having taught successfully for forty-five (45) months, not less than twenty-seven (27) months of which shall have been in this state. He must have the credits required for a first grade elementary certificate and in addition shall pass an examination in the following, to wit: Algebra, plane geometry, biology, geology, English literature, physics, psychology, composition, and general history, and present satisfactory evidence of having completed satisfactorily twelve (12) semester hours of professional study in an accredited institution of higher learning, or else pass an examination in such professional subjects as the state board of education may direct: Provided, that the state board of education may accept other subjects in lieu of any of the above mentioned subjects upon request of the applicant: Provided further, that grades of eighty-five (85) per cent and above earned in accredited institutions of higher learning in which teachers for the common schools are trained may be accepted by the state board of education in lieu of examinations in such subjects. This certificate shall be valid in the common schools of the state during the life of the holder unless revoked for cause. [L. '17, p. 203, § 3; L. '11, p. 51, § 4. Cf. L. '09, p. 339, § 1 (Art. IV). Cf. L. '97, p. 412, § 137; L. '03, p. 183, § 4; L. '05, p. 106, § 3; L. '07, p. 618, § 13.]

Section "9" in the third subdivision is evidently an error, "§ 8" probably being intended; and § 4974 [4973] is substituted accordingly.

§ 4982. [4645.] City Certificates—Board of Examiners, Powers and Duties of.

In any city of this state in which one hundred or more teachers are employed in the city schools, if the board of directors in such city shall

so determine, there shall be a board of examiners consisting of the city superintendent of schools and two other members having practical experience as teachers, residents of said city, to be designated as associate examiners. The associate examiners shall be elected by the board of directors at their regular meeting in July annually, and shall hold office for one year, but no candidate for examination as a preliminary to teaching in the public schools shall be an associate examiner. The city superintendent of schools shall be chairman of the board of examiners. The board of examiners shall meet and hold examinations for the granting of teachers' certificates on such occasions only as may be authorized by the board of directors. Such board of examiners shall have power:

(1) To adopt rules and regulations, not inconsistent with the laws of this state or the rules of the state board of education, for its own government and for the examination of teachers and to fix standards of proficiency for the granting and renewing of certificates subject to the approval of the board of directors.

(2) To prepare questions on the various subjects prescribed by law and examine by written or oral examination all candidates for the following certificates: (a) A city high school certificate valid for one year only unless renewed and authorizing the holder to teach or serve as principal in any primary, grammar, or high school in such city. (b) A city grammar school certificate valid for one year only unless renewed and authorizing the holder to teach in any primary or grammar school, or serve as principal in any primary school in such city. (c) A city primary certificate, valid for one year only, unless renewed, and authorizing the holder to teach in any primary school in the city. The board of examiners shall report the result of all examinations to the board of directors who, through the president and secretary thereof, shall issue to the successful candidates the certificates to which they are entitled; and the board of directors shall report a list of certificates issued to the state superintendent of public instruction and to the county superintendent of the county in which the city is located.

(3) To recommend to the board of directors renewal of the various renewable certificates, in accordance with such regulations as they may adopt, or as may be prescribed by the board of directors; whereupon said board of directors through its president and secretary, may renew such certificates from year to year. [L. '09, p. 342, § 1. Cf. L. '07, p. 601, § 1.]

§ 4983. [4646.] Age—Moral Character, etc.

No certificate of permission to teach shall be issued to any person not eighteen years of age. No certificate shall be granted to any person whose moral character or habits are known by the board of examiners or board of directors to be bad, or who is afflicted with a serious infectious or hereditary disease. No certificate shall be granted by the board of directors or upon its authority except to successful candidates in a regular or special examination conducted by the board of examiners in accordance with the provisions of the law. [L. '09, p. 343, § 2. Cf. L. '07, p. 602, § 2.]

See *supra*, § 4969, age of applicant.

§ 4984. [4647.] Primary and Grammar Certificates—Requirements.

City primary and city grammar certificates shall be granted only to applicants who are found upon examination to have a practical knowledge

of pedagogics, school management and the general school system of the state of Washington, and to be proficient in and qualified to teach the following branches: reading, writing, spelling, English grammar, geography, arithmetic, physiology and hygiene, United States history, and such other English branches as the board of directors may prescribe: Provided, that the examination of applicants for such certificates shall be specially adapted to discover their fitness to teach all branches named to pupils of primary or grammar grades respectively. [L. '09, p. 344, § 3. Cf. L. '07, p. 603, § 3.]

§ 4985. [4648.] High School Certificates.

City high school certificates shall be granted only to applicants who pass satisfactorily the examination required for grammar certificates and in addition thereto, sustain a satisfactory examination in civil government, physical geography, elementary physics, algebra, botany, and such other branches as the board of directors may prescribe. [L. '09, p. 344, § 4. Cf. L. '07, p. 603, § 44.]

§ 4986. [4649.] Exemptions.

Holders of normal diplomas and holders of state diplomas or state certificates or any certificate authorized by the laws of the state of Washington shall be exempt from all further examinations during the terms of validity of such certificates as provided by law. Teachers engaged in the exclusive teaching of music, foreign languages, drawing, penmanship, kindergarten, manual training, domestic science and physical culture shall be exempt from all examinations except such as pertain to the special departments over which they preside. [L. '09, p. 344, § 5. Cf. L. '07, p. 603, § 5.]

§ 4987. [4650.*] Special Certificates.

Special certificates shall be granted only to applicants who by examination or otherwise show satisfactory evidence of fitness to teach a special or departmental subject (such as music, drawing, penmanship, kindergarten, manual training, domestic science, physical education), and such other subjects as may be authorized by the state board of education: Provided, that special certificates may be issued authorizing any person or persons to teach any subject or subjects in night schools which such person or persons show by examination or otherwise they are qualified to teach. [L. '17, p. 205, § 4; L. '09, p. 344, § 6. Cf. L. '07, p. 603, § 6.]

§ 4988. [4651.] Certificates and Diplomas of Higher Institutions.

Certificates and diplomas of the normal schools, of the State College of Washington, and of the University of Washington shall be granted as provided by law. [L. '09, p. 345, § 1 (Art. VI).]

§ 4989. [4651-1.] Certificates—Graduates of Accredited Schools.

The state board of education shall investigate the character of the work required to be performed as a condition of entrance to and graduation from normal schools, colleges, universities and other institutions of higher education and to prepare an accredited list of those higher

institutions of learning of this and other states whose graduates may be awarded teachers' certificates by the superintendent of public instruction without examination except upon the state manual of Washington: Provided, that graduates of accredited colleges and universities must present evidence that they have completed satisfactorily twelve semester hours in professional study in an accredited institution or else pass examination in such professional subjects as the state board of education may direct: And provided further, that the entrance and graduation requirements of all colleges and universities whose diplomas are accredited must be equal to those of the University of Washington; and the requirements for normal schools shall be equal to the advanced courses of the state normal schools of this state. [L. '15, p. 481, § 1.]

§ 4990. [4652.] Temporary Certificates.

Temporary certificates shall be issued in accordance with the rules and regulations of the state board of education. [L. '11, p. 54, § 5. Cf. L. '09, p. 345, § 1 (Art. VII); L. '97, p. 416, § 146.]

Former laws cited in 48 Wash. 487.

§ 4991. [4653.*] Special Certificates, to Whom Issued.

Special certificates shall be issued by the county superintendent, or city superintendent if in a city, to applicants who show by examination or otherwise satisfactory evidence of fitness to teach special subjects, such as music, art, manual training, penmanship, kindergarten, domestic science, typewriting, stenography, physical education, or any subject or subjects in night school, and such other subjects as may be authorized by the state board of education. Special certificates shall be valid so long as the holder continues to teach in the city or county where granted, unless revoked. [L. '17, p. 205, § 5; L. '09, p. 345, § 1 (Art. VIII).]

§ 4992. [4654.] Cause for Revocation of Certificate.

Any certificate to teach named in this act may be revoked by the authority authorized to grant same upon complaint of any superintendent for immorality, violation of written contract, intemperance, crime against the law of the state, or any unprofessional conduct, after the defendant has been given an opportunity to be heard. [L. '09, p. 345, § 1 (Art. IX). Cf. L. '97, p. 417, § 148.]

Former laws cited in 21 Wash. 150.

Revocation: See Remington's Digest, Schools, § 47; Browne v. Gear, 21 Wash. 147, 57 Pac. 359.

§ 4993. [4655.] Penalty.

In case any certificate is revoked, the holder shall not be eligible to receive another teacher's certificate for a period of twelve months after the date of revocation. [L. '09, p. 346, § 2.]

§ 4994. [4656.] Appeal.

Any teacher whose certificate to teach has been revoked, as provided in the preceding sections, and feeling aggrieved at such revocation, shall have the following right of appeal:

First. To the superintendent of public instruction whenever the certificate has been revoked by the county superintendent.

Second. To the state board of education when the certificate has been revoked by the superintendent of public instruction.

Third. To the state board of education when the certificate has been revoked by the faculty of the State University, the State College or the normal schools.

Fourth. An appeal under the provisions of this act to the state superintendent shall operate as a stay of proceedings for a period of thirty (30) days, and an appeal to the state board of education shall operate as a stay of proceedings till the next regular or special meeting of said board. [L. '09, p. 346, § 3.]

Right to appeal to courts to interfere with revocation of teacher's

license. 14 **Ann. Cas.** 298; 15 **L. B. A. (N. S.)** 1148.

CHAPTER XXXVI.

TEACHERS' RETIREMENT FUND.

§ 4995. Definition of Terms.

The word "teacher" whenever used in this act shall be held and construed to mean and include any person regularly employed as teacher, instructor, principal, supervisor or superintendent in the public schools, or as an assistant to any such teacher, instructor, principal, supervisor or superintendent. The word "member" whenever used in the act shall be held and construed to mean and include any teacher who shall be a contributor to the retirement fund of the district where such teacher is employed, any person who shall be an annuitant of such fund, and any person who, having been a teacher in such district of the first class, shall be a contributor to the retirement fund of such district while temporarily holding office or being employed as a county superintendent of schools or as a deputy or assistant thereof in the county where such district is situated, or as state superintendent of schools or deputy or assistant thereof, in this state, or while temporarily absent on leave for professional preparation, as hereinafter provided. The word "annuitant" whenever used in this act shall be held and construed to mean and include any member who shall have been retired and shall be entitled to receive an annuity under the provisions of this act. The word "director" whenever used in this act shall be held and construed to mean and include a regularly elected, qualified and acting member of the board of school directors of a school district of the first class. The word "trustees" whenever used in this act shall be held and construed to mean and include a regularly elected, qualified and acting member of the board of trustees of a teachers' retirement fund established under the provisions of this act. [L. '17, p. 744, § 1.]

Constitutionality of teachers' pension law. **L. R. A.** 1918A, 526.

Vested right of pensioner to pension. **Ann. Cas.** 1915C, 751; 50 **L. R. A. (N. S.)** 1021.

§ 4996. Establishment of Retirement Fund.

Whenever a petition in writing is signed by an apparent majority of the teachers of any school district of the first class, and praying for the

establishment of a teachers' retirement fund for such district, under the provisions of this act, shall be filed with the board of directors of such district, the board shall at its next regular meeting canvass such petition and if it be found to contain the valid signatures of a majority of the teachers of the district and to be in proper form, the board shall at the next regular meeting of the board, vote upon the question of establishing a teachers' retirement fund under the provisions of this act, in and for such district, and shall enter the result of such vote upon the minutes of the board and in case a majority of the board shall vote in favor thereof such fund shall be deemed established, but nothing herein contained shall be construed as preventing the filing of a new petition for the establishment of such fund, at any time after the expiration of one year from the date of the refusal of the board to establish such fund. [L. '17, p. 745, § 2.]

§ 4997. Administration of Fund—Director Trustees—Member Trustees.

Every such fund established under the provisions of this act, shall be administered by a board of five trustees, two of whom shall be members of the board of directors of the district in which the fund is established, and three of whom shall be members of the fund, to be elected as hereinafter provided. Upon the establishment of the fund the board of directors shall elect two director trustees to serve until and for the term of one year from and after the second Monday in October next following the establishment of such fund, and thereafter shall annually at its first regular meeting in September, elect two director trustees for the term of one year from and after the second Monday in October next following such election: Provided, that no director trustee shall be eligible to serve as trustee after he shall cease to be a director. Any vacancy in the office of director trustee shall be filled by the board of directors for the unexpired term. Upon the establishment of the fund the board of directors shall call an election to be held not less than one or more than two weeks from the date of establishment, at the office of the board of directors, at which the petitioners for such fund shall elect by ballot from among their number three member trustees, to serve until and for the respective term of one, two and three years from and after the second Monday in October next following the establishment of such fund, and thereafter the members of the fund shall annually, on the first Monday in October, elect one member trustee for the term of three years from and after the second Monday in October next following such election: Provided, that no petitioner shall be eligible to serve as trustee for more than ninety days after his election unless he shall become a member of the fund, and no member trustee shall be eligible to serve as such after he shall cease to be a member. Such annual election of the member trustee shall be called and held under the direction of and in the manner prescribed by the board of trustees. Any vacancy in the office of member trustee shall be filled by the board of trustees until such annual election, when the vacancy shall be filled by election for the unexpired term. [L. '17, p. 745, § 3.]

§ 4998. Organization of Board—Officers.

On the Monday following the election of the first member trustees, the board of trustees shall meet and organize by the election of a president

and a secretary to serve until and for the term ending one year from and after the second Monday in October next following the establishment of the fund, and thereafter shall annually on the second Monday in October elect said officers for the term of one year, and in case of a vacancy shall fill the same for the unexpired term. The secretary of the board of trustees may or may not be a member of the board. The trustees shall serve without pay, but the secretary, whether a trustee or not, shall receive such reasonable salary as the board may authorize. The county treasurer, the county auditor and the prosecuting attorney of the county in which any such fund shall be established, shall be ex-officio treasurer, auditor and legal adviser, respectively, of such fund, and the board of trustees thereof, and shall be liable, respectively, upon their official bonds for the faithful performance of their duties under the provisions of this act, and shall serve without extra compensation: Provided, however, that in case of any controversy arising between the board of trustees and the board of directors, or the county treasurer, or county auditor, and whenever they shall deem it for the best interest of the fund the trustees are empowered to employ attorneys and pay reasonable fees for the services rendered, out of the retirement fund. [L. '17, p. 746, § 4.]

§ 4999. Meetings.

The board of trustees shall hold regular meetings on the second Monday in October, January, April and July of each year, and may hold special meetings at the call of the president or three trustees, and may adjourn any regular meeting from day to day, or time to time, until the business before the board is completed. [L. '17, p. 747, § 5.]

§ 5000. Office Expenses and Secretary's Salary.

A place for the transaction of the business of the board of trustees and an office for the secretary, together with all necessary furniture and supplies, including books, records, blanks and forms as prescribed by the state bureau of inspection and supervision of public offices, and all necessary clerical assistance for transacting the business of the trustees and the secretary, shall be furnished at the expense of the district in which the fund is established, and the salary of the secretary shall be paid out of the retirement fund. [L. '17, p. 747, § 6.]

§ 5001. Applications for Membership.

At any time within one year from the date of the establishment of a fund as in this act provided, any teacher employed by the district at the date of the establishment of such fund, and any person who shall have been a teacher employed by the district within two years prior to the date of the establishment of the fund and who shall have retired from service by reason of having become incapacitated for service in the public schools, and any person who having been a teacher in the district is holding office or is employed as state or county superintendent of schools in this state or as a deputy or assistant thereof or is absent on leave for professional preparation, may file with the secretary of the board of trustees, upon a blank to be furnished for that purpose, an application for membership in such fund, verified under oath by the applicant,

and showing a detailed statement of the applicant's service as a teacher in the district, in this state and elsewhere, giving the years and months of service in each, respectively, and shall file with such application, upon blanks to be furnished for the purpose, such proof of service certified by the clerk, or other officer having charge of the records of the district where the service was rendered, as may be required by the board of trustees. [L. '17, p. 747, § 7.]

§ 5002. Certificates of Membership.

All applications for membership shall be considered by the board of trustees at the next regular meeting after the same are filed, or at a special meeting called for that purpose before the next regular meeting, and, if the application is found to be in proper form and accompanied by the proof required by the trustees, the applicant's name shall be entered upon the membership register of the funds together with the respective totals of years and months of service allowed, in the district, in this state, and elsewhere, respectively, and a certificate of membership showing the date of issue and the former teaching serve [service] allowed, shall be delivered to the applicant and a duplicate thereof transmitted to the secretary of the district, who shall cause the same to be entered upon the records of the district. In making allowance for former service, a year of service shall be a legal school year where the service was rendered and fractions of years of service may be counted in computing the total years of service when the sum of such fraction equals one or more years: Provided, that no teacher shall receive more than one year's credit for teaching in any school year, as defined by the school code of this state. [L. '19, p. 415, § 1. Cf. L. '17, p. 748, § 8.]

§ 5003. Membership of New Teachers.

Every teacher entering the employment of a district after a fund has been established therein, shall become a member of such fund by virtue of such employment, and it shall be the duty of the secretary of the district, at the time a new teacher is employed, to file with the secretary of the fund a notice in writing stating the name of the teacher and the date when the employment begins, and to notify the teacher in writing of the provisions of this act with reference to membership in the fund and that an application for credit for former service, on a form to be furnished for that purpose, may be filed with the secretary of the fund within ninety days from the date of the beginning of such employment. In case such application is filed within ninety days the same shall be considered by the board of trustees and credit allowed and certificate of membership issued as in the case of original applications for membership. In case such application for credit for former service is not filed within ninety days, the teacher's name shall be entered upon the membership register of the fund without credit for former service and a certificate of membership without such credit issued as in the case of original applications for membership. [L. '17, p. 749, § 9.]

§ 5004. Membership Dues—Deduction from Salaries—Transfers.

It shall be the duty of the board of directors to assess against and deduct from the salary of each member of the fund employed by the

district, membership dues at the following rates, to wit: Twelve dollars (\$12.00) per year up to and including the tenth year of total service; twenty-four dollars (\$24.00) per year from and including the eleventh and up to and including the twentieth year of total service; and thirty-six dollars (\$36.00) from and including the twenty-first year of total service, until the total contribution of the member to the fund shall equal seven hundred and twenty dollars (\$720.00). Said assessments and deductions to be made in two equal semi-annual installments from the salary of such member earned in the months of October and April, respectively, of each school year: Provided, that in case any member shall be discharged or shall retire from employment of the district the membership dues for the months since the last semi-annual installment shall be deducted from the salary earned in the last month of service in the district. A receipt for the amount deducted, signed by the secretary of the board of directors, shall be delivered to the member, with the warrant for the installment of salary from which the deduction is made. It shall be the duty of the secretary of the board of directors, on or before the tenth day of November and May respectively in each year, to draw a warrant upon the county treasurer payable out of the general fund of the district and in favor of the retirement fund of the district, for the total amount of deductions made during the preceding six months, which warrant shall be presented to the county treasurer, who shall transfer the amount of such warrant from the general fund of the district to the retirement fund. Every member of the fund holding office or being employed as state or county superintendent of schools, or as deputy or assistant thereof, and every member of the fund granted a leave of absence for professional preparation, by the board of directors, may on or before the fifth day of November and May, respectively, of each year, pay to the county treasurer, for the benefit of the fund, a like amount as is hereinabove required to be deducted from the salary of a member employed by the district, and take the treasurer's receipt therefor. [L. '17, p. 749, § 10.]

§ 5005. Credits for Service and Contributions.

It shall be the duty of the secretary of the district, at the time of issuing the transfer warrants hereinabove provided for, to certify to the secretary of the fund the names of the teachers assessed and respective number of months of serving since the last certificate, and the respective amounts deducted from the salary of each. Upon receiving such certificate, it shall be the duty of the secretary of the fund to credit the members with the respective months of service and respective amounts contributed by each, in the proper columns of the membership register after their respective names. Each member of the fund not employed by the district or granted leave of absence for professional preparation by the board of directors, may on or before the tenth day of November, and on or before the tenth day of May of each year present his receipt from the county treasurer for his payment for the benefit of the fund, to the secretary of the fund, together with a verified statement of the amount and character of services rendered during the preceding half year, and it shall be the duty of the secretary to credit such service and contribution to

such member on the membership register and indorse such credit on the receipt and return it to the member: Provided, that credit shall not be allowed a member absent on leave for professional preparation in excess of two years of total absence on such leave, or in excess of one year of absence on such leave in any ten year period of total service. [L. '19, p. 416, § 2; L. '17, p. 750, § 11.]

§ 5006. Fiscal Year—Duty of County Treasurer.

The fiscal year of any retirement fund established under the provisions of this act shall begin on the first day of July in each year and end on the thirtieth day of June following, and it shall be the duty of the county treasurer, on or before the second Monday of July of each year, to certify to the board of trustees the balance of cash remaining in the fund at the close of the preceding fiscal year, and the face value of and the amount of interest accrued upon any securities belonging to the fund, and it shall be the duty of the treasurer, from time to time, upon written request of the trustees, to certify the amount of cash remaining in, and the face value of and the amount of interest accrued upon any securities belonging to the fund at any given date. [L. '17, p. 751, § 12.]

§ 5007. Annual Estimate of Receipts and Disbursements.

It shall be the duty of the board of trustees, at its regular meeting in July of each year, to make an estimate of the total receipts of the fund for the current fiscal year, including membership dues, interest earned on securities belonging to the fund, and contributions transferred from other retirement funds in the state, and an estimate of the total disbursements from the fund during the current fiscal year, including retirement annuities, disability annuities, the secretary's salary, refunds to discharged members, payments to beneficiaries of deceased members, and contributions transferred to other retirement funds in this state. [L. '17, p. 751, § 13.]

§ 5008. Investment of Excess Moneys—Sale of Securities.

If at any time it shall appear, to the board of trustees, that the balance of cash remaining in the fund, together with the estimated receipts for the remainder of the fiscal year, will exceed the estimated disbursements for the remainder of the year, in the sum of one thousand dollars (\$1,000) or more, it shall be the duty of the board of trustees to invest such excess in such bonds as are by law authorized for the investment of the permanent school funds of the state, and in such investment to give preference to school district bonds regularly created and issued. Upon such investment being authorized by the board of trustees, the secretary of the board shall draw a warrant on the fund for the amount so invested, and the bonds so purchased shall be deposited with the county treasurer whose duty it shall be to collect all interest payments falling due thereon, and the principal at maturity, and to credit the amounts so collected to the retirement fund. If at any time it shall appear to the board of trustees, that the cash remaining in the fund together with the estimated receipts for the remainder of the fiscal year will not meet the estimated disbursements as they shall fall due, it shall be the duty of the board to sell so many of the bonds belonging to the fund as will produce cash sufficient for that purpose. [L. '17, p. 752, § 14.]

§ 5009. Credits for Re-entry into Service—Transfers.

Any member who leaves the employment of the district in which a retirement fund has been established under the provision of this act, and subsequently re-enters the employment of such district, shall be entitled to credit for contributions previously made, and, upon satisfactory proof, to credits for such service in teaching as has been rendered in the interim, and any member who leaves the employment of such district and enters the employment of another district in this state in which a retirement fund has been or shall be established under the provisions of this act, shall be entitled to have the amount such member has contributed to the fund of the first district, but without interest thereon, transferred to, and shall be given credit therefor in the fund of the second district, and shall be entitled to have not more than three years of service in the first district credited as service in the second district in case the member shall apply for an annuity from the fund of the second district under the provisions of this act: Provided, that such transferred service shall not reduce the total amount of service required, or the amount of service required in this state. [L. '19, p. 417, § 3; L. '17, p. 752, § 15.]

§ 5010. Length of Service for Retirement Annuities—Minimum of Contribution Credits.

Any member of the fund who shall have been a teacher for a period of, or periods aggregating thirty years, embracing not less than two hundred and forty months of service, fifteen years of which service shall have been in the public schools of this state, and twelve years of which service shall have been in the district where such person is a member, shall be entitled, upon and during retirement from service in the public schools to receive a retirement annuity of four hundred and eighty dollars (\$480): Provided, that any member of the fund who shall have been a teacher for a period of or periods aggregating thirty-five years, embracing not less than two hundred and eighty months of service, fifteen years of which shall have been in the public schools of this state, and who is employed as a teacher in the district at the time the fund is established, shall be entitled upon and during retirement from service in the public schools to receive an annuity of four hundred and eighty dollars (\$480): And provided further, that no retirement annuity shall be credited or paid until the expiration of one year from the date of the establishment of the fund: And provided further, that in case the credit for membership dues of any member, at the date of retirement, shall be less than the sum of seven hundred and twenty dollars (\$720), and thereafter shall be paid such annuity, unless the member shall elect to pay into such fund the necessary amount to make up the total credit of seven hundred and twenty dollars (\$720), in which case the annuity shall be paid to the member. [L. '19, p. 417, § 4. Cf. L. '17, p. 753, § 16.]

§ 5011. Disability Annuity.

Any member of the fund who shall have been a teacher for a period of, or periods aggregating ten years, embracing not less than eighty months of service, eight years of which service shall have been in the public

schools of this state, and six years of such service shall have been in the district where such person is a member, shall be entitled, upon retiring from service in the public schools and proving to the satisfaction of the board of trustees that he or she has become incapacitated for service in the public schools, to receive a disability annuity of such part of four hundred and eighty dollars (\$480) as the number of years of total service of such member is a part of thirty, for a period not to exceed two years, and any member of a fund who shall have been a teacher for a period of, or periods aggregating, twenty years, embracing not less than one hundred and sixty months of service, twelve years of which service shall have been in the public schools of this state, and ten years of such service shall have been in the district where such person is a member, shall be entitled, upon retiring from service in the public schools and proving to the satisfaction of the board of trustees that he or she has become incapacitated for service in the public schools, to receive a disability annuity of such part of four hundred and eighty dollars (\$480) as the number of years of total service of such member is a part of thirty, so long as such member is incapacitated for service: Provided, that no disability annuity shall be paid for less than three months' incapacity, nor shall accrue until any sick benefit allowed by the district shall have ceased: And provided further, that no such disability annuity shall be paid until the expiration of one year from the date of the establishment of the fund. [L. '17, p. 754, § 17.]

§ 5012. Payment of Annuities.

All retirement annuities shall be credited or paid in quarterly installments on the third Monday of October, January, April and July, for the quarters ending on the first day of said months and shall accrue from the first day of the month next following the date of their allowance: Provided, the annuitant shall have retired from service on that date, otherwise from the first day of the month next following the date of retirement. All disability annuities shall be paid on the first day of the month next following the date of allowance for the amount accrued to that date, and thereafter in monthly installments on the first day of the month for the amount accruing for the previous month. [L. '17, p. 754, § 18.]

§ 5013. Pro Rata Payments—Exemptions.

In case there shall not at any time be sufficient funds to the credit of the retirement fund to pay annuities in full as they shall fall due they shall be paid pro rata. Annuities granted under the provisions of this act shall not be subject to attachment, garnishment, or seizure by execution in the hands of the board of trustees or the county treasurer, and such annuities shall not be subject to sale, assignment, pledge, mortgage or other alienation. [L. '17, p. 755, § 19.]

§ 5014. Discharged Members Repaid Dues.

Any member of the fund who shall be discharged from the employment of the district where such person is a member, or who is refused further employment in the district where such person is a member, before such member is entitled to a retirement annuity, shall be entitled to be

paid back, out of such fund, the amount such member has paid into such fund as membership dues, but without interest thereon, less such sum or sums as have been paid to such member as disability annuities. [L. '17, p. 755, § 20.]

§ 5015. Payments in Case of Death of Member.

In case of the death of any member before such member has been retired and granted a retirement annuity, the beneficiary or beneficiaries, designated upon a form provided for that purpose, signed by the member, witnessed by two witnesses and filed with the secretary of the board of trustees, or in case no beneficiary is designated, then the legatee or legatees, or heir or heirs, of the member, as the case may be, shall be entitled to be paid out of the fund a sum equal to one-half of the difference between the entire amount such deceased member has paid into the fund as membership dues, and the entire amount which has been paid to such deceased member as disability annuities. And in case of the death of any member after such member has been retired and granted a retirement annuity, such beneficiary or beneficiaries, legatee or legatees, heir or heirs, as the case may be, shall be entitled to be paid out of the fund a sum equal to one-half of the difference between the entire amount such deceased member has paid into the fund as membership dues, and the entire amount which has been paid to such deceased member as and for disability and retirement annuities. [L. '17, p. 755, § 21.]

§ 5016. Verified Claims Against Fund.

All original claims for retirement annuities, disability annuities, refunds to discharged members, transfers to the retirement funds of other districts, and payments to beneficiaries, legatees or heirs of deceased members, shall be made in writing on forms to be furnished for that purpose, verified under oath by the claimant, and filed with the secretary of the fund, and shall be supported by such proof, by affidavit or otherwise, of the facts upon which the claim is based, as may be required by the rules and regulations adopted by the board of trustees. Upon the filing of any claim the secretary shall set the same down for hearing before the board of trustees at the next ensuing regular meeting of the board, or at a special meeting called for that purpose in case the board shall determine that an emergency exists and notify the claimant of the date of the hearing, and shall, at such hearing, certify to the board the facts with reference to the years and months of service, of membership dues paid by, and previous payments made to, the member upon whose record the claim is based, as shown by the records in the office of the secretary. [L. '17, p. 756, § 22.]

§ 5017. Allowance or Rejection.

If at the hearing it shall appear to the board that the claim is based upon sufficient facts, but is not in proper form or the requisite proof is not offered, the hearing may be adjourned for such reasonable time as the board may determine. The final action of the board in allowing or rejecting any claim shall be by resolution of a majority of the members of the board and entered on the minutes, and in case the claim is allowed,

the secretary at the expiration of ten days from the date of allowance, if no appeal is taken, shall draw the necessary warrant on the county treasurer payable out of the retirement fund, deliver the same to the claimant and take a receipt therefor, and enter the payment on the membership register. All subsequent payments of annuities shall be authorized by resolution of the board entered on the minutes, upon proper vouchers signed and verified by the annuitant as may be required by the rules adopted by the board, and the secretary shall draw the necessary warrant therefor at the expiration of five days from the date of authorization, if no appeal is taken, and deliver the same to the annuitant. All warrants issued by authority of the board of trustees shall be entered in a warrant register to be kept by the secretary, specifying the date, number, amount and name of the payee thereof, and the secretary shall on or before the fifth day of each month transmit certified copies of such warrant register from the preceding month to the county treasurer and the county auditor, respectively. [L. '17, p. 756, § 23.]

§ 5018. Appeals to Superior Court.

Any claimant feeling aggrieved by the action of the board in rejecting any claim, or any annuitant aggrieved by the action of the board in discontinuing the payment of any annuity, or any five members aggrieved by the action of the board in allowing any claim or continuing the payment of any annuity allowed, may, within ten days from the date of such action appeal therefrom to the superior court of the county in which the fund is established, by filing with the secretary a notice of appeal in writing, signed by the appellants and giving a bond to the fund, with sufficient security to be approved by the secretary, in the sum of fifty dollars (\$50), conditioned to pay all costs which may be adjudged against the appellants in the superior court, and in case the appeal is taken by members, a copy of the notice of appeal shall be served upon the claimant or annuitant as the case may be. Upon the taking of an appeal, the secretary shall certify to the clerk of the superior court all papers and documents filed in the matter of the claim, together with a transcript of the record of the action of the board thereon, the notice of appeal and the appeal bond, and the matter shall be set down for hearing de novo before the court without a jury and heard in the manner provided by law for setting and hearing appeals from justices of the peace, except as hereinabove provided. Appeals from the decisions of the superior court may be taken to the supreme court of this state in the manner provided by law for taking appeals in equity cases. [L. '17, p. 757, § 24.]

§ 5019. Partial Invalidity.

If any part of this act shall be adjudged to be invalid or unconstitutional, such adjudication or [of] invalidity or unconstitutionality shall not affect the validity or constitutionality of the act as a whole, or of any part thereof not adjudged invalid or unconstitutional. [L. '17, p. 758, § 25.]

§ 5020. Tax Levies for Benefit of Retirement Fund.

If at the time of making the annual estimate of receipts and disbursements, as provided in section 5007, it shall appear that the total estimated receipts for the current fiscal year together with the total assets of the fund at the close of the preceding fiscal year, will be insufficient to meet the total estimated disbursements for the current fiscal year, it shall be the duty of the secretary of the board of trustees to certify the amount of such deficiency to the board of directors on or before the third Monday in July, and it shall be the duty of the board of directors to report to the board of county commissioners the amount required to make up such deficiency with the annual estimate of the amount required for the support of the schools of the district and the board of county commissioners shall include such amount in the general tax levy for the district, and the same shall be collected as other taxes and when collected shall be credited to the teachers' retirement fund of the district, provided, however, that the amount of such levy for the benefit of any retirement fund shall not in any year exceed a sum equal to the total amount contributed to the fund by its members during the preceding fiscal year. [L. '19, p. 418, § 5.]

CHAPTER XXXVII.**GENERAL ELECTIONS.****§ 5021. [4657.] When and Where Held.**

The election of school district directors shall, except as otherwise provided by law, be held on the first Saturday in March of each year, at the district schoolhouse, if there be one, or if there be none or more than one, then at a place to be designated by the board of directors; Provided, that if a petition signed by not less than twenty-five per cent of the legal voters in any district asking that the date of the next annual election therein be changed, shall be filed with the county superintendent of schools not less than twenty days before such election, said superintendent shall fix a date within the first seven days of March, other than a Saturday, for the holding of such election and forthwith notify the clerk thereof and such election shall then be held upon the date so fixed in the manner and upon the notice that other like elections are held. Special school elections shall be called and conducted in the manner provided for calling and conducting annual elections. [L. '15, p. 338, § 1; L. '13, p. 348, § 1; L. '09, p. 346, § 1; L. '90, p. 375, § 54; L. '91, p. 255, § 18; 1 H. C., § 821; L. '93, p. 268, § 6; L. '97, p. 417, § 149; L. '01, p. 47, § 4; L. '03, p. 184, § 36.]

Cited in 4 Wash. 302, 663; 13 Wash. 702; 40 Wash. 456, 458.

§ 5022. [4658.] Election, Notice of, etc.

The district clerk must give at least ten days' notice of such school election, by posting or causing to be posted, written or printed notices thereof in at least three public places in the district, one of which must be the place of holding the election. Said notice must designate the place of holding the election, day of holding the election, hours between which the polls are to be kept open, names and offices for which persons are

to be elected, and terms of office, with a statement of any other questions which the board of directors may desire to submit to the electors of said district. Notices must be signed by the district clerk "By order of the board of directors." Unless otherwise designated in the notice of election, the polls shall be open at 1 o'clock in the afternoon and close at 8 o'clock in the afternoon, but the board of directors may, in districts of the second or the third class, previous to giving notice of election, determine on an hour before 8 o'clock for closing, but they must not be closed earlier than 4 o'clock in the afternoon. In no case shall the polls be opened before the hour named in the notice, nor kept open after the hour fixed for closing the polls, but if there is not a sufficient number of electors present at the hour named for opening the polls to constitute a board of election, it shall be lawful to open the polls as soon thereafter as a sufficient number of electors is present. [L. '09, p. 346, § 2. Cf. L. '90, p. 375, § 55; 1 H. C., § 822; L. '97, p. 417, § 150.]

Cited in 4 Wash. 302, 662; 31 Wash. 4; 97 Wash. 208.

Elections for the purpose of authorizing an increase of the debt limit of school districts may properly be held under the general provisions of law concerning the holding of annual and special school elections: *Holmes & Bull F. Co. v. Hedges*, 13 Wash. 696, 43 Pac. 944.

Under Article VI, § 2, of the Constitution, women possessing certain qualifications have the right to vote at all school elections: *Holmes & Bull F. Co. v. Hedges*, 13 Wash. 696, 43 Pac. 944.

The successful candidate having received six hundred and fifty votes as against two hundred and eighty for the defeated candidate, the latter must allege and prove, in order to overthrow the election, that had the polls been kept open until 8 P. M. the result would have been

different: *State ex rel. Bailey v. Smith*, 4 Wash. 661, 30 Pac. 1064.

If notice of election, published by the clerk of a school district, notified the electors that the polls would be open until 7 P. M., instead of 8 P. M., as required by statute, the clerk, being himself a candidate, cannot take advantage of his own error: *State ex rel. Bailey v. Smith*, *supra*.

On appeal from a judgment ousting the appellant from the office of school clerk, he is entitled (L. '91, p. 341) to file a bond staying proceedings pending the appeal, and it is the duty of the trial judge to order and fix the amount thereof: *State ex rel. Smith v. Sachs*, 3 Wash. 96, 27 Pac. 1075.

Polls, When to be Open: See *Stimson Timber Co. v. Mason County*, 97 Wash. 205, 166 Pac. 251.

§ 5023. [4659.] Election, How Conducted.

At the hour fixed for opening the polls the electors present shall select two electors to act as judges of the election and one elector to act as clerk of the election, and the three selected shall constitute the election board; and no election shall be held unless an election board is so constituted and qualified. The judges and clerk aforesaid shall, before entering upon the duties of their office, severally take and subscribe an oath or affirmation faithfully to discharge the duties as such officers of election, said oath or affirmation to be administered by any school officer or any other person authorized to administer oaths. The judges shall, before they commence receiving ballots, cause to be proclaimed aloud at the place of voting that the polls are now open. [L. '09, p. 347, § 3. Cf. L. '90, p. 376, § 56; 1 H. C., § 823; L. '97, p. 418, § 151.]

§ 5024. [4660.] Form and Reception of Ballot.

The voting shall be by ballot. The ballots shall be of white paper of uniform size and quality containing the names of the persons for whom the electors intend to vote, and designating the office to which such person

so named is intended by him to be chosen. Whenever any person offers to vote, one of the judges shall pronounce his name in an audible voice, and if there be no objections to the qualifications of such person as an elector, he shall receive the ballot in the presence of the election board and deposit the same without being opened or examined in the ballot-box, and the clerk shall immediately enter the name upon the list headed "Names of voters." [L. '09, p. 347, § 4. Cf. L. '90, p. 376, § 57; 1 H. C., § 824; L. '97, p. 418, § 152.]

Sufficiency of Ballots: See *Kinder v. School District No. 126*, 68 Wash. 410, 123 Pac. 610.

§ 5025. [4661.] Qualification, Registration and Challenges, of Voters.

Every person, male or female, over the age of twenty-one years, who shall have resided in the school district for thirty days immediately preceding any school election, and in the state one year, and is otherwise, except as to sex, qualified to vote at any general election, shall be a legal voter at any school election, and no other person shall be allowed to vote: Provided, that registration for purposes of school election shall not be required except in school districts of the first class. Persons offering to vote may be challenged by any legally qualified school elector of the district, and one of the judges of election shall thereupon, before receiving his vote, administer to the person challenged an oath in substance as follows: "You do swear (or affirm), that you are a citizen of the United States, that you are twenty-one years of age, according to your information and belief, and that you have resided in this district thirty days next preceding this election, and in the state one year, and that you have not voted before on this day." If he shall refuse to take the oath, his vote will be rejected. Any person guilty of illegal voting shall be punished as provided in the general election laws of the state. [L. '09, p. 348, § 5. Cf. L. '90, p. 377, § 58; 1 H. C., § 825; L. '97, p. 418, § 153; L. '99, p. 323, § 23.]

Power of legislature to define qualifications of voters at school elections. 7

Power of legislation to define qualifications of voters at school elections. 7
Ann. Cas. 666.

§ 5026. [4662.] Counting and Canvass of Returns.

When the polls are closed proclamation thereof shall be made at the place of voting, and no vote shall be afterward received. As soon as the polls are closed the judges shall open the ballot-box and commence counting the votes, and in no case shall the ballot-box be removed from the room in which the election is held until all the votes are counted. The counting shall be in public. The ballots shall be taken out one by one, by one of the judges, who shall open them and read aloud the name of each person contained therein, and the office for which such person was voted for. The clerk shall write down each office to be filled and the name of such person voted for such office, and shall keep the number of votes by tallies as they are read aloud by one of the judges. The counting of the votes shall continue without adjournment until all the votes are counted. No ticket shall be rejected on account of form or mistake in the initials, or spelling of names, if the judges can determine to their

satisfaction the person voted for and the office intended. After the result of the election is duly canvassed and officially declared, the clerk of the election shall forward the poll sheet thereof to the county superintendent, who shall preserve the same on file in his office. [L. '09, p. 348, § 6. Cf. L. '90, p. 377, § 59; 1 H. C., § 826; L. '97, p. 419, § 154.]

In a proceeding for an injunction to restrain the issuance of school district warrants, authorized at a special election for the purpose of erecting a high school building, the final return of the canvassing board, declaring the result, after canvassing the votes, regularly made and

not impeached for fraud, nor attacked in any proceeding to obtain a review thereof, is final and conclusive on the courts as to the number of votes cast: *Nichols v. School District*, 39 Wash. 137, 81 Pac. 325.

§ 5027. [4663.] Certificates of Election—Tie Votes.

Persons having the highest number of votes given for each office shall be declared duly elected, and the clerk of election shall immediately make out and deliver to each person so elected a certificate of election. The clerk of election shall also make out a certificate showing the persons elected to each office at such election, with oaths of office of persons elected attached, and mail such certificates and oaths to the superintendent of schools of the county in which the election is held. If two persons have an equal and highest number of votes for one and the same office, they shall, within ten days after the election, appear before the clerk of election of said district and publicly decide by lot which of the persons so having an equal number of votes shall be declared elected, and the clerk of election shall make out and deliver to the person thus declared elected a certificate of his election, and notify the county superintendent of the county as before provided. If the persons above named do not, within ten days after election, thus decide, the office shall be declared vacant by the clerk of election, and the county superintendent shall, when notified of the vacancy, fill the same by appointment. [L. '09, p. 349, § 7. Cf. L. '90, p. 378, § 60; 1 H. C., § 827; L. '97, p. 420, § 155.]

CHAPTER XXXVIII.

SPECIAL MEETINGS.

§ 5028. [4664.] When and for What Purpose Called.

Any board of directors may, at its discretion and shall, upon a petition of a majority of the legal voters of their district, call a special meeting of the voters of the district, to determine the length of time in excess of the minimum length of time prescribed by law that such school shall be maintained in the district during the year; to determine whether or not the district shall purchase any schoolhouse site or sites, and to determine the location thereof; or to determine whether or not the district shall build one or more schoolhouses; or to determine whether or not the district shall maintain one or more free kindergartens; or to determine whether or not the district shall sell any real or personal property belonging to the district, borrow money or establish and maintain a school district library. [L. '09, p. 349, § 1. Cf. L. '97, p. 420, § 156; L. '01, p. 382, § 18.]

Former laws cited in 44 Wash. 523, 524; 69 Wash. 191.

Cited in 97 Wash. 209.

Submission of Questions to Popular Vote: See Remington's Digest, Schools, § 23; Nichols v. School District, 39 Wash. 137, 81 Pac. 325; Regan v. School District No. 25, 44 Wash. 523, 87 Pac. 828;

State ex rel. School District No. 56 v. Superior Court, 69 Wash. 189, 124 Pac. 484; Sorenson v. Perkins & Co., 72 Wash. 16, 129 Pac. 577; Stimson Timber Co. v. Mason County, 97 Wash. 205, 166 Pac. 251.

§ 5029. [4665.] Where Held, Notice of, etc.

All such special meetings shall be held at the schoolhouse, if there be one, or if there be none, or more than one, then at such schoolhouse or place as the board of directors may determine. The voting shall be by ballot, the ballots to be of white paper of uniform size and quality. At least ten days' notice of such special meeting shall be given by the district clerk, in the manner that notice is required to be given of the annual election, which notice shall state the object or objects for which the meeting is to be held, and no other business shall be transacted at such meeting than such as is specified in the notice. The district clerk shall be clerk of the meeting, and the chairman of the board of directors, or, in his absence, the senior director present, shall be chairman of the meeting: Provided, that in the absence of one or all of said officers, the qualified electors present may elect a chairman or clerk, or both chairman and clerk, of said meeting as occasion may require, from among their number. The clerk of the meeting shall make a record of the proceedings of the meeting, and when the clerk of such meeting has been elected by the qualified voters present, he shall within ten days thereafter, file the record of the proceedings, duly certified, with the clerk of the district, and said records shall become a part of the records of the district, and be preserved as other records. [L. '09, p. 350, § 2. Cf. L. '97, p. 421, § 157.]

§ 5030. [4666.] Board to Carry Out Directions of Meeting.

It shall be the duty of every board of directors to carry out the directions of the electors of their districts as expressed at any such meeting. [L. '09, p. 350, § 3. Cf. L. '97, p. 421, § 158.]

CHAPTER XXXIX.

ELECTIONS IN DISTRICTS OF THE FIRST CLASS.

§ 5031. [4667.*] Elections in First-class Districts—Notice.

The regular district election in each district of the first class shall be held upon the first Tuesday of December in each year. The board of directors shall cause written or printed notices to be posted, specifying the day and place of such election, and the time during which the ballot box will be kept open. Said notices shall be posted in at least one place in each ward in the district at least twenty days previous to the time of election. Said notices shall also be published three times in two daily papers published in the district, and if there be no daily or dailies, then in the weekly paper or papers in three regular issues next preceding the day of such election. If the board of directors fail to give notice at such time, as herein provided, then any five legal voters residing in the district may give such notice over their own title for such election. [L. '19, p. 218, § 14. Cf. L. '09, p. 351, § 1.]

Cited in 107 Wash. 483.

The requirement of this section, as to published notice of school elections is but directory, and notwithstanding notice was published only two days instead of three, it will not invalidate an election,

where it appears from the publicity given it that the voters had ample notice and the result of the election was not affected: *Lee v. Bellingham School District* No. 301, 107 Wash. 482, 182 Pac. 580.

§ 5032. [4668.*] Opening and Closing Polls.

At all elections official ballots or voting machines shall be used to record the votes of the electors, and the polls shall be opened at 8 o'clock A. M. and be closed at 8 o'clock P. M. The official ballot shall be printed and furnished by the board of directors and shall contain the names of all candidates whose names have been presented by petitions signed by at least fifty registered voters filed with the secretary of the board not less than ten days before the day of election. The names of no other candidates shall appear upon said official ballots, nor upon the voting machines and no other ballots shall be received or counted. [L. '19, p. 218, § 15. Cf. L. '09, p. 351, § 2.]

§ 5033. [4669.*] Voting Places—Election Officers.

It shall be the duty of the board of directors to divide the district into suitable voting precincts the boundaries of which shall follow city and county precinct lines wherever practicable and to provide in each voting precinct a voting place, provided the number of voting precincts shall not be greater than the number of county voting precincts in such district. The board shall also appoint two judges and one clerk for each voting place. Both judges and clerk shall be qualified electors in the precinct for which they are appointed. Should any judge or clerk be absent at the time for opening the polls, the electors present shall appoint a legal voter to fill such vacancy. In case voting machines shall be used an inspector shall be appointed in place of the clerk, whose duties shall also include those of clerk. [L. '19, p. 219, § 16. Cf. L. '11, p. 503, § 1; L. '09, p. 351, § 3.]

§ 5034. [4670.*] Qualification of Electors.

The qualification of electors shall be the same as at a general state or county election. Only those electors residing within the district shall be entitled to vote and an elector may vote only at the polling place designated by the board of directors for the precinct in which the elector resides. [L. '19, p. 219, § 17; L. '09, p. 351, § 4.]

§ 5035. [4671.*] Registration Books.

The city clerk, the county auditor or other municipal officer in whose custody the registration books of the general election are kept, shall furnish to the secretary of the board on the morning of the day of any school election, the registration books or a copy thereof, of said city and of all county precincts lying outside the limits of the city but being wholly or partly within the district which said registration books shall be returned within two days after such election. [L. '19, p. 220, § 18. Cf. L. '09, p. 352, § 5.]

§ 5036. [4672.*] Canvass of Vote—Certificate of Election.

The board of directors shall, upon closing the polls, receive the returns at the time and place it shall direct and shall, within five days from such election meet as a canvassing board and canvass the returns and ascertain the result. The result of said election shall be certified by the board of directors to the county school superintendent, who shall preserve the certificate entering upon his record the receipt thereof, also the names of the person or persons elected as member of such board of directors for said district, together with the term for which elected. [L. '19, p. 220, § 19. Cf. L. '09, p. 352, § 6.]

§ 5037. [4673.] Voters must Register.

Every person residing in any portion of a school district of the first class, which lies without the limits of any incorporated city, who is not required to register to vote at a general election held therein shall not be entitled to vote at any school election, either general or special, to be held in any such district of the first class unless he or she shall have previously complied with the requirements as to registration as in this act provided. [L. '11, p. 501, § 1. Cf. L. '09, p. 352, § 1. Cf. L. '97, p. 40, § 1; L. '01, p. 382, § 18.]

§ 5038. [4675.*] Board to Pay Expenses and Furnish Supplies.

The board of directors of each district in the state shall be authorized to employ judges and clerks or inspectors of election and to provide all funds and supplies necessary for carrying out the provisions of this act. [L. '19, p. 220, § 20; L. '09, p. 352, § 3. Cf. L. '97, p. 41, § 3.]

§ 5039. [4678.] Registration Required Annually—Qualifications for.

Registration shall not be required more than once in each year. All persons who are duly qualified electors under the provisions of this act, who reside in any portion of a school district of the first class outside of the limits of any incorporated city and who are not required to register to vote at a general election shall be entitled to registration on application to the secretary of the board of directors of the district in which they reside: Provided, such elector shall have been a resident of the state for one year, of the county ninety days, and of the voting precinct thirty days prior to the next general or special election to be held in such district. No person shall vote at any such election except in the precinct where he or she has resided for the length of time above specified. [L. '11, p. 501, § 2.]

§ 5040. [4683.] Change of Residence of Registered Voter.

If any elector shall during the year for which he or she may be registered change his or her place of residence from the precinct in which he or she is registered to any other precinct in said district, outside the corporate limits of such city, he or she shall apply to the secretary of the board to have said removal noted. The secretary shall run a red ink line across the name in the precinct book in which said applicant shall be registered, and likewise note said removal in the column headed, "Remarks," in said book and thereupon the secretary shall enter the name

and register the elector in the registration book of the precinct to which he or she has removed. [L. '11, p. 502, § 4. Cf. L. '09, p. 356, § 11; L. '97, p. 44, § 11.]

§ 5041. [4684.*] Challenges—Procedure.

If any person duly registered is challenged, it shall be the duty of the judges of election to examine the challenger and any witnesses that may be produced on oath, touching the right of such elector to vote; the judges shall then, unless they dismiss said challenge, examine the proposed elector on oath, and if it appears that said elector is entitled to vote at said election his or her vote shall be received, otherwise rejected. Any person swearing falsely before any judge of election on the hearing of any such challenge, shall be deemed guilty of perjury, and shall be subjected to the pains and penalties of perjury. [L. '19, p. 221, § 21. Cf. L. '09, p. 356, § 12; L. '97, p. 44, § 12.]

§ 5042. [4685.*] Registration Books—Delivered to Clerk of Election.

On the morning of any general or special school election, the secretary of the board shall deliver to the clerk or inspector of each voting precinct within his district the original book, or books of registration furnished to such secretary by the proper registration officer, covering the precinct or precincts for which such clerk or inspector was appointed. Each clerk or inspector of election shall return the books of registration intrusted to him, to the secretary of the board at the time of the delivery of the ballots cast in the precinct at such election, and it shall be unlawful for any clerk, inspector or any judge of election to cause or allow any marks or alterations to be made in said books while the same are in his possession, other than a proper check mark when a ballot is cast to indicate the party voting. [L. '19, p. 221, § 22; L. '09, p. 356, § 13; L. '97, p. 45, § 14.]

CHAPTER XL.

PENALTIES.

§ 5043. [4686.] Disclosing Examination Questions.

Any member of the state board of education, any employee of the state of Washington, any county superintendent or any employee of his office, who shall directly or indirectly disclose any question or questions prepared for the examination of teachers or eighth grade pupils, or any teacher or other person connected with the instruction of or the examination of eighth grade pupils, who shall, before the time appointed for the use of the questions in the examination of such pupils, disclose the questions, or make known their character, or who shall directly or indirectly assist any such eighth grade pupil to answer any question submitted, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than five hundred dollars. Said fine shall be turned over to the county treasurer of the county in which it is collected, and shall be by him transmitted to the state treasurer, who shall place the same to the

credit of the current school fund of the state. [L. '09, p. 357, § 1. Cf. L. '97, p. 421, § 159; L. '03, p. 325, § 1.]

Cited in 84 Wash. 87.

§ 5044. [4687.] Failure of County Superintendent to Make Report.

If any county superintendent fails to make a full and correct report to the superintendent of public instruction of all statements required by him or if he shall fail to file with the superintendent of public instruction a full and correct annual report within ten days after the time prescribed by law for filing said report, he shall forfeit the sum of fifty dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid upon information from the superintendent of public instruction that such reports have not been made. [L. '09, p. 357, § 2. Cf. L. '90, p. 360, § 15; 1 H. C., § 780; L. '97, p. 421, § 160.]

§ 5045. [4688.] Failure to Pay Over Funds.

Any officer or person collecting or receiving any fines, forfeitures or other moneys belonging to the schools of the state of Washington, or belonging to the school fund of any county or school district in this state, and refusing or failing to pay over the same, as required by law, shall forfeit double the amount so withheld, and interest thereon at the rate of five per cent per month during the time of so withholding the same; and it shall be a special duty of the county superintendent of schools to supervise and see that the provisions of this section are fully complied with, and report thereon to the county commissioners semi-annually or oftener. Such fines and penalties, when collected shall be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '09, p. 357, § 3. Cf. L. '90, p. 383, § 89; 1 H. C., § 820; L. '97, p. 422, § 161; L. '03, p. 326, § 3.]

§ 5046. [4689.] Failure of Directors to Enforce Teaching of Hygiene.

Upon complaint in writing being made to any county superintendent by any district clerk, or by any head of a family, that the board of directors of the district of which said clerk shall hold his office, or said head of family shall reside, have failed to make provisions for the teaching of hygiene or have failed to require it to be taught, with special reference to the effects of alcoholic drink, stimulants and narcotics upon the human system, as provided by law, in the common schools of such district, it shall be the duty of such county superintendent to investigate at once the matter of such complaints, and if found to be true, he shall immediately notify the county treasurer of the county in which such school district is located, and after the receipt of such notice, it shall be the duty of such county treasurer to refuse to pay any warrants drawn upon him by the board of directors of such district subsequent to the date of such notice and until he shall be notified to do so by such county superintendent. Whenever it shall be made to appear to the said county superintendent, and he shall be satisfied that the board of directors of such district are complying with the provisions

of law in this matter, and are causing physiology and hygiene to be taught in the public schools of such district as hereinbefore provided, he shall notify said county treasurer, and said treasurer shall thereupon honor the warrants of said board of directors. [L. '09, p. 358, § 4. Cf. L. '90, p. 383, § 89; 1 H. C., § 820; L. '97, p. 422, § 161; L. '03, p. 326, § 4.]

§ 5047. [4690.] Failure of County Superintendent to Enforce Teaching of Hygiene.

Any county superintendent of common schools who shall fail or refuse to comply with the provisions of the preceding section shall be liable to a penalty of one hundred dollars, to be recovered in civil action in the name of the state in any court of competent jurisdiction, and the sum recovered shall go into the state current school fund; and it shall be the duty of the prosecuting attorneys of the several counties of the state to see that the provisions of this section are enforced. [L. '09, p. 358, § 5. Cf. L. '90, p. 385, § 91; 1 H. C., § 855; L. '97, p. 422, § 163; L. '03, p. 327, § 5.]

§ 5048. [4691.] Failure of Clerk to Make Report.

In case the district clerk fails to make the reports as by law provided, at the proper time and in the proper manner, he shall forfeit and pay to the district the sum of twenty-five dollars for each and every such failure. He shall also be liable, if, through such neglect, the district fails to receive its just apportionment of school moneys, for the full amount so lost. Each and all of said forfeitures shall be recovered in a suit brought by the county superintendent or by any citizen of such district, in the name of and for the benefit of such district, and all moneys so collected shall be paid over to the county treasurer and shall be by him placed to the credit of the general fund of the district to which it belongs. [L. '09, p. 359, § 6. Cf. L. '90, p. 369, § 36; 1 H. C., § 801; L. '97, p. 423, § 164; L. '03, p. 327, § 6.]

§ 5049. [4692.] Failure to Deliver Property—Employment of Teachers.

Any school officer who shall refuse or fail to deliver to his qualified successor all books, papers, records and moneys pertaining to his office, or who shall willfully mutilate or destroy any such property, or any part thereof, or shall misapply moneys intrusted to him by virtue of his office, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine not to exceed one hundred dollars; said fine, when collected, to be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state; and any director who shall aid in, or give his consent to the employment of a teacher who is not the holder of a valid certificate authorizing him or her to teach in the public schools of this state, shall be personally liable to his district for any loss which it may sustain by reason of the employment of such person not lawfully qualified to teach. [L. '09, p. 359, § 7. Cf. L. '97, p. 423, § 165; L. '03, p. 327, § 7; L. '07, p. 621, § 16.]

§ 5050. Corrupt Practices of School Officials.

It shall be unlawful for any county superintendent of schools, superintendent or principal of public schools, directors of any school district, or other public school officer in the state of Washington, to accept, demand, or receive, either directly or indirectly, any commission, remuneration, or thing of value from any teacher's agency, employment bureau, teacher or other employee of any school under his or her jurisdiction or charge, as compensation for or on account of the appointment or recommendation of any teacher or other employee to any position in such school, or for furnishing information of a vacancy existing or to exist in any such position, or to accept, demand or receive, either directly or indirectly, any commission, remuneration or thing of value from any publisher, manufacturer, salesman, agent, or any other person, as compensation for or on account of the recommendation of any books, maps, school furniture or school supplies for use in such school, or for any services rendered in inducing the directors of any such school district to adopt, purchase, install or use the same in any such school. Any willful violation of the provisions of this section shall be deemed a misdemeanor and punished as such. [L. '17, p. 505, § 1.]

§ 5051. [4693.] Failure to Enforce Course of Study.

Any teacher who willfully refuses or neglects to enforce the course of study or the rules and regulations required by the state board of education, or by any other lawful authority, shall not be allowed by the directors any warrant for salary due until said teacher shall have complied with said requirements. [L. '09, p. 360, § 8. Cf. L. '97, p. 423, § 166; L. '03, p. 327, § 8.]

§ 5052. [4694.] Abuse of Pupils.

Any teacher who shall maltreat or abuse any pupil by administering any unjust punishment, or who shall inflict punishment on the head or face of a pupil, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be fined in any sum not exceeding one hundred dollars. Said fine, when collected, shall be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '09, p. 360, § 9. Cf. L. '90, p. 371, § 43; 1 H. C., § 808; L. '97, p. 423, § 167; L. '03, p. 328, § 9.]

§ 5053. [4695.] Failure to Attend Institute.

In addition to other causes for the revocation of teachers' certificates as provided by law, any teacher failing to attend the annual institute held in the county in which he is employed, or the annual joint institute held by the county in which he is employed and another county or other counties, unless for good and sufficient reasons satisfactory to the superintendent of public instruction, may upon complaint of the superintendent of the county in which he is employed to teach have any certificate he may hold forfeited by order of the superintendent of public instruction: Provided, that such forfeiture shall be duly published after the said teacher shall have been given opportunity to present

his reasons for such nonattendance, and after final action thereon. [L. '09, p. 360, § 10. Cf. L. '90, p. 381, § 77; 1 H. C., § 842; L. '97, p. 423, § 168; L. '03, p. 328, § 10.]

§ 5054. [4696.] Insulting or Abusing Teacher.

Any parent, guardian or other person who shall insult or abuse a teacher in the presence of his school, or anywhere on the school grounds or premises, shall be deemed guilty of a misdemeanor and be liable to a fine of not less than ten dollars nor more than one hundred dollars, and said fine shall be turned over to the county treasurer, and by him remitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '09, p. 360, § 11, Cf. L. '90, p. 383, § 86; 1 H. C., § 851; L. '97, p. 424, § 169; L. '03, p. 328, § 11.]

§ 5055. [4697.] Disturbing School.

Any person who shall willfully disturb any school or school meeting shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than fifty dollars. Said fine, when collected, shall be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '09, p. 361, § 12. Cf. L. '90, p. 383, § 87; 1 H. C., § 852; L. '97, p. 424, § 170; L. '03, p. 328, § 12.]

Cited in 108 Wash. 207.

"Person," applies to and includes a "pupil" of such school who was not attending the school at the time the offense was committed and was outside of the school building: *State v. Packenham*, 40 Wash. 403, 82 Pac. 597.

An act providing for the punishment of those guilty of disturbing a religious society, is not void for uncertainty, the word "disturb" having a well-known legal significance: *State v. Stuth*, 11 Wash. 423, 39 Pac. 665.

§ 5056. [4698.] Making False Report of Attendance.

Any teacher, principal or superintendent who shall knowingly report, cause to be reported, or permit to be reported, the presence of any pupil or pupils at school, when such pupil or pupils were absent, or when school is not in session, shall forfeit his certificate or subject it to revocation and the same shall not be restored or a new one granted within one year after such forfeiture or revocation: Provided, that pupils who are excused from attendance at examinations for promotion, having completed their work in accordance with the rules of the board of directors, shall be accredited with attendance during said days of examination. [L. '09, p. 361, § 13. Cf. L. '03, p. 329, § 13.]

§ 5057. [4699.] Mutilating Property.

Any pupil who shall cut, deface or otherwise injure any school-house, furniture, fence or outbuilding thereof, or any book or books belonging to the district library, shall be liable to suspension and punishment, and the parent or guardian of such pupil shall be liable for damages, on complaint of the teacher or of any director or other person residing in the district; and when such damages shall have been collected they shall be turned over to the county treasurer and by him placed to the credit of the school district sustaining such damages. [L. '09, p. 361, § 14. Cf. L. '90, p. 372, § 48; 1 H. C., § 813; L. '97, p. 424, § 172; L. '03, p. 329, § 14.]

§ 5058. [4700.] Failure to Use Adopted Text-book.

Any district using text-books other than those prescribed by lawful authority, or any district failing to comply with the course of study prescribed by the state board of education or by other lawful authority, or any district in which warrants are issued to a teacher not legally qualified to teach in the common school of the said district, shall forfeit twenty-five per cent of their school fund for that or the subsequent year, and it is hereby made the duty of the county superintendent to deduct said amount from the apportionment to be made to any district failing in either or all of the above requirements, and the amounts thus deducted shall revert to the general school funds of the state, and the county treasurer shall return the same to the state treasurer for reapportionment. [L. '09, p. 361, § 15. Cf. L. '97, p. 424, § 174; L. '03, p. 329, § 16.]

§ 5059. [4701.] Failure of New District to Keep School.

Any new district formed by the division of an old one and which new district shall have maintained at least one month's school during the preceding school year, as shown by the last annual report of the county superintendent, on file in the office of the superintendent of public instruction, shall be entitled to its just share of school moneys when the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least the minimum time required by law in the old district: Provided, that if any school district has heretofore failed to receive apportionment of state school funds because of a failure to hold school the time required by law, and there are unpaid warrants drawn on the general funds of said district for maintenance of school prior to said failure, a special tax shall be levied by the board of county commissioners on the property of the district, the proceeds of which shall be applied to the payment of the indebtedness. [L. '09, p. 362, § 16. Cf. L. '90, p. 363, § 24; L. '91, p. 248, § 9; 1 H. C., § 789; L. '97, p. 425, § 175; L. '99, p. 324, § 24; L. '03, p. 330, § 17; L. '05, p. 107, § 5.]

§ 5060. [4702.] False Oath.

If any person shall falsely swear or affirm in taking the oath or making the affirmation herein prescribed when being registered for voting in a school district of the first class, or shall falsely personate another and procure the person so personated to be registered, or if any person shall represent his name to the secretary or officer of registration to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the register list otherwise than in the manner provided in this act, he or she shall be guilty of a felony, and upon conviction be punished by confinement in the penitentiary not more than five nor less than one year. [L. '09, p. 362, § 17. Cf. L. '97, p. 44, § 107.]

Cited in 83 Wash. 422.

§ 5061. [4703.] Vivisection Forbidden.

No teacher or other person employed in any school in the state of Washington, except a medical or dental school or the medical or dental

department of any school, shall practice vivisection upon any vertebrate animal in the presence of any pupil in said school, or any child or minor there present; nor in such presence shall exhibit any vertebrate animal upon which vivisection has been practiced. [L. '97, p. 16, § 1; L. '97, p. 426, § 178.]

See § 5063, penalty.

§ 5062. [4704.] Dissection Permitted, When.

Dissection of dead animals, or any portion thereof, in the schools of the state of Washington shall, in no instance, be for the purpose of exhibition, but in every case shall be confined to the class-room and the presence of those pupils engaged in the study to be illustrated by such dissection. [L. '97, p. 17, § 2; L. '97, p. 426, § 179.]

See § 5063, penalty.

§ 5063. [4705.] Violating Vivisection Law.

Any person violating the provisions of the last two sections, shall upon conviction thereof, be deemed guilty of a misdemeanor, and be fined in any sum of not less than fifty nor more than one hundred dollars. Said fine, when collected, shall be turned over to the county treasurer, and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '97, p. 424, § 173. Cf. L. '97, p. 16, § 3; L. '03, p. 329, § 15.]

CHAPTER XLI.

APPEALS.

§ 5064. [4706.] Appeal from Decisions—Time for Taking.

Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school officer or school board may, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, appeal the same to the proper officer or board as hereinafter provided. [L. '09, p. 362, § 1. Cf. L. '90, p. 360, § 16; L. '91, p. 245, § 6; 1 H. C., § 781; L. '97, p. 372, § 36.]

See notes to § 4776, *supra*.

Cited in 97 Wash. 501; 101 Wash. 378; 104 Wash. 660.

Review of Proceedings as to Districts: See Remington's Digest, Schools, § 11; Gregory v. Dixon, 7 Wash. 27, 34 Pac. 212; Wilsey v. Cornwall, 40 Wash. 250, 82 Pac. 303; State ex rel. School District etc. v. Board of County Commrs., 72 Wash. 454, 130 Pac. 749; Tufts v. Riffe, 97 Wash. 500, 166 Pac. 788.

See, also, State ex rel. Calouri v. Stratton, 108 Wash. 485, 185 Pac. 610.

Appeal lies from decisions of school examiners relative to teacher's certificates to the superintendent of public instruction, under this section: State ex rel. Gannon v. Hitt, 13 Wash. 547, 43 Pac. 638.

Review by courts of regulations of school boards for control and discipline of pupils. 6 Ann. Cas. 998; 13 Ann. Cas. 333.

§ 5065. [4707.*] Appeals—To Whom Taken.

Appeals from the decision or order, or from the failure to decide or order, by a board of school directors shall be taken to the county

superintendent of schools in and for the county. Appeals from the decision or order, or the failure to decide or order, of a county superintendent of schools shall, when relating to the operation or management of schools or to the relation with teachers, be taken to the superintendent of public instruction. In all other cases appeal shall be taken to the superior court of the county in which the district is situated. [L. '19, p. 222, § 23. Cf. L. '09, p. 363, § 2.]

See references to last section.

See notes to § 5069, *infra*.

Cited in 97 Wash. 501, 502; 108 Wash. 487.

§ 5066. [4708.] Basis of Appeal.

The basis of appeal shall be an affidavit or affidavits of the party aggrieved, filed within the time for the taking of such appeal, setting forth in a clear and concise manner the errors complained of. [L. '09, p. 363, § 3. Cf. L. '90, p. 366, § 32; 1 H. C., § 797; L. '97, p. 376, § 47.]

Cited in 97 Wash. 502.

§ 5067. [4709.] Notice of Appeal—Transcript—Notice of Hearing.

Having received the basis of appeal, as set forth in the preceding section, the officer to whom the appeal is taken shall within ten days, and the board of county commissioners shall at their next regular session, notify in writing the party from whose action the appeal is taken of the taking of such appeal and of its nature and scope. Within twenty days after such notice the said party shall file a complete transcript, properly certified to be correct, of the record and papers and proceedings relating to the decision complained of. Upon the filing of such transcript notice shall be duly given to all parties interested of the time and place where the matter of the appeal shall be heard and determined. [L. '09, p. 363, § 4. See references to last section.]

Cited in 97 Wash. 502.

§ 5068. [4710.] Hearing.

At the hearing of an appeal, properly presented in accordance with this chapter, the county superintendent or the board of county commissioners, as the case may be, shall hear testimony of all parties interested, and for the purpose may administer oaths if necessary, may summon witnesses or demand records or certified copies of the same: Provided, that in the case of a hearing before the board of county commissioners the board may hear the case *de novo*, and in the case of a hearing on appeal by the superintendent of public instruction no new evidence may be admitted. [L. '09, p. 363, § 5.]

Cited in 97 Wash. 502.

§ 5069. [4711.] Decision Final Unless Disturbed by Court.

In decisions of appeal by the superintendent of public instruction and by the board of county commissioners the decision or order shall be final unless set aside by a court of competent jurisdiction in an action brought therein to review such order or decision. [L. '09, p. 364, § 6.]

Cited in 97 Wash. 502; 108 Wash. 488.

This section of the school code, being later in time, controls earlier sections, so far as there is a conflict: State ex rel. Calouri v. Stratton, 108 Wash. 485, 185 Pac. 610.

Under this section, certiorari lies to review decisions on appeal from the county superintendent, notwithstanding the earlier section 5065, *supra*, provides that de-

cisions on appeal by the board shall be final: State ex rel. Calouri v. Stratton, 108 Wash. 485, 185 Pac. 610.

Under this section, and section 5065, *supra*, appeal lies to the board from the school superintendent, and certiorari lies to the courts from the board but not from the school superintendent: State ex rel. Calouri v. Stratton, 108 Wash. 485, 185 Pac. 610.

§ 5070. [4712.] Notice and Record of Decisions.

Decisions of appeal shall be made a matter of record in full, and certified copies of the same shall be made if asked for by the parties interested within ten days of such decision. Notice of such decision of appeal shall be made in writing to parties interested within five days of their rendition. [L. '09, p. 364, § 7.]

§ 5071. [4713.] Decision Changing Boundaries to be Reported to County Assessor.

In cases of appeal resulting in the change of any school district boundaries the decision shall within five days thereafter be also certified by the proper officer to the county assessor of the county, or to the county assessors of the counties, wherein the territory may lie. [L. '09, p. 364, § 8.]

CHAPTER XLII.

COMPULSORY EDUCATION.

Truant schools, see *infra*, § 11310 et seq.

State training school: See *supra*, § 4519 et seq., and *infra*, § 10299 et seq.

State school for girls, see *supra*, § 4631.

§ 5072. [4714.] Attendance—Age—When Excused.

All parents, guardians and other persons in this state having or who may hereafter have immediate custody of any child between eight and fifteen years of age (being between the eighth and fifteenth birthdays), or of any child between fifteen and sixteen years of age (being between the fifteenth and sixteenth birthdays) not regularly and lawfully engaged in some useful and remunerative occupation, shall cause such child to attend the public school of the district, in which the child resides, for the full time when such school may be in session or to attend a private school for the same time, unless the superintendent of the schools of the district in which the child resides, if there be such a superintendent, and in all other cases the county superintendents of common schools, shall have excused such child from such attendance because the child is physically or mentally unable to attend school or has already attained a reasonable proficiency in the branches required by law to be taught in the first eight grades of the public schools of this state as provided by the course of study of such school, or for some other sufficient reason. Proof of absence from public schools or approved private school shall be *prima facie* evidence of a violation of this section. [L. '09, p. 364, § 1. Cf. L. '97, p. 385, § 71; L. '99, p. 280,

et seq.; L. '01, p. 379, § 11; L. '03, p. 55, § 1; L. '05, p. 316, § 1; L. '07, p. 569, § 1; L. '07, p. 613, § 7.]

Former laws cited in 25 Wash. 124; 69 Wash. 362; 71 Wash. 216; 79 Wash. 289.

Compulsory Attendance: See Remington's Digest, Schools, § 54; State ex rel. Henry v. McDonald, 25 Wash. 122, 64 Pac. 912; State ex rel. McFadden v. Shorrock, 55 Wash. 208, 104 Pac. 214; State v. Counort, 69 Wash. 361, 124 Pac. 910, 41 L. R. A. (N. S.) 95.

This section does not require the attendance of children in common schools of the state or private schools; hence does not tend to show that a model training school in a state normal school is either a common or private school, within the meaning of the law relating to the

apportionment of state school funds: State ex rel. School District No. 3 v. Preston, 79 Wash. 286, 140 Pac. 350.

Compulsory attendance at public schools. *Ann. Cas.* 1912A, 373; *Ann. Cas.* 1915C, 555.

What instruction constitutes compliance with compulsory education statute. 41 L. R. A. (N. S.) 95.

Expulsion or exclusion of child from school as excuse or justification for noncompliance with compulsory education law. L. R. A. 1915D, 223.

§ 5073. [4715.] Employment of Children Under Certain Age — When Permitted.

No child under the age of fifteen years shall be employed for any purpose by any corporation, person or association of persons in this state during the hours which the public schools of the district in which such child resides are in session, unless the said child shall present a certificate from a school superintendent as provided for in section 5072, excusing the said child from attendance in the public schools and setting forth the reason for such excuse, the residence and age of the child, and the time for which such excuse is given. Every owner, superintendent, or overseer of any establishment, corporation, company or person employing any such child shall keep such certificate on file so long as such child is employed by him, her or it. The form of said certificate shall be furnished by the superintendent of public instruction. Proof that any child under fifteen years of age is employed during any part of the period in which public schools of the district are in session, shall be deemed prima facie evidence of a violation of this section. [L. '09, p. 365, § 2. Cf. L. '03, p. 56, § 2; L. '05, p. 316, § 2; L. '07, p. 569, § 2.]

See supra, § 2447, certain employment prohibited without consent of judge.

§ 5074. [4716.] Penalty.

Any person violating any of the provisions of either of the two preceding sections shall be fined not more than twenty-five dollars. Attendance officers shall make complaint for violation of the provisions of this act, to a justice of the peace or to a judge of the superior court. [L. '09, p. 365, § 3. Cf. L. '05, p. 317, § 3; L. '07, p. 570, § 3.]

§ 5075. [4717.] Attendance Officers, Duty of.

To aid in the enforcement of this act, attendance officers shall be appointed and employed as follows: In incorporated city districts the board of directors shall annually appoint one or more attendance officers. Any attendance officer may be a sheriff, constable, a city marshal, or a regularly appointed policeman. In all other districts the county superintendent shall act as attendance officer, and he shall also have authority

to appoint one or more assistant attendance officers to aid him in the performance of his duties as attendance officer. The compensation of attendance officer in such city districts shall be fixed and paid by the board appointing him. The attendance officer shall be vested with police powers, the authority to make arrests and serve all legal processes contemplated by this act, and shall have authority to enter all stores, mills, shops, or other places in which children may be employed, for the purpose of making such investigations as may be necessary for the enforcement of this act. The attendance officer is authorized to take into custody the person of any child between eight and fifteen years of age, who may be a truant from school, and to conduct such child to his parents, for investigation and explanation, or to the school which he should properly attend. The attendance officer shall institute proceedings against any officer, parent, guardian, person, company or corporation violating any provisions of this act, and shall otherwise discharge the duties prescribed in this act, and shall perform such other services as the superintendent of schools or the board of directors may deem necessary. The attendance officer shall keep a record of his transactions, for the inspection and information of the board of directors and the city and county superintendent, and shall make a detailed report to the superintendent of the city or of the county, as often as the same may be required. [L. '09, p. 365, § 4. Cf. L. '05, p. 317, § 4; L. '07, p. 570, § 4.]

§ 5076. [4718.] May Arrest Truants Without Warrants.

Any attendance officer, sheriff, deputy sheriff, marshal, policeman, or any other officer authorized to make arrests in the city or district, shall arrest without a warrant a child who, under the provisions of this act is required to attend school, such child then being a truant from instruction at the school which he or she is lawfully required to attend, shall forthwith deliver a child so arrested either to the custody of a person in parental relation to the child or to the teacher from whom the child is then a truant, or, in case of habitual or incorrigible truants, shall bring him or her before a justice of the peace. The justice of the peace shall, if he be convinced that the child so arrested is a habitual truant or that the child is guilty of willful and continued disobedience to the school rules and regulations or laws, or that the conduct of the child is pernicious and injurious to the school, bind the child over to the superior court with a view of his commitment to the state reform school or other school for incorrigibles. [L. '09, p. 366, § 5. Cf. L. '05, p. 317, § 5; L. '07, p. 571, § 5.]

See *infra*, §§ 10313—10315, commitment to truant schools.

§ 5077. [4719.] Teacher to have Copy of Census—Must Report Truancy.

It shall be the duty of the district clerk or secretary, at the beginning of each school year, to provide the teacher with a copy of the last census of school children taken in his school district: Provided, that if there be a principal or city superintendent in such district, the clerk or secretary shall make such census report to him, and it shall be the duty of every teacher to report to the proper truant officer, all cases

of truancy or incorrigibility in his or her school, immediately after the offense or offenses shall have been committed: Provided further, that if there be a principal the report shall be made to him and by him transmitted to the truant officer: And provided further, that if there be a city superintendent, the principal shall transmit such report to said city superintendent, who shall transmit such report to the proper truant officer of his district. [L. '09, p. 367, § 6. Cf. L. '03, p. 56, §§ 2—4; L. '05, p. 318, § 6; L. '07, p. 571, § 6.]

§ 5078. [4720.] Courts have Concurrent Jurisdiction.

In cases arising under this act all justices' courts, municipal courts and superior courts in the state of Washington shall have concurrent jurisdiction. [L. '09, p. 367, § 7. Cf. L. '05, p. 318, § 7; L. '07, p. 572, § 7.]

§ 5079. [4721.] County Attorney to Prosecute.

The county attorney shall act as attorney for the complainant in all court proceedings relating to compulsory attendance of children as required by this act. [L. '09, p. 367, § 8. Cf. L. '90, p. 382, § 83; L. '97, p. 425, § 177; L. '99, p. 324, § 25; L. '01, p. 382, § 190; L. '03, p. 58, § 8; L. '05, p. 318, § 8; L. '07, p. 572, § 8.]

§ 5080. [4722.] Officer's Report of Enforcement of Law.

The county superintendent shall on or before the fifteenth day of August of each year, by printed circular or otherwise, call the attention of all school district officers to the provisions of this act, and to the penalties prescribed for the violation of its provisions, and he or she shall require the clerk of every school district to make a report annually hereafter, to him or her, verified by affidavit, stating whether or not the provisions of this act have been faithfully complied with in his district. Such reports shall be made upon blanks to be furnished by the superintendent of public instruction and shall be transmitted to the county superintendent at the time the district clerk is required to make his annual report to the county superintendent. Any district clerk who shall knowingly or willfully make a false report relating to the enforcement of the provisions of this act or fail to report as herein provided shall be deemed guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction shall be fined not less than twenty-five dollars nor more than one hundred dollars; and any district clerk who shall refuse or neglect to make the report required in this section, shall be personally liable to his district for any loss which it may sustain because of such neglect or refusal to report. [L. '09, p. 367, § 9. Cf. L. '07, p. 572, § 9.]

§ 5081. [4723.] Penalty for Nonperformance of Duty — Disposition of Fines.

Any superintendent, teacher or attendance officer, who shall fail or refuse to perform the duties prescribed by this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not less than twenty nor more than one hundred dollars: Provided, that in case of a district officer, such fine shall be paid to the county treasurer

and by him placed to the credit of the school district in which said officer resides, and in case of other officers such fine shall be paid to the county treasurer and by him placed to the credit of the general school fund of the county. [L. '09, p. 368, § 10. Cf. L. '03, p. 57, § 7; L. '05, p. 318, § 10; L. '07, p. 572, § 10.]

§ 5082. [4724.] Fines Applied to Support of Schools.

All fines except as otherwise provided in this act shall inure and be applied to the support of the public schools in the district where such offense was committed. [L. '09, p. 368, § 11. Cf. L. '05, p. 319, § 11; L. '07, p. 573, § 12.]

§ 5083. [4725.] Officer not Liable for Costs When Performing Duty.

No officer performing any duty under any of the provisions of this act, or under the provisions of any rules that may be passed in pursuance hereof, shall in any wise become liable for any costs that may accrue in the performance of any duty prescribed by this act. [L. '09, p. 368, § 12. Cf. L. '05, p. 319, § 12; L. '07, p. 573, § 13.]

§ 5084. [4726.] Compulsory Attendance at Free Government Schools.

Whenever the government of the United States or the state of Washington shall erect, or cause to be erected and maintained, a school for general educational purposes within the state of Washington, and the expense of the tuition, lodging, food and clothing of the pupils therein is borne by the United States or the state of Washington, it shall be compulsory on the part of every parent, guardian or other person in the state of Washington having control of a child or children between the ages of five and eighteen years, eligible to attend said school, to send such child or children to said school for a period of nine months each year, or during school for a period of nine months each year, or during the annual term, unless such child or children is or are excused from such attendance by the principal or superintendent of said school, upon it being shown to the satisfaction of said principal or superintendent that the bodily or mental condition of such child or children has been and is such as to prevent his, her or their attendance at school, or application at study for the period required, or that such child or children is or are taught in the public schools, private schools, or other schools, or at home in such branches as are usually taught in the public schools: Provided, that in case the government of the United States or the state of Washington does not make provision for the free transportation of said child or children to and from their homes to said school, then he, she or they shall not be liable to the provisions of this act, unless they reside less than ten miles from said school. [L. '03, p. 107, § 1.]

"Act" refers to §§ 5084—5088.

§ 5085. [4727.] Demand for Attendance.

It shall be the duty of all principals or superintendents of the school or schools mentioned in this act, before attempting to enforce the provisions of this act hereinafter mentioned to serve, or cause to be

served, a demand for the attendance of certain children, naming them, and also designating the school to which their attendance is required, upon the parent, guardian or other person having charge of said child or children as may be eligible to attend said school over which he has charge, and a copy of this act; and such parent, guardian or other person having charge of said child or children shall have ten days to either deliver said child or children at said school, or to the principal or superintendent thereof, or furnish satisfactory proof that the bodily or mental condition of said child or children does not admit of attendance. [L. '03, p. 108, § 2.]

"Act" refers to §§ 5084—5088.

§ 5086. [4728.] Failure of Parents, etc., to Comply.

If at the expiration of ten days after such notice or demand the parents, guardian or other persons having charge of said child or children shall have failed or refused to comply with this act, the principal or superintendent shall cause a demand to be made upon such parent, guardian or other person for the amount of the penalty hereinafter provided; and if such parent, guardian or person shall neglect or refuse to pay the same within five days after making said demand, the superintendent or principal shall commence proceedings in the name of the state for the recovery of the fine hereinafter provided before any court having jurisdiction: Provided, that nothing in this act shall apply to any child or children who is or are actually and necessarily compelled to labor for the support of such parent. [L. '03, p. 108, § 3.]

"Act" refers to §§ 5084—5088.

§ 5087. [4729.] Penalty.

Any parent, guardian or other person having control or charge of any child or children, failing to comply with the provisions of this act shall be liable to a fine of not less than five dollars nor more than twenty-five dollars, for the first offense, nor less than ten dollars nor more than fifty dollars for the second and each subsequent offense, besides the cost of collection. [L. '03, p. 108, § 4.]

"Act" refers to §§ 5084—5088.

§ 5088. [4730.] Disposition of Fines.

All fines collected under the provisions of this act shall be paid into the county treasury, the same to be placed to the credit of the general school fund. [L. '03, p. 108, § 5.]

"Act" refers to §§ 5084—5088.

CHAPTER XLIII.

GRAMMAR SCHOOL EXAMINATIONS.

§ 5089. [4731.] Promotion to High School—Questions.

It shall be the duty of the superintendent of public instruction at such times as he may deem it advisable, but not oftener than three times each year, to forward questions prepared by the state board of education for use in the examination of pupils having completed the gram-

mar school course of study, to fix the date for such examination, and to grant certificates of promotion to pupils successfully passing such examination according to the standard prescribed by the state board of education: Provided, that such certificate shall entitle the holder thereof to entrance into any high school of the state without further examination: Provided further, that nothing in this act shall be construed as compelling boards of directors to admit nonresident pupils without tuition charge. [L. '09, p. 368, § 1. Cf. L. '01, p. 60, §§ 1—3; L. '03, p. 312, § 1.]

§ 5090. [4732.] County Board to Examine Papers—Assistant Examiners.

It shall be the duty of the county board of education to examine and grade the manuscripts of the pupils who take the examinations mentioned in the preceding section. The county superintendent may appoint assistant examiners who shall conduct such examinations of pupils according to the rules and regulations of the state board of education, and within three days transmit the manuscripts to the county superintendent. Assistant examiners shall receive three dollars per day to be paid in the same manner as the regular board. [L. '09, p. 369, § 2. Cf. L. '03, p. 312, § 2.]

§ 5091. [4733.] Papers Examined at County Seat—Questions—Special Course.

It shall be the duty of the county board of education to meet at the county seat at the call of the county superintendent for the purpose of examining and grading the manuscripts of pupils taking such examinations under the direction of any assistant examiner or of the county superintendent. No questions shall be used in such examination except those prepared by the state board of education as provided in section 5089: Provided, that the state board of education may prescribe a special course of reading to be done by pupils in the last year of the grammar school course, as a requisite to their receiving certificates of graduation. [L. '09, p. 369, § 3. Cf. L. '03, p. 313, § 3.]

§ 5092. [4734.] Report of Result to State Superintendent.

It shall be the duty of the county superintendent to report to the superintendent of public instruction, within ten days after any meeting of the county board of education, the names of all pupils successfully passing any examination, as herein provided, together with their respective standings or grades in the several prescribed subjects and such other facts relating to said pupils or said examination as the superintendent of public instruction may require. [L. '09, p. 369, § 4. Cf. L. '03, p. 313, § 4.]

CHAPTER XLIV.

HIGH SCHOOL EXTENSION EXAMINATIONS.

§ 5093. [4735.] Course Outlined by State Board—Examination.

The state board of education shall outline a course of reading and study similar to a course of study required in a full four year high school course, and shall provide for the examination and certification of those taking or completing such course. Examinations for this purpose shall be held at the same time and place of holding examinations for teachers' certificates, and in such form to fully test the students' knowledge of the subject or subjects examined in. Any one or more subjects may be taken at any such examination and a student failing in any subject may again be examined in such subject at any subsequent examination: Provided, each year's work of a lower grade must be completed before a student shall be permitted to complete the work of a higher year. Such examination shall be intended only for those not taking a full course in the same subject in a regular high school, and no person shall be admitted to any such examination unless he shall have given to the county superintendent notice of his intention to take such examination and the subjects in which he desires to be examined at least thirty days before the examination, and obtain permission from such superintendent to take such examination. [L. '09, p. 370, § 1.]

§ 5094. [4736.] Questions—Examination of Papers.

The questions for such examination shall be prepared by the state board of education, and shall be furnished to the state superintendent of public instruction, who shall cause the same to be printed and distributed to the several county superintendents upon request therefor the same as the questions for teachers' examinations are printed and distributed. The manuscripts containing the answers of applicants shall be returned to the superintendent of public instruction to be marked and graded by him and who shall issue certificates to those who have the required percentage in the various branches which shall be fixed by the state board of education. [L. '09, p. 370, § 2.]

§ 5095. [4737.] Certificates.

Upon the completion of the full course as outlined by the state board of education a state high school certificate shall be issued to the applicant by the said board and such certificate shall entitle the holder thereof to enter the freshman class of the State University or to enter any other class in the other state educational institutions as may be specified by the state board of education. [L. '09, p. 371, § 3.]

CHAPTER XLV.

KINDERGARTENS.

§ 5096. [4738.] Election to Authorize Establishment.

The board of directors of any school district of the first and second classes shall have power to establish and maintain free kindergartens in connection with the common schools of said district for the instruction of children between the ages of four and six years, residing in said

district, and shall establish such courses of training, study and discipline and such rules and regulations governing such kindergartens as said board may deem best. [L. '11, p. 382, § 1. Cf. L. '09, p. 371, § 1; L. '97, p. 426, § 181.]

See *supra*, § 4805, subd. 4, kindergartens in districts of first class.

§ 5097. [4739.] Part of Public School System.

Kindergartens established under this act shall be a part of the public school system and under the control and supervision of the regular officers who have charge of the public schools of the state: Provided, that nothing in this act shall be construed to change the law relating to the taking of the census of the school population or the apportionment of state and county funds. [L. '09, p. 371, § 2.]

§ 5098. [4740.*] Cost of Establishment and Maintenance.

The cost of establishing and maintaining such kindergartens shall be paid from the general school fund of the district. It shall be the duty of teachers, city superintendents, district clerks and county superintendents to respectively report as other school attendance is reported, the attendance of all children five years of age or over at such kindergartens, and it shall thereupon be the duty of the superintendent of public instruction to make apportionment to the proper counties of the current state school fund and of the respective county superintendents to apportion to the districts entitled thereto such funds as are now apportioned by such officers, and on making such apportionments to consider and allow one-half credit for such kindergarten attendance to the same extent as credit is allowed for attendance in primary or grammar grades: Provided, however, that credit for kindergarten attendance shall be based on a three-hour day: Provided, that for the purposes of this act, an attendance of two (2) hours shall be credited as one-half day. Such kindergartens shall constitute a part of the common school system and shall be open to all children of proper age resident in the district maintaining same. It shall be the duty of all district clerks to include children four years of age and over in the enumeration of the annual school census with like effect as children of higher age are now included therein. [L. '17, p. 506, § 1. Cf. L. '11, p. 382, § 1.]

§ 5099. [4741.] Qualification of Teachers.

Kindergarten teachers and supervisors shall have diplomas or certificates from some accredited kindergarten training school, from the kindergarten department of a state normal school of this state or of a normal school whose kindergarten department is accredited by the state board of education. [L. '09, p. 371, § 4.]

CHAPTER XLVI.

PROHIBITING SALE OF INTOXICATING LIQUORS.

§ 5100. [4742.] Unlawful to Sell Intoxicating Liquors on University Grounds.

It shall be unlawful to sell any intoxicating liquors, with or without a license, on the grounds of the University of Washington, or within two miles thereof, excepting south half of section twenty-two, township twenty-five, range four east, and any license granted for the sale of such intoxicating liquors within said area shall be void. Said grounds of the University of Washington are otherwise known and described as follows: Fractional section sixteen, township twenty-five north, range four east of Willamette meridian. [L. '95, p. 134, § 1.]

§ 5101. [4743.] Penalty.

Any person or persons violating the provisions of the last preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail for a term not less than six months nor more than one year, or by both such fine and imprisonment. [L. '95, p. 134, § 2.]

§ 5102. [4744.] Within Two Thousand Feet of Certain Institutions.

It shall be unlawful to sell or in any way dispose of any vinous, spirituous, malt or other intoxicating liquors, with or without a license within two thousand (2,000) feet of any normal school, agricultural college, reform school, or state school for defective youth, now established or which may hereafter be legally established within the state of Washington: Provided, that nothing in this section shall be construed to affect in any way the provisions of the last two preceding sections. [L. '03, p. 151, § 1; L. '09, p. 376, § 1.]

Cited in 68 Wash. 389.

§ 5103. [4745.] Penalty.

Any person or persons violating the provisions of [the preceding section] this act shall be deemed to be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than two hundred (200) dollars, nor more than one thousand (1,000) dollars, or by both such fine and imprisonment. [L. '03, p. 151, § 2; L. '09, p. 376, § 2.]

"Act" in the Laws of '93 (copied in 1909), refers to the preceding section.

CHAPTER XLVII.

DESIGNATION AND INTENT OF ACT.

§ 5104. [4746.] Designation.

This act shall be known and cited as the code of public instruction of the state of Washington. [L. '09, p. 376, § 1.]

"Act" refers to chapter 97 of the Laws of 1909.

§ 5105. [4747.] Intent.

This act is intended to be and is amendatory of, and a recodification as amended of, all laws relating to the public school system of the state of Washington. [L. '09, p. 376, § 2.]

CHAPTER XLVIII.
FIRE DRILLS IN SCHOOLS.

§ 5106. [4748.] Semi-monthly Fire Drills.

It shall be the duty of the principal or other person in charge of every public or private school or educational institution within the state, to instruct and train the pupils by means of drills, so that they may in a sudden emergency be able to leave the school building in the shortest possible time and without confusion or panic. Such drills or rapid dismissals shall be held at least twice in each month. [L. '09, p. 386, § 1.]

§ 5107. [4749.] Penalty.

Neglect by any principal or other person in charge of any public or private school or educational institution to comply with the provisions of this chapter shall be a misdemeanor, punishable at the discretion of the court by a fine not exceeding fifty (\$50) dollars. Such fine to be paid to the county treasurer for the benefit of said school district. [L. '09, p. 386, § 2.]

§ 5108. [4750.] Publication of Act.

It shall be the duty of the board of directors or other body having control of the schools in any town or city to cause a copy of this chapter to be printed in the manual or handbook prepared for the guidance of teachers, where such manual or handbook is in use or may hereafter come into use. It shall be the duty of the superintendent of public instruction to cause a copy of this chapter to be published in the Washington state manual. [L. '09, p. 386, § 3.]

§ 5109. [4751.] Colleges and Universities Exempt.

The provisions of this chapter shall not apply to colleges or universities. [L. '09, p. 386, § 4.]

For pages 372 to 375, §§ 1 to 15, which was but an attempted re-enactment of the act of 1903, concerning eminent domain proceedings by school districts, see *supra*, §§ 906—920.

Educational Associations: See "Corporations," § 3863.

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ELECTIONS.

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CHAPTER I.

QUALIFICATIONS OF ELECTORS.

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For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison, excepting when serving out a sentence in the penitentiary for an infamous crime. [L. '66, p. 25, § 2; Cd. '81, § 3051.]

Const., Art. VI, § 4.

Cited in 51 Wash. 588.

Qualification of Voters: See Remington's Digest, Elections, §§ 13—16.

§ 13. Constitutional and Statutory Provisions: State ex rel. Zent v. Nichols, 50 Wash. 508, 97 Pac. 728.

§ 14. Sex—General Elections: Bloomer v. Todd, 3 W. T. 599, 19 Pac. 135, 1 L. R. A. 111.

§ 15. — School Elections: Holmes & Bull Furniture Co. v. Hedges, 13 Wash. 696, 43 Pac. 944.

§ 16. **Citizenship:** *Bloomer v. Todd*, 3 Wash. 599, 19 Pac. 135, 1 L. R. A. 111.

See, also, *State ex rel. Carroll v. Superior Court*, 113 Wash. 54, 193 Pac. 236.

Power of the states to impose qualifications for voters and for holders of office. 97 Am. Dec. 263; 7 Ann. Cas. 665.

How far right to vote is absolute. 25 L. R. A. 480.

Residence of voters as synonymous with domicile. Ann. Cas. 1915C, 792, 804; 19 L. R. A. (N. S.) 759.

Right to vote as affected by residence at school or public institution. Ann. Cas. 1917C, 403; 23 L. R. A. 215; 40 L. R. A. (N. S.) 168.

Right of soldier or sailor in actual service to vote. Ann. Cas. 1917B, 485.

§ 5111. [4754.] **Absence on Business as Affecting Residence.**

Absence from state on business shall not affect the question of residence of any person: Provided, the right to vote has not been claimed or exercised elsewhere. [L. '66, p. 25, § 4; L. '67, p. 8, § 11; Cd. '81, § 3053; 1 H. C., § 346.]

Cited in 51 Wash. 588.

§ 5112. [4755.] **Who Disqualified.**

No idiot, or insane person, or persons convicted of an infamous crime, shall be entitled to the privilege of an elector. [L. '66, p. 25, § 3; Cd. '81, § 3052.]

See Const., Art. VI, § 3.

Cited in 39 Wash. 2; 51 Wash. 588; 69 Wash. 270.

Constitution, Article VI, section 3, providing that persons convicted of infamous crimes shall be excluded from the elective franchise unless restored to their civil

rights, cannot be taken as a construction of this section, to mean that such persons lost their civil rights, when the act only forfeited their right to vote, a political and not a civil right: *State v. Collins*, 69 Wash. 268, 124 Pac. 903.

§ 5113. [4756.] **Infamous Crime, What is.**

A crime shall be deemed infamous which is punishable by death or imprisonment in the penitentiary. [L. '66, p. 25, § 5; Cd. '81, § 3054; 1 H. C., § 345.]

Cited in 6 Wash. 570.

CHAPTER II.

REGISTRATION OF VOTERS.

§ 5114. [4756-1.] **"Precinct" Defined.**

The word "precinct" as used in this act, shall, unless the same be inconsistent with the context, be construed to mean a subdivision for voting or polling purposes, within or without the limits of an incorporated city, or town, and whether established by the county commissioners, or by the city council or legislative body of such cities as are entitled under the law to fix the boundaries of voting or polling districts. [L. '15, p. 33, § 1.]

AMENDED ACT.

§ 5115. [4757.*] **Registration of Voters.**

There shall be in 1920 and biennially thereafter to continue for two years, in incorporated cities and towns and quadrennially thereafter to continue for four years outside such cities and towns, except as hereinafter provided, in each precinct of the state, a new and complete regis-

tration of the legal voters therein. Such registration shall begin on the first Monday of January of such year, and the registration-books shall be open for the registration of voters at all times except during the twenty days immediately preceding any general state or county or general municipal election or any primary election of any nature or any special municipal election, except as hereinafter provided. [L. '19, p. 462, §2. See references to next section.]

This act was amended by the next section, but the amendment is subjected to referendum and suspended until the general election in November, 1922.

Cited in 55 Wash. 515.

Registration of Voters: See Remington's Digest, Elections, §§ 17—19. **Constitutional and Statutory Provisions:** Stallcup v. Tacoma, 13 Wash. 141, 42 Pac. 541, 52 Am. St. Rep. 25; State ex rel. Arnold v. Mitchell, 55 Wash. 513, 104 Pac. 791.

See, also, State ex rel. Carroll v. Superior Court, 113 Wash. 54, 193 Pac. 236.

§ 18. Elections Subject to Registration Laws: Luzader v. Sargeant, 4 Wash. 299,

30 Pac. 142; Seymour v. Tacoma, 6 Wash. 138, 32 Pac. 1077; Graves v. Seattle, 8 Wash. 248, 35 Pac. 1079; Hindman v. Boyd, 42 Wash. 17, 84 Pac. 609.

§ 19. Necessity of Registration: State ex rel. Hyland v. Peter, 21 Wash. 243, 57 Pac. 814.

Constitutionality of registration laws. 23 Am. Dec. 642; 54 Am. Rep. 843; Ann. Cas. 1913B, 17; 25 L. R. A. 484.

REFERRED ACT.

§ 5115-1. [4757.*] Registration of Voters.

There shall be in 1922 and biennially thereafter to continue for two years, in incorporated cities and towns and quadrennially thereafter to continue for four years outside such cities and towns, except as hereinafter provided, in each precinct of the state, a new and complete registration of the legal voters therein. Such registration shall begin on the second day of January of such year, and the registration-books shall be open for the registration of voters at all times except during the twenty days immediately preceding any general state or county or general municipal election or any primary election of any nature or any special municipal election, except as hereinafter provided. [L. '21, p. 693, § 2; L. '19, p. 462, § 2; L. '15, p. 34, § 2. Cf. L. '90, p. 414, § 1; 1 H. C., § 447; L. '01, p. 284, § 2.]

This section referred and suspended until November, 1922.

See supra, § 5025, in school districts.

§ 5116. [4758.] Registration in Precincts Overlapping Corporate Boundaries.

In precincts where an incorporated city or town forms a part of a voting precinct, and where any portion of a city or town forms a part of a precinct extending beyond the corporate limits, there shall be a registration of voters: Provided, the board of county commissioners may appoint the clerk of a city or town in such a precinct the officer of registration for that portion of such a precinct without the city or town, but the voters within the city or town and those without shall be registered in separate poll-books of registration. [L. '91, p. 198, § 1; 1 H. C., § 488.]

§ 5117. [4759.] Voters of Such Precincts—By Whom Registered.

The voters of any such precinct resident within the corporate limits of an incorporated city or town shall be registered by the clerk of said

city or town, and those voters resident within the precinct, but without the corporate limits of a city or town, shall be registered by an officer of registration to be appointed by the board of county commissioners. [L. '91, p. 198, § 2; 1 H. C., § 449.]

§ 5118. [4760.] Time and Manner of Registration.

The time and manner of registration under this chapter shall be the same as that prescribed by law. [L. '91, p. 198, § 3; 1 H. C., § 450.]

"Chapter" substituted for "act," which embraces §§ 5116—5119.

§ 5119. [4761.] Expense of Registration—How Paid.

The expense of registration in all cities and towns shall be paid by such cities or towns, and the expense of registration in precincts outside of cities and towns shall be paid by the county in which such precincts are situated. [L. '91, p. 198, § 4; 1 H. C., § 451.]

AMENDED ACT.

§ 5120. [4762.*] Registration-books—Duty to Open.

It shall be the duty of the comptroller or clerk of any incorporated city or town to procure and open for the registration of voters, duplicate poll-books on the first Monday of January, 1920, for each precinct of such city or town; and on the first Monday of January of each biennial year thereafter to procure and open like books of registration for each of said precincts; and it shall be the duty of the board of county commissioners of each county, on the first Monday of January, 1920, and quadrennially thereafter, in like manner to procure and open a poll-book for the registration of voters in each precinct of such county outside of incorporated cities and towns, and to designate a legal voter in each of said precincts, to be the registration officer in such precinct, whose duties shall be the same as those devolving upon the city or town clerk of incorporated cities or towns under the provisions of this act: Provided, that the board of county commissioners of any county may, for the convenience of voters, designate a legal voter of such county at some convenient place to be the registration officer for one or more such precincts outside of incorporated cities and towns. [L. '19, p. 462, § 3. See references to next section.]

This section is amended by the next sections, but the amendment is subjected to referendum and suspended until general election in November, 1922.

REFERRED ACT.

§ 5120. [4762.*] Registration-books—Duty to Open.

It shall be the duty of the comptroller or clerk of any incorporated city or town to procure and open for the registration of voters, duplicate poll-books on the second day of January, 1922, for each precinct of such city or town; and on the second day of January of each biennial year thereafter to procure and open like books of registration for each of said precincts; and it shall be the duty of the board of county commissioners of each county, on the second day of January, 1922, and quadrennially thereafter, in like manner to procure and open a poll-book for the regis-

tration of voters in each precinct of such county outside of incorporated cities or towns, and to designate a legal voter in each of said precincts, to be the registration officer in such precinct whose duties shall be the same as those devolving upon the city or town clerk of incorporated cities or towns under the provisions of this act: Provided, that the board of county commissioners of any county may, for the convenience of voters, designate a legal voter of such county at some convenient place to be the registration officer for one or more such precincts outside of incorporated cities and towns. [L. '21, p. 693, § 3; L. '15, p. 34, § 3. Cf. L. '90, p. 414, § 2; 1 H. C., § 452; L. '05, p. 346, § 1; L. '19, p. 462, § 3.]

This section referred and suspended until November, 1922.

AMENDED ACT.

§ 5121. [4763.*] Poll-books, Where Kept—Registration Officer—Duty.

Such poll-books shall at all times, except as herein otherwise provided, be kept in the office of such city or town clerk or precinct registration officer of such city, town or precinct; and the city or town clerk, and the person designated by the board of county commissioners as herein provided, shall be the registration officer of such city, town or precinct, and it shall be his duty to register all legal voters of such city, town or precinct on such poll-books, as hereinafter provided: Provided, that in all cities of the first class, the city council may, by ordinance or resolution, direct that in all or certain of the precincts of such city, designated in such ordinance or resolution, the poll-books of such precincts shall be kept open in such precincts for the registration of voters thereof, at and during such time as shall be designated in such ordinance or resolution. It shall be the duty of the city clerk, in cities of the first class, to designate by the notice required by section 5123 the time and place where the registration poll-books for each precinct so designated by ordinance or resolution will be open in such precinct for the registration of voters of such precinct; and the city clerk shall provide for the precinct book in charge of an officer of registration to be kept at the place and kept open for the registration of voters qualified to register, between the hours of 9 A. M. and 9:30 P. M. on the days designated in said published notice: Provided, further, that in precincts outside of incorporated cities or towns, the registration officer of any such precincts, may, with the written consent of the county auditor, during the time such poll-books are kept open for the registration of voters therein, for the convenience of the voters, and at such time or times and by giving such notice of his intention so to do, as he may deem expedient, designate some centrally located place in addition to the usual place where such poll-books are kept, where the said poll-books will be kept open for the registration of voters of such precincts. [L. '19, p. 463, § 4. See references to next section.]

This section was amended by the next section but the amendment is referred and suspended until the general election in November, 1922.

*REFERRED ACT.***§ 5121-1. [4763.*] Poll-books, Where Kept—Registration Officer—Duty.**

Such poll-books shall at all times, except as herein otherwise provided, be kept in the office of such city or town clerk or precinct registration officer of such city, town or precinct; and the city or town clerk, and the person designated by the board of county commissioners as herein provided, shall be the registration officer of such city, town or precinct, and it shall be his duty to register all legal voters of such city, town or precinct on such poll-books, as hereinafter provided: Provided, that in all cities of the first class, the city council may, by ordinance or resolution, direct that in all or certain of the precincts of such city, designated in such ordinance or resolution, the poll-books of such precincts shall be kept open in such precincts for the registration of voters thereof, at and during such time as shall be designated in such ordinance or resolution. It shall be the duty of the city clerk, in cities of the first class, to designate by the notice required by section 5123 the time and place where the registration poll-books for each precinct so designated by ordinance or resolution will be open in such precinct for the registration of voters of such precincts; and the city clerk shall provide for the precinct books in charge of an officer of registration to be kept at the place and kept open for the registration of voters qualified to register, between the hours of 9 A. M. and 9:30 P. M. on the days designated in said published notice: Provided, further, that in precincts outside of incorporated cities or towns, the registration officer of any such precincts, may, with the written consent of the county auditor, during the time such poll-books are kept open for the registration of voters therein, for the convenience of the voters, and at such time or times and by giving such notice of his intention so to do, as he may deem expedient, designate some centrally located place in addition to the usual place where such poll-books are kept, where the said poll-books will be kept open for the registration of voters of such precincts. [L. '21, p. 694, § 4; L. '19, p. 463, § 4. Cf. L. '15, p. 34, § 4; L. '09, p. 628, § 1; L. '90, p. 414, § 3; 1 H. C., § 453; L. '03, p. 80, § 1; L. '05, p. 347, § 2; L. '07, p. 216, § 1.]

This section is referred and suspended until November, 1922.

§ 5122. [4764.] Effect of Registration as Evidence of Right to Vote.

It shall be the duty of all citizens of such city, town, or voting precinct, after the opening of the books as herein provided, to apply to the city or town clerk or officer or [of] registration, and be registered therein, at such time or times as said books shall be open for that purpose, as provided in this act; and such registration, when made as in this chapter provided, shall entitle such citizens to vote in their respective wards and precincts. If such citizens are otherwise legally qualified voters at such election, and have so caused themselves to be registered, such registration shall be prima facie evidence of the right of such citizens to vote at any election held in such city, town, or precinct subsequent to such registration, and preceding the first Monday of January next thereafter. [L. '90, p. 415, § 4; 1 H. C., § 454.]

*AMENDED ACT.***§ 5123. [4765.*] Notice of Opening of Registration-books.**

It shall be the duty of the city or town clerk of each incorporated city or town, beginning the first week in January, 1920, and biennially thereafter, and of the county auditor of each county, beginning the first week in January, 1920, and quadrennially thereafter, to cause to be published in a newspaper of general circulation in such city, town or county for two successive weeks, a notice that the legal voters of said city, town or county can register at the office of the said city or town clerk, or at the residence of the registration officers of the precincts of said county outside of incorporated cities and towns; and if in a city of the first class, in each precinct, at a place which has been designated by the city council, during the time designated in such notice: Provided, that the notices to be given by the county auditor shall refer only to precincts outside of incorporated cities or towns and shall in addition give the name of the registration officer of each precinct outside of such incorporated cities or towns, together with his place of residence, as near as may be. [L. '19, p. 464, § 5. See references to next section.]

This section was amended by the next section, but the amendment is subjected to referendum and suspended until the general election in November, 1922.

Election, when not invalidated by irregularity in a port district election in that in a few small towns no notice of opening the registration polls was given as required by this section: *Paine v. Port of Seattle*, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580.

*REFERRED ACT.***§ 5123-1. [4765.*] Notice of Opening of Registration-books.**

It shall be the duty of the city or town clerk of each incorporated city or town, beginning the first week in January, 1922, and biennially thereafter, and of the county auditor of each county, beginning the first week in January, 1922, and quadrennially thereafter, to cause to be published in a newspaper of general circulation in such city, town or county, for two successive weeks, a notice that the legal voters of said city, town or county can register at the office of the said city or town clerk, or at the residence of the registration officers of the precincts of said county outside of incorporated cities and towns; and if in a city of the first class, in each precinct, at a place which has been designated by the city council, during the time designated in such notice: Provided, that the notices to be given by the county auditor shall refer only to precincts outside of incorporated cities or towns and shall in addition give the name of the registration officer of each precinct outside of such incorporated cities or towns, together with his place of residence, as near as may be. [L. '21, p. 695, § 5; L. '19, p. 464, § 5. Cf. L. '15, p. 35, § 5; L. '07, p. 217, § 2; L. '90, p. 415, § 5; 1 H. C., § 455; L. '03, p. 80, § 2.]

This section was referred and suspended until November, 1922.

§ 5124. [4766.*] Poll-books Open for Registration—Notice of Closing.

The registration-books in this chapter provided for, shall be open at all times during the biennium, or quadrennium as the case may be,

for the registration of voters, except they shall be closed against original registrations in all general, state, county or municipal elections or any primaries and all special city, town or precinct elections, twenty days preceding any such election or primary to be held in said city, town or precinct: Provided, that the said books shall be open except on a day of any election, for transfers from one precinct within an incorporated city or town to another, within such city or town, as hereinafter provided. The city or town clerk, or the county auditor when the election concerns precincts outside of incorporated cities or towns, shall give notice of the closing of said books, by notice to be published at least ten days prior thereto, in a newspaper of general circulation in such city, town or county, and by posting written or printed notices in three of the most public places in such city, town or county, at least ten days preceding the day of such closing, and such notice of publication shall have at least two insertions in such newspaper; in all special city, town or precinct elections such notice shall be given by the posting aforesaid only at least five days before such closing. [L. '19, p. 465, § 6. Cf. L. '15, p. 36, § 6. Cf. L. '01, p. 287, § 5; L. '90, p. 415, § 6; 1 H. C., § 456; L. '93, p. 72, § 1.]

Cited in 66 Wash. 142.

AMENDED ACT.

§ 5125. [4767.*] Registration-books, Arrangement — Identification of Voter.

The registration-books aforesaid shall be so arranged as to admit the alphabetical classification of the names of the voters, and ruled in parallel columns, with appropriate heads, as follows: Date of registration; voted; names; ages; occupation; place of residence; place of birth; time of residence in the state, county, ward and precinct; whether a taxpayer of the state of Washington; if of foreign birth, name and place of court and date of declaration of intention to become a citizen of the United States, or date of naturalization. Column headed "signature" for a signature of voter at time of registering, and another and similar column immediately following headed "identification" for the signature of the voter in case he be challenged when he offers to vote, and a column for "remarks." If the voter registering is of foreign birth, he shall at the time of registering be questioned by the registration officer, and shall produce satisfactory evidence to the registration officer, that he was at the time of the adoption of the Constitution of the State of Washington, a qualified elector of this state, or that he is a naturalized citizen of the United States (in which latter case he shall be required to exhibit to the registration officer the original, or a duly certified copy, of his naturalization papers, or, if naturalized by virtue of the naturalization of his ancestor, then the original, or a duly certified copy, of the naturalization papers of such ancestor, unless the said officer shall know of his own knowledge that such voter is in fact a naturalized citizen), or if a woman of foreign birth that she has married a citizen of the United States. Under the head of place and residence shall be noted the number of lot and block, or number and street where the applicant resides, or some other definite description sufficient to locate and establish the residence with reasonable certainty; and the voter so regis-

tered as provided in this act shall sign his name in each of the duplicate poll-books to be procured and opened for the registration of voters in the precincts of incorporated cities and towns or in the poll-book to be procured and opened for the registration of voters in each precinct outside of such incorporated cities or towns as provided by this chapter on the registry opposite the entry above required, in the column headed "signature," unless he is a qualified elector at the time of the taking effect of this act, and shall not be capable of writing his name, or in the case of physical infirmity he be unable to write his name, in either of which cases he shall on the left-hand margin of said column make his mark or cross and such other mark as is usual in indicating his signature, and some person who personally knows said voter, and who is personally known to the registration officer, and who is capable of writing his name, shall sign in said column immediately opposite said mark, as an identifying witness thereto. [L. '19, p. 466, § 7. See references to next section.]

This section was amended by the next section, but the amendment is subjected to referendum and suspended until the general election in November, 1922.

Cited in 55 Wash. 515, 517; 66 Wash. class legislation as to foreign-born citizens: State ex rel. Carroll v. Superior Court, 113 Wash. 54, 193 Pac. 236.

This section is not objectionable as

REFERRED ACT.

§ 5125-1. [4767.*] Registration-books, Arrangement — Identification of Voter—Declaration of Political Faith.

The registration-books aforesaid shall be so arranged as to admit the alphabetical classification of the names of the voters, and ruled in parallel columns, with appropriate heads, as follows: Date of registration; voted; names; ages; occupation; place of residence; place of birth; time of residence in the state, county, ward and precinct; whether a taxpayer of the state of Washington; political faith; if of foreign birth, name and place of court and date of declaration of intention to become a citizen of the United States, or date of naturalization. Column headed "signature" for a signature of voter at time of registering and another and similar column immediately following, headed "identification" for the signature of the voter in case he be challenged when he offers to vote, and a column for "remarks." If the voter registering is of foreign birth, he shall at the time of registering be questioned by the registration officer, and shall produce satisfactory evidence to the registration officer, that he was at the time of the adoption of the Constitution of the state of Washington, a qualified elector of the state, or that he is a naturalized citizen of the United States (in which latter case he shall be required to produce satisfactory evidence to the registration officer of his naturalization, unless the said officer shall know of his own knowledge that such voter is in fact a naturalized citizen), or if a woman of foreign birth that she has married a citizen of the United States. Under the head of place of residence shall be noted the number of lot and block, or number and street where the applicant resides, or some other definite description sufficient to locate and establish the residence with reasonable certainty; and the voter so registered as provided in this act shall sign his name in each of the duplicate poll-books to be procured

and opened for the registration of voters in the precincts of incorporated cities and towns or in the poll-book to be procured and opened for the registration of voters in each precinct outside such incorporated cities or towns as provided by this chapter on the registry opposite the entry above required, in the column headed "signature," unless he is a qualified elector at the time of the taking effect of this act and shall not be capable of writing his name, or in case of physical infirmity he be unable to write his name, in either of which cases he shall on the left-hand margin of said column make his mark or cross and such other mark as is usual in indicating his signature, and some person who personally knows said voter, and who is personally known to the registration officer, and who is capable of writing his name, shall sign in said column immediately opposite said mark, as an identifying witness thereto.

At the time of registering, each elector shall declare the name of the political party with which he intends to affiliate at the ensuing primary election or elections, and the name of such political party shall be stated in the column headed "political faith." If the elector declines to state his political party the fact of such declination shall likewise be stated and no person shall be entitled to vote the ticket of any political party at any primary election, by virtue of such registration, unless he has stated the name of the political party with which he intends to affiliate at the time of such registration. In cases of transfer of registration the same entry shall be made in the column headed "political faith" as was made in the original registration: Provided, however, that any person registered outside any incorporated city or town, may change his political affiliation, one time, by re-registering after any biennial general election. [L. '21, p. 696, § 6; L. '15, p. 37, § 7; L. '05, p. 347, § 3. Cf. L. '90, p. 415, § 7; 1 H. C., § 457; L. '93, p. 73, § 2; L. '01, p. 285, § 3; L. '19, p. 466, § 7.]

This section referred and suspended until the general election in November, 1922.

AMENDED ACT.

§ 5126. [4768.*] Registration, Application for—Affidavit.

No person shall be registered unless he appears in person before the city or town clerk or officer of registration at the place where the registration-books are kept during office hours and apply to be registered and give his name, age, occupation, number and place or residence, place of birth, time of residence in the state, and county, and ward and precinct, and furnish satisfactory evidence to said registration officer that he is capable of reading and speaking the English language so as to comprehend the meaning of ordinary English prose, unless he is incapacitated through physical infirmities, in which case he shall furnish satisfactory evidence that he was before such infirmity capable of reading and speaking the English language, unless such person so offering was a qualified elector at the time of the taking effect of this act, in which case the provisions with reference to reading and speaking the English language shall not apply; and shall furnish to said officer all the facts required by this act to be stated, and in addition thereto shall make and subscribe to the following oath or affirmation:

State of Washington, } ss.
County of —, }

I, —, do solemnly swear (or affirm) that I am a person over twenty (20) years, eleven (11) months and ten (10) days of age, that I am a native born or naturalized citizen of the United States, or was a legal elector of the territory of Washington at the time of the adoption of the constitution of the state of Washington; that I have been an actual permanent resident of the state of Washington for eleven (11) months and ten (10) days last past, of the county of — for seventy (70) days last past and of the — precinct ten (10) days last past; that I have not lost any civil rights by being convicted of an infamous crime; that I was either a qualified elector on the first day of July, 1901, or that I can read or speak the English language; that I have read, or heard read, the statements preceding my name herein, as set down by the officer of registration, know the contents thereof, and believe the same to be true.

Subscribed and sworn to before me this — day of —.

(Official Character.)

Said affidavit shall be bound in book form and preserved with the other records of the city, town or precinct. [L. '01, p. 286, § 4. Cf. L. '90, p. 416, § 8; 1 H. C., § 458; L. '93, p. 73, § 3.]

This section was amended by the next section but the amendment is subjected to referendum and suspended until the general election in November, 1922.

Cited in 66 Wash. 140, 143; 67 Wash. 620; 69 Wash. 270.

138, 119 Pac. 20, 122 Pac. 8; State v. Cohen, 67 Wash. 618, 122 Pac. 9.

Criminal Prosecution for Fraudulent Registration: See Remington's Digest, Elections, § 65; State v. Ross, 66 Wash.

Validity of statute requiring information as to age, sex, residence, etc., as a condition of registration. 14 A. L. R. 260.

REFERRED ACT.

§ 5126-1. [4768.*] Registration, Application for—Affidavit.

No person shall be registered unless he appears in person, before the city or town clerk, or officer of registration at the place where the registration-books are kept during office hours and apply to be registered, and give his name, age, occupation, number and place of residence, place of birth, time of residence in the state, and county, and ward, and precinct, and furnish satisfactory evidence to said registration officer that he is capable of reading and speaking the English language, so as to comprehend the meaning of ordinary English prose, unless he is incapacitated through physical infirmities, in which case he shall furnish satisfactory evidence that he was before such infirmity capable of reading and speaking the English language, unless such person so offering was a qualified elector at the time of the taking effect of this act, in which case the provisions with reference to reading and speaking the English language shall not apply; and shall furnish to said officer all the facts required by this act to be stated, and in addi-

tion thereto shall make and subscribe to the following oath or affirmation:

State of Washington, }
County of —, } ss.

I, — do solemnly swear (or affirm) that I am a person over twenty (20) years, eleven (11) months and ten (10) days of age, that I am a native born or naturalized citizen of the United States, or was a legal elector of the territory of Washington at the time of the adoption of the Constitution of the state of Washington; that I have been an actual, permanent resident of the state of Washington for eleven (11) months and ten (10) days last past, of the county of — for seventy (70) days last past and of the — precinct ten (10) days last past; that I have not lost any civil rights by being convicted of an infamous crime; that I was either a qualified elector on the first day of July, 1901, or that I can read or speak the English language; that I have not registered during the present biennium (or quadrennium) in any other precinct except as herein set down by the officer of registration; that my answer in the column headed "political faith" is true and correct; that I have read or heard read, the statements preceding my name herein, as set down by the officer of registration, know the contents thereof and believe the same to be true.

Subscribed and sworn to before me this — day of —, 19—.

(Official character.)

The said affidavit shall be bound in book form and preserved with the other records of the city, town or precinct.

And every registration officer when required so to do by a writ of mandate of a court of competent jurisdiction, shall register the voter as directed by said writ. [L. '21, p. 698, § 7. Cf. L. '15, p. 38, § 8; L. '01, p. 286, § 4; L. '90, p. 416, § 8; 1 H. C., § 458; L. '93, p. 73, § 3.]

This section subjected to referendum and suspended until November, 1922.

§ 5127. [4769.*] Voter must be Registered.

No person shall be entitled to vote at any election in any such city, town, or precinct who is not registered according to the provisions of this act: Provided, that this prohibition shall not extend to any qualified elector who has been prevented from registering by reason of his being in the military or naval service of the United States, but any such elector shall, subject to the other provisions of this act, be entitled to vote upon making and filing with the election officers of his voting precinct an affidavit setting forth facts showing that he is such qualified elector and was prevented from registering by reason of such service, whereupon such election officers shall enter his name and other data under the appropriate headings upon said registration-book and deliver said affidavit to the proper registration officer upon the return of said registration-book. The registration shall not be conclusive evidence of the right of any registered person to vote, but said person may be challenged and required to establish his right at the polls in the manner

as may be required by law. [L. '19, p. 467, § 8; L. '90, p. 416, § 9; 1 H. C., § 459.]

Cited in 21 Wash. 249.

Where, under the law of this state, jail-breaking was only a misdemeanor at the time the offense was committed in another state, the offense would not be an infamous crime, within the meaning of this section: State v. Collins, 69 Wash. 268, 124 Pac. 903.

Under this section it is no excuse for failure to register that a voter is a member of a city fire department and was prevented from registering by his duties as a fireman, and he is not entitled to vote: State ex rel. Hyland v. Peter, 21 Wash. 243, 57 Pac. 814.

§ 5128. [4770.] Examination of Applicant—Oath.

The city or town clerk, or officer of registration, is hereby empowered to administer all necessary oaths in examining an applicant for registration, or any witness he may offer in his behalf, in order to ascertain his right to be registered under the provisions of this act; and the said clerk, or registration officer, shall closely examine any applicant for registration whose right to registration he may doubt, or who may be challenged, and shall explain to him the necessary qualifications of a voter, and if the applicant for registration be entitled to vote at the next election he shall be registered, otherwise he shall not. [L. '90, p. 417, § 11; 1 H. C., § 461; L. '93, p. 74, § 4.]

§ 5129. [4771.*] Change of Residence to be Noted.

The registration-books of any city or incorporated town shall be open at all times, except on primary and election days of whatever nature, and the day previous thereto, for the transfer of registration. If any qualified voter residing within the corporate limits of any city or town, having duly registered in a precinct thereof, shall, during the biennium for which he has been registered, change his residence from the said precinct to another precinct in the same city or town, he shall apply to the city or town clerk to have said removal noted on said registration-books. The clerk or officer of registration shall register said person in the precinct to which he has removed, and run a red-ink line across his name in the precinct book of his former residence, and likewise note the transfer in the column for "remarks" in said poll-book. In all other cases of removal from one precinct to another, during the biennium, or quadrennium, as the case may be, the elector shall register in the precinct to which he has removed and such registration shall be deemed an original registration, and in all cases of registration during any biennium, or quadrennium, as the case may be, the registration officer shall inquire whether the voter has previously registered in any other precinct in the state during the biennium, or quadrennium, as the case may be, and shall ascertain the name or number of the precinct, and the city, town and county, and shall forthwith notify the registration officer of such precinct of the new registration, and upon receiving such notice the registration officer of the precinct of former registration shall cancel the same on the books in his office. [L. '19, p. 468, § 9; L. '15, p. 39, § 9. Cf. L. '90, p. 417, § 12; 1 H. C., § 462.]

§ 5130. [4771-1.] Certification of Convictions and Deaths.

It shall be the duty of the county clerk of each county, to certify to the auditor thereof, on the first day of October of each year, the

name and address of each person convicted in the courts of said county the preceding year of an infamous crime, and whose conviction is not on appeal or reversed. It shall further be the duty of the officers of any county, city, town or precinct, charged with the registry of deaths, to certify on October 1st of each year to the county auditor, the deaths occurring within the year, of all persons over twenty-one years of age, giving their respective names and addresses. The county auditor shall thereupon and before October 15th, certify to each city or town clerk, or precinct officer of registration, the names and addresses of the several persons whose names have been certified as above, residing within his respective city, town or precinct, and such officer shall thereupon strike said name or names from the registration-books as in other cases of cancellation, giving a brief reason therefor in the column for "remarks." [L. '15, p. 40, § 10.]

§ 5131. [4772.*] Delivery of Books to Election Officers.

It shall be the duty of the clerk, or officer of registration, immediately upon the close of registration-books preceding any election to be held in said city, town or precinct, to certify to the authenticity of said registration-books; and, in time for the opening of polls, as provided by law, to have one of said registration-books at each of the polling places, and deliver the same to the inspector or one of the judges of said election, and take his receipt therefor: Provided, that in case of any general state or county election, the county auditor may in his discretion, require the delivery of the said registration-books to himself, to be by said auditor delivered to the officers of election. The fees and expenses of the registration officer of precincts lying without the corporate limits of a city or town, for the delivery of the registration-books to election officers or the county auditor as in this section provided, shall be fixed and paid as election expenses by the county commissioners, but mileage in no case shall exceed ten cents per mile for each mile necessarily traveled. [L. '19, p. 469, § 11. Cf. L. '15, p. 42, § 13; L. '90, p. 417, § 13; 1 H. C., § 463; L. '05, p. 348, § 4.]

§ 5132. [4772-1.] Fees of Registration Officers.

The fees of the registration officers of precincts outside of the corporate limits of any city or town, in addition to those hereinbefore provided for, shall be as follows:

- (a) For each person registered five cents per name.
- (b) For each cancellation, five cents per name.
- (c) For checking any recall, initiative or referendum petition, and certifying to the same, five cents per name.
- (d) For certifying to any state officer the names of the electors registered or voted, as may be required by law, five cents per name.

Said fees shall be paid by warrant drawn upon the county treasurer by order of the county commissioners upon proper vouchers being presented therefor. [L. '15, p. 42, § 14.]

§ 5133. [4772-2.] Penalty.

Every officer who shall willfully violate or fail to comply with the provisions of this act, and every person who shall willfully violate any

of the provisions of this act shall be guilty of a felony. [L. '15, p. 43, § 15.]

§ 5134. [4773.] Checking of Votes and Return of Poll-list.

At every election one of the judges of election shall, as each person registered votes, enter on the said poll-book in the check line opposite the name of such person the word "voted," said poll-book to be returned to the city or town clerk or officer of registration after said election, and by him preserved. [L. '90, p. 418, § 14; 1 H. C., § 464; L. '05, p. 349, § 5.]

§ 5135. [4774.] Neglect or Refusal of Officers to Perform Duty—Penalty.

If any officer shall neglect or refuse to perform any duty required by this act, or in the manner required by this act, or shall neglect or refuse to enter upon the performance of any such duty, or shall enter, or cause or permit to be entered, on the registry books the name of any person in any other manner or at any other time than as prescribed by this act, or shall enter, or cause or permit to be entered, on such lists the name of any person not entitled to be registered thereon according to the provisions of this act, or shall destroy, secrete, mutilate, alter, or change any such registry books, he shall, upon conviction, be punished by confinement and hard labor in the penitentiary not more than five nor less than one year, and shall forfeit any office he may then hold. [L. '90, p. 418, § 15; 1 H. C., § 465.]

See note to § 5120.

§ 5136. [4775.] False and Fraudulent Registration, How Punished.

If any person shall falsely swear, or affirm, in taking the oath or making the affirmation prescribed in section 5126, or shall falsely personate another, and procure the person so personated to be registered, or if any person shall represent his name to the city or town clerk, or officer of registration to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry list otherwise than in the manner provided in this act, he shall be deemed guilty of a felony, and upon conviction be punished by confinement and hard labor in the penitentiary not more than five years nor less than one year. [L. '90, p. 418, § 16; 1 H. C., § 466; L. '93, p. 74, § 5.]

Cited in 66 Wash. 139, 143; 67 Wash. 619, 620.

§ 5137. [4776.] Application of Preceding Sections.

The provisions of this act shall apply to all elections for national, state, congressional, district, county or municipal officers, and all general or special elections held within any such cities, towns or precincts, except road elections, and the wards or voting precincts established by the authorities of any county, city or town shall be the same for all county, district, state, congressional, national or other elections. [L. '90, p. 418, § 17; 1 H. C., § 467; L. '95, p. 340, § 1.]

Cited in 4 Wash. 303; 6 Wash. 151; 13 Wash. 144; 55 Wash. 515.

CHAPTER III.

TIME AND MANNER OF HOLDING ELECTIONS.

In school districts, see § 5021.

In cities, see "Municipal Corporations."

§ 5138. [4777.] Election of Presidential Electors.

On the Tuesday next after the first Monday of November in the year eighteen hundred and ninety-two, and on the same day of every fourth year thereafter, there shall be elected by the qualified electors of the state of Washington as many electors of President and Vice-President of the United States as this state may be entitled to elect of senators and representatives in congress. [L. '91, p. 364, § 1; 1 H. C., § 347.]

Election of presidential electors. 43 L. R. A. (N. S.) 284.

§ 5139. [4778.] Votes, How Received, Returned, Canvassed, etc.—Lists of Electors.

The votes for the electors shall be given, received, returned, and canvassed as the same are given, returned, and canvassed for members of congress. The secretary of state shall prepare three lists of the names of the electors elected, and affix the seal of the state to the same. Such lists shall be signed by the governor and secretary of state, and by the latter delivered to the college of electors at the hour of their meeting, prescribed in the next succeeding section. [L. '91, p. 364, § 2; 1 H. C., § 348.]

§ 5140. [4779.] Meeting of Electors—Vacancies—College of, How Constituted.

The electors of the President and Vice-President shall convene at the seat of government on the day fixed by federal statute, at the hour of 12 of the clock at noon of that day, and if there shall be any vacancy in the office of an elector occasioned by death, refusal to act, neglect to attend, or otherwise the electors present shall immediately proceed to fill, by viva voce and plurality of votes, such vacancy; and when all of the electors shall appear, or the vacancies, if any, shall have been filled as above provided, such shall constitute the college of electors of the state of Washington, and shall proceed to perform the duties required of them by the Constitution and laws of the United States. [L. '91, p. 365, § 3; 1 H. C., § 349; L. '09, p. 30, § 1.]

§ 5141. [4780.] Compensation of Electors.

Every such elector who shall attend at the time and place appointed, and give his vote for President and Vice-President, shall be entitled to receive from this state five dollars for each day's attendance at such meeting of the college of electors, and ten cents per mile for travel in going to and returning from the place where the electors shall meet, on the usually traveled route. [L. '91, p. 365, § 4; 1 H. C., § 350.]

§ 5142. [4781.] Biennial Elections to be Held—Day of.

The election of legislative, district, county, and precinct officers, in this state, shall be held on the Tuesday following the first Monday of

November, Anno Domini 1882, and thereafter biennially, on the Tuesday next following the first Monday in November; and all elective, state, legislative, district, county, and precinct officers shall hereafter be elected at the times herein specified. [Cf. L. '54, p. 65, § 3; L. '66, p. 27, § 1; L. '67, p. 6, §§ 1, 5; L. '71, p. 35, §§ 1—3; Cd. '81, § 3055; 1 H. C., § 351.]

See Const., Art. VI, § 8.

§ 5143. Elections in Class A and First Class Counties—County Elections.

All county elections in class A counties and counties of the first class, whether general or special, and whether for the election of county officers or for the submission to the voters of any county of any question for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November in the year in which they may be called: Provided, that this section shall not be construed as fixing the time for holding the elections for the recall of county officers or primary elections. [L. '21, p. 179, § 1.]

§ 5144. City, Town and Other Elections.

That all city, town, township, school district, port district, park district, irrigation district, dike district, drainage district, drainage improvement district, diking improvement district, river improvement district, commercial waterway district, and all other municipal and district elections whether general or special, and whether for the election of municipal or district officers or for the submission to the voters of any city, town, township or district of any question for their adoption or approval or rejection, shall be held in class A counties and counties of the first class on the first Tuesday after the first Monday in May in the year in which they may be called: Provided, that this section shall not be construed as fixing the time of holding elections for the recall of city, town or district officers; and Provided further, that this section shall not be construed as repealing the provisions of any charter of a city of the first class providing for the election of persons receiving a majority of all votes cast for any office at a primary or first election, but such primary or first election shall be held two weeks prior to the general election provided for in this section. [L. '21, p. 179, § 2.]

§ 5145. Vacancies in Congress.

Nothing in this act contained shall be construed as preventing the calling of a special election by the governor to fill a vacancy existing in any state office or the office of United States senator, representative in congress, for the senator or member of the house of representatives of the state of Washington, on any other dates than those above specified. [L. '21, p. 180, § 3.]

§ 5146. Term of Office of City and District Officers.

The term of every city, town and district officer elected under the provisions of this act shall begin on the first Monday in June following his election: Provided, however, that any person elected to office at the first election held under this act shall not take office until the expiration

of the term of office of his predecessor; and provided further, that any person whose term of office shall expire prior to the holding of the first election under this act, shall continue to hold office until his successor is elected and qualified. [L. '21, p. 180, § 4.]

§ 5147. Polling Places—Election Officers, etc.

It shall be the duty of the chairman of the board of county commissioners, the county auditor and the prosecuting attorney in class A counties and counties of the first class in all city, town and district elections held under the provisions of this act to provide places for holding elections, to appoint the election officers, to provide for their compensation, to provide ballot-boxes and ballots or voting machines, poll-books and tally-sheets, and deliver them to the election officers at the polling places, to publish and post notices of calling such elections in the manner provided by law, and to apportion to each city, town or district its share of the expense of such election. [L. '21, p. 181, § 5.]

§ 5148. Conduct of Elections.

The election officers hereinabove provided for shall conduct such elections and shall receive and deposit ballots cast thereat in the proper and respective ballot-boxes and shall count said ballots and make return thereof to the proper officers of the respective cities, towns and districts in the manner provided by law: Provided, however, there shall be but one set of election officials in each precinct. [L. '21, p. 181, § 6.]

§ 5149. Time Polls are Open.

At every election held under the provisions of this act, the polls shall be kept open from 8 o'clock A. M. to 8 o'clock P. M., and all qualified electors who shall be inside of the polling place at 8 o'clock P. M. shall be allowed to cast their ballots at such election. [L. '21, p. 181, § 7.]

§ 5150. Elections in Other Than Class A and First Class Counties—Time of Holding.

All city, school district and port district elections, other than in class A and first class counties, whether general or special, and whether for the election of officers, or for the submission to the voters of such city, port district or school district, of any question for their adoption and approval or rejection, in any port district, containing a school district of the first class, shall be held on the first Saturday in December in the year in which they may be called: Provided, that this section shall not be construed as fixing the time for holding the elections for the recall of any city or district officers or primary election or special bond election. [L. '21, p. 665, § 1.]

§ 5151. Term of Office.

The term of every city, port district and school district officer elected under the provisions of this act shall begin on the first Monday in January following his election: Provided, however, that any person elected to office at the first election held under this act shall not take

office until the expiration of the term of office of his predecessor: And provided further, that any person whose term of office shall expire prior to the holding of the first election under this act shall continue to hold office until his successor is elected and qualified. [L. '21, p. 665, § 2.]

§ 5152. Place of Holding and Election Officers.

It shall be the duty of the chairman of the board of county commissioners, the county auditor and the prosecuting attorney in all city, town and district elections held under the provisions of this act to provide places for holding elections, to appoint the election officers, to provide for their compensation, to provide ballot-boxes, ballot or voting machines, poll-books and tally-sheets, and deliver them to the election officers at the polling places, to publish and post notices of calling such elections in the manner provided by law, and to apportion to each city, town or district its share of the expense of such election. [L. '21, p. 666, § 3.]

§ 5153. Conduct of Elections.

The election officers hereinabove provided for shall conduct such election and shall receive and deposit the ballot cast thereat in the proper and respective ballot-boxes and shall count said ballots and make return thereof to the proper officers of the respective cities, port districts and school districts in the manner provided by law: Provided, however, that there shall be but one set of election officers in each precinct. [L. '21, p. 666, § 4.]

§ 5154. Polls, Hours to Remain Open.

At every election held under the provisions of this act, the polls shall be kept open from 8 o'clock A. M. to 8 o'clock P. M., and all qualified electors who shall be inside the polling place at 8 o'clock P. M. shall be allowed to cast their ballots at such election. [L. '21, p. 666, § 5.]

§ 5155. [4782.] Special Elections Defined.

Special elections are such as are held to supply vacancies in any office, whether the same be filled by the vote of the qualified electors of the state, or any district, county, or township, and may be held at such times as may be designated by the proper officer. [L. '66, p. 27, § 2; Cd. '81, § 3056; 1 H. C., § 352.]

Vacancies in office are now filled by appointment, except in cases provided by Article II, § 15, of the Constitution.

See references to § 9950, *infra*, vacancies, etc.

§ 5156. [4783.] Governor to Issue Proclamation.

It shall be the duty of the governor, at least sixty days before any general election, to issue his proclamation, designating the offices to be filled by the state at large at such election, and to transmit a copy thereof to the county auditor of each county. [L. '66, p. 27, § 4; Cd. '81, § 3058; 1 H. C., § 353.]

§ 5157. [4784.*] Election Notice, Form of.

It shall be the duty of each county auditor to give at least thirty days' notice of any general election, and at least fifteen days previous to any special election, by posting or causing to be posted up, at each place of holding election in the county, a written or printed notice thereof; said notice to be as nearly as circumstances will admit as following:

Notice is hereby given that on the — day of — next, at — in the — district or precinct of —, in the county of —, an election will be held for state, county, town, or district officers (naming the offices to be filled, as the case may be), which election will be opened at 8 o'clock in the morning, and will continue until 8 o'clock in the evening of the same day.

Dated this — day of —, A. D. 19—.

A. B. County Auditor.

[L. '19, p. 470, § 12; L. '66, p. 27, § 6; Cd. '81, § 3060; 1 H. C., § 354.]

See *infra*, § 5319, time of opening and closing polls.

Cited in 33 Wash. 278.

Notice of Election: See Remington's Digest, Elections, §§ 9—11. **Requisites and Sufficiency:** State ex rel. Bailey v. Smith, 4 Wash. 661, 30 Pac. 1064; Richards v. Klickitat County, 13 Wash. 509, 43 Pac. 647; State ex rel. Mullen v. Doherty, 16 Wash. 382, 47 Pac. 958, 58 Am. St. Rep. 39; Hesseltine v. Wilbur, 29 Wash. 407, 69 Pac. 1094; Seymour v. Tacoma, 6 Wash. 138, 32 Pac. 1077; Williams v. Shoudy, 12 Wash. 362, 41 Pac. 169; Brown's Estate v. West Seattle, 43 Wash. 26, 85 Pac. 854.

§ 10. — Election on Specific Question: State ex rel. Weisenthal v. Denny, 4 Wash. 135, 29 Pac. 991, 16 L. R. A. 214; Luzader v. Sargeant, 4 Wash. 299, 30 Pac. 142; State ex rel. Mullen v. Doherty, 16 Wash. 382, 47 Pac. 958, 58 Am. St. Rep. 39; Parkinson v. School Dist., 28 Wash. 335, 68 Pac. 875; Hesseltine v. Wilbur, 29 Wash. 407, 69 Pac. 1094; Peth v. Martin, 31 Wash. 1, 71 Pac. 549; Ehrhardt v. Seattle, 33 Wash. 664, 74 Pac. 827.

§ 11. — Publication and Posting:

Seymour v. Tacoma, 6 Wash. 427, 33 Pac. 1059; Thompson v. Sumner, 9 Wash. 310, 37 Pac. 450; Richards v. Klickitat County, 13 Wash. 509, 43 Pac. 647; State ex rel. Mullen v. Doherty, 16 Wash. 382, 47 Pac. 958, 58 Am. St. Rep. 39.

Where no notice of a special election to fill a vacancy was given, as contemplated by statute, and a candidacy therefor was kept secret, thirteen votes by stickers, out of a total of thirty-two thousand electors voting for other officers at the general election, held at the same time, is not such an expression of the popular will as to amount to an election to such office, or such as would dispense with the necessity of giving notice of the special election for that office: State ex rel. Sampson v. Superior Court, 71 Wash. 484, 128 Pac. 1054, Ann. Cas. 1914C, 591.

Necessity for notice of proclamation of election. 120 Am. St. Rep. 794.

Necessity of compliance with statutory requirements as to notice of election for issuance of bonds. 18 Ann. Cas. 1137.

§ 5158. [4785.] Creation of Election Officers.

It shall be the duty of the county commissioners, at their regular session held previous to the day of holding the general election, to appoint for each precinct, from the qualified electors of said precinct, one inspector and two judges, who shall constitute a board of judges of election. In case said board be not appointed for any precinct by the board of county commissioners, as specified in this section, or those appointed in accordance with this section shall not be present at the place designated by the county commissioners in a precinct for holding the polls, at the hour to open the polls, the electors present may appoint a board of judges for such precinct. [L. '66, p. 30, § 2; Cd. '81, § 3068; 1 H. C., § 355.]

§ 5159. [4786.] Clerks of Election to be Appointed—Challengers.

The inspector and judges for each precinct having more than one hundred voters shall, before the time of opening the polls, appoint two suitable persons to act as clerks, who shall be qualified electors: Provided, that in precincts having less than one hundred voters the said judges shall keep a tally of the voters voting at said election, and shall perform all of the duties pertaining to and required to be performed by clerks of elections: And provided further, that each of the recognized political parties may have one challenger at the polls of each voting precinct. [Cf. L. '66, p. 31, § 2; Cd. '81, § 3069; 1 H. C., § 356; L. '95, p. 386, § 1.]

Cited in 66 Wash. 142.

§ 5160. [4787.] Oath of Election Officers—How to be Administered.

The inspector, judges, and clerks aforesaid shall, before entering upon the duties of their offices, severally take and subscribe the oath or affirmation hereinafter directed, which shall be administered to them by any person authorized to administer oaths; but if no such person be present, the inspector shall administer the same to the judges and clerks, and one of the judges shall administer the oath to the inspector. [L. '66, p. 31, § 4; Cd. '81, § 3070; 1 H. C., § 357.]

§ 5161. [4788.] Oath of Inspectors, Form of.

The following shall be the form of the oath or affirmation to be taken by each inspector:

I, A B, do swear (or affirm) that I will duly attend to the ensuing election, during the continuance thereof, as an inspector, and that I will not receive any ticket or vote from any person other than such as I shall firmly believe to be, according to the provisions of the laws of this state, entitled to vote at such election, without requiring such evidence of the right to vote as is directed by law; nor will I vexatiously delay, or refuse to receive, any vote from any person whom I shall believe to be entitled to vote as aforesaid; but that I will in all things truly, impartially, and faithfully perform my duty therein to the best of my judgment and abilities; and that I am not, directly nor indirectly, interested in any bet or wager on the result of this election. [L. '66, p. 31, § 5; Cd. '81, § 3071; 1 H. C., § 358.]

§ 5162. [4789.] Oath of Judges, Form of.

The following shall be the oath or affirmation of each judge:

We, A B, do — that we will as judges duly attend the ensuing election, during the continuance thereof, and faithfully assist the inspector in carrying on the same; that we will not give our consent that any vote or ticket shall be received from any person, other than such as we firmly believe to be, according to the law of the state, entitled to vote at such election; and that we will make a true and perfect return of the said election, and will in all things truly, impartially, and faithfully perform our duty respecting the same to the best of our judgment and abilities; and that we are not directly nor indirectly, interested in any bet or wager on the result of this election. [L. '66, p. 31, § 6; Cd. '81, § 3072; 1 H. C., § 359.]

§ 5163. [4790.] Oath of Clerks, Form of.

The following shall be the form of the oath to be taken by the clerks, viz.:—

We, and each of us, A B, do — that [we] will impartially and truly write down the name of each elector who shall vote at the ensuing election, and also the name of the county and precinct wherein such elector resides; and carefully and truly write down the number of votes that shall be given for each candidate at the election as often as his name shall be read to us by the inspector thereof and in all things truly and faithfully perform our duty respecting the same to the best of our judgment and abilities; and that we are not directly nor indirectly, interested in any bet or wager on the result of this election. [L. '66 p. 32, § 7; Cd. '81, § 3073; 1 H. C., § 360.]

§ 5164. [4791.] Oaths to be Certified and Returned.

It shall be the duty of the county auditor to make out two copies of each of the said oaths or affirmations for each election precinct, which shall be severally subscribed by the inspector and judges and clerks in the precincts where clerks are employed, and the said oaths or affirmations shall be verified under the hand of the person by whom they shall be administered, and one of the said oaths or affirmations shall be placed with the election returns to be returned to the county auditor. [Cf. L. '66, p. 32, § 8; Cd. '81, § 3074; 1 H. C., § 361; L. '95, p. 386, § 2.]

§ 5165. [4792.] Inspector to be Chairman—May Administer Oaths and Fill Vacancies.

The inspector shall be chairman of the board and after its organization shall have power to administer all necessary oaths which may be required in the progress of the election. He shall also have power to fill any vacancy that may occur in the board of judges, or by absence or refusal to serve of either of the clerks after the polls shall have been opened. [L. '66, p. 32, § 9; Cd. '81, p. 3075; 1 H. C., § 362.]

§ 5166. [4793.*] Fees of Election Officers.

The fees of officers of election shall be as follows:

To the inspectors, judges and clerks of an election fifty cents per hour for full time employed by each of them. The person carrying the returns to the county auditor shall be entitled to ten cents per mile for each mile traveled. [L. '19, p. 470, § 13; Cf. L. '66, p. 52, § 12; L. '67, p. 8, § 9; Cd. '81, § 3151; 1 H. C., § 446; L. '95, p. 26, § 1.]

CHAPTER IV.**NOMINATIONS AND PRIMARY ELECTIONS.****§ 5167. [4794.] Nomination of Candidates—Convention for.**

Any convention, primary meeting, or primary election, as hereinafter defined, held for the purpose of making nominations for public office, and also electors to the number hereinafter specified, may nominate candidates for public office, to be filled by election within the state. A

convention, or primary meeting, within the meaning of this chapter, is an organized assemblage of electors or delegates, representing a political party or principle, and a primary election is a legally conducted election for the nomination of candidates for public office. [L. '90, p. 400, § 2; 1 H. C., § 364.]

Superseded as to primary elections by § 5177 et seq.

Cited in 5 Wash. 85; 23 Wash. 119; 70 Wash. 666.

Constitutionality of primary election laws. 5 Ann. Cas. 568; 12 Ann.

Cas. 73; Ann. Cas. 1916B, 594; 22 L. B. A. (N. S.) 1136; 41 L. B. A. (N. S.) 132; L. B. A. 1917A, 259.

§ 5168. [4795.] Nominations, How Certified.

All nominations made by such convention, primary meeting, or primary election shall be certified as follows: The certificate of nomination, which shall be in writing, shall contain the name of each person nominated, his residence, his business, his address, and the officer for which he is named, and shall designate, in not more than five words, the party or principle which such convention, primary meeting, or primary election represents, and it shall be signed by the presiding officer and secretary of such convention or primary meeting, or, in case of a primary election, by one of the judges and the clerk thereof, who shall add to their signatures their respective place of residence, their business, and addresses. Such certificate, made out as herein required, shall be delivered by the secretary or president of such convention or primary meeting, clerk, or judge of the primary election, to the secretary of state, or the clerk of the board of county commissioners, as hereinafter required. [L. '90, p. 400, § 3; 1 H. C., § 365.]

Cited in 23 Wash. 119; 50 Wash. 525; 70 Wash. 666.

Nomination by Convention or Other Representative of Party: See Remington's Digest, Elections, § 22; State ex rel. Peters v. Superior Court, 70 Wash. 662, 127 Pac. 310.

The superior court has jurisdiction to

compel the presiding officer by writ of mandate to certify the name of the person selected for office by such convention: State ex rel. Cann v. Moore, 23 Wash. 115, 62 Pac. 441.

Conclusiveness of certificate of nomination. 9 L. B. A. (N. S.) 916.

§ 5169. [4796.] Certificates of Nomination, How Filed.

Certificates of nomination of candidates for offices to be filled by the electors of the entire state, or of any division or district greater than a county, shall be filed with the secretary of state. Certificates of nomination for county and precinct offices shall be filed with the clerks of the boards of county commissioners of the respective counties wherein the officers are to be elected. Certificates of nomination for municipal offices shall be filed with the clerks of the respective municipal corporations wherein the officers are to be elected. The certificate of a nomination for an office in a district composed of more than one county shall be filed in the offices of the clerks of the boards of county commissioners of all the counties to be represented by such joint officer or member. [L. '90, p. 401, § 4; 1 H. C., § 366.]

§ 5170. [4797.] Certificate to Contain but One Name—Restriction on Nominations.

No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in the nomination of more than one person for each office to be filled, and no person shall accept a nomination to more than one office. [L. '90, p. 402, § 6; 1 H. C., § 368.]

Cited in 5 Wash. 85; 17 Wash. 22.

§ 5171. [4798.*] Certificates of Nomination Preservation — Election Precincts.

The secretary of state and the clerks of boards of county commissioners of the several counties, and of the several municipal corporations, shall cause to be preserved in their respective offices for six months all certificates of nomination filed in their respective offices under the provisions of this act. All such certificates shall be open to public inspection under proper regulations, to be made by the officers with whom the same are filed. The board of county commissioners of each county in the state shall, at their first session after the taking effect of this act divide their respective counties into election precincts, and establish the boundaries of the same. Such board of county commissioners shall designate one voting place for each precinct and each precinct shall contain two hundred and fifty electors or less, based on the number of votes cast at the last general election; but no precinct shall contain more than three hundred electors. If at any election hereafter three hundred or more votes shall be cast at any voting place, it shall be the duty of the inspector in such precinct to report the same to the board of county commissioners, who shall, at a regular meeting, between general election day and December 31st of the same year, divide such precinct as nearly as possible so that the new precincts formed thereof shall each contain two hundred and fifty electors, or less: Provided, that in cities of the first class, the duties herein conferred upon the county commissioners shall be performed by the city council or commissioners of such city and reports of inspectors herein provided for shall be made to such city council or commissioners. In establishing precincts it shall be the duty of the county commissioners and city councils and commissioners to fix the boundaries thereof so that each precinct shall be wholly in one senatorial or representative district, and one county commissioner's district. [L. '21, p. 700, § 1; L. '15, p. 26, § 1. Cf. L. '07, p. 241, § 1; L. '66, p. 30, § 1; Cd. '81, § 3067; L. '90, p. 402, § 7; 1 H. C., § 369.]

"Act" refers to §§ 5167—5176.

See *infra*, § 5278, division of precincts when to be made.

Cited in 61 Wash. 387; 69 Wash. 424; 70 Wash. 307.

ELECTION DISTRICTS OR PRECINCTS AND OFFICERS—Creation and Alteration of Districts or Precincts: See Remington's Digest, Elections, § 12; Hilliard v. Board of County Commrs., 69 Wash. 423, 125 Pac. 363.

Under this section, before amendment, a city election for the annexation of ter-

ritory was void where no voting places were designated in several of the precincts; since the electors therein were thereby disfranchised: *Wilton v. Pierce County*, 61 Wash. 386, 112 Pac. 386.

A port district election is not invalidated by the failure to show that county commissioners designated the polling places "by resolution": *Paine v. Port of Seattle*, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580.

§ 5172. [4799.*] Certificates of Nomination—Filing.

Certificates of nomination to be filed with the secretary of state shall be filed not more than sixty days, and not less than thirty days before the day fixed by law for the election of the persons in nomination. Certificates of nomination herein directed to be filed with the clerk of the board of county commissioners shall be filed not more than sixty days, and not less than twenty days before the election. Certificates for the nomination of candidates for municipal offices shall be filed with the clerks of the respective municipal corporations not more than thirty days and not less than ten days previous to the day of election: Provided, that the provisions of this section shall not be held to apply to nominations for special elections to fill vacancies caused by death, resignation or otherwise. [L. '21, p. 701, § 2; L. '90, p. 403, § 8; 1 H. C., § 370.]

Construction of provision in election or primary law with respect to time of filing certificate of nomination. *Ann. Cas.* 1914A, 1135.

§ 5173. [4800.] Secretary of State to Certify Name, etc., to Nominees.

Not less than twenty nor more than thirty days before an election to fill any state or district office, the secretary of state shall certify to the clerk of the board of county commissioners of each county within which any of the electors may by law vote for candidates for such office, the name and place of residence of each person nominated for such office, as specified in the certificates of nomination filed with the secretary of state. [L. '90, p. 403, § 9; 1 H. C., § 371.]

Cited in 93 Wash. 260.

A writ of mandate to compel the secretary of state to certify certain nominations to the county auditors, applied for less than one week prior to the election and when the tickets had already been certified and most of them printed, will

be denied when no reason is given why the nominations were not filed and tendered within the time required by law, the time not being reasonable: *State ex rel. Socialist Labor Party v. Nichols*, 51 Wash. 79, 97 Pac. 1087.

§ 5174. [4801.*] Nominations—Publication.

At any time not less than three days nor more than ten days before the election to fill any public office other than a municipal office, the clerk of the board of county commissioners of each county, shall cause to be published once in one or more newspapers within the county, the nominations to office, certified to him under the provisions of this chapter, but if there be no paper published within the county, written or printed notices shall be posted in not less than three conspicuous places in such precinct. In the case of municipal elections, such publication shall be made in one or more newspapers devoted to the dissemination of general news, and published within the municipal corporation in which the election is to be held at least three days before the election but not more than ten days prior thereto, and if there be no newspaper, the notices shall be posted as above provided. [L. '19, p. 470, § 14; L. '90, p. 403, § 10; 1 H. C., § 372.]

§ 5175. [4802.*] Nomination Void When Declined in Writing.

Whenever any person nominated for public office, as in this chapter provided, shall at least twenty days before election, except in the case

of municipal elections, in a writing signed by him, notify the officer with whom the certificate nominating him is by this chapter required to be filed, that he declines such nomination, such nomination shall be void. In municipal elections such declination must be made at least ten days before the election. [L. '21, p. 701, § 3; L. '90, p. 404, § 11; 1 H. C., § 373.]

Cited in 70 Wash. 670; 82 Wash. 145.

The central committee of a political party authorized to fill vacancies has no power to declare a vacancy where the lawful nominee of the two parties, in declining to be a candidate under both tickets, did not decline the nomination

in writing in the manner required by this section: State ex rel. Peters v. Superior Court, 70 Wash. 662, 127 Pac. 310.

Refusal to have one's name placed on primary ballot. L. B. A. 1916E, 709.

§ 5176. [4803.] Vacancies, Manner of Filling—Nominations for.

Should any person so nominated die before the printing of the tickets, or decline the nomination as in this chapter provided, or should any certificate of nomination be or become insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, or by primary election, the committee of the political party he represents may, upon the occurring of such vacancy, proceed to fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate or nomination. The certificate so made shall be executed in the manner prescribed for the original certificate of nomination, and shall have the same force and effect as an original certificate of nomination. When such certificate shall be filed with the secretary of state, he shall, in certifying the nominations to the various county clerks [auditors], insert the name of the person who has thus been nominated to fill a vacancy in place of that of the original nominee. And in the event that he has already sent forth his certificate, he shall forthwith certify to the clerks of the boards of county commissioners of the proper counties the name and place of residence of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom such nominee is substituted. [L. '90, p. 404, § 12; 1 H. C., § 374.]

When does vacancy in party ticket occur within statute authorizing

filling of vacancies. 41 L. B. A. (N. S.) 1088.

§ 5177. [4804.] Construction of Terms.

The words and phrases in this act shall, unless the same be inconsistent with the context, be construed as follows:

(a) The word "primary" the primary election provided for by this act.

(b) The words "September primary" the primary election held in September to nominate candidates to be voted for at the ensuing election.

(c) The word "election" a general or city election as distinguished from a primary election. [L. '07, p. 457, § 1.]

"Act" refers to this and the following sections of this chapter.

Cited in 55 Wash. 515; 69 Wash. 174; 93 Wash. 249.

The title of this act is sufficient to include its provisions, since they all legitimately relate to, regulate and provide for nominations of candidates for public office in the state of Washington: State ex rel. Zent v. Nichols, 50 Wash. 508, 97 Pac. 728.

That a primary election law tends to destroy political parties, which are of general utility and necessity, is a political rather than a judicial question, which cannot be urged upon the courts as affecting the constitutionality of the law: State ex rel. Zent v. Nichols, 50 Wash. 508, 97 Pac. 728.

§ 5178. [4805.] Application of Act—Special and Other Elections not Included.

Hereafter, all candidates for elective offices in this state, either state, county, municipal, precinct or congressional, shall be nominated at a direct primary election held in pursuance of this act: Provided, that this act shall not be held to refer to special elections for filling the vacancies of unexpired terms, or to election to offices of any city or town of the fourth class or for any school, dike, irrigation or metropolitan park district or other local improvement elections, or for presidential electors: Provided, further, that the provisions of this act shall not apply to nomination of candidates for municipal elective offices in cities of the first class which have adopted or may hereafter adopt charters under section 10, Article XI of the state Constitution, where such charters have provided or may hereafter provide a nonpartisan method or methods of nominating candidates for municipal elective offices; and all such cities shall have the right and power to provide in their charters for any method or methods of nonpartisan nomination of candidates for their elective offices as they may desire. [L. '11, p. 490, § 2. Cf. L. '07, p. 457, § 2; L. '09, p. 169, § 1.]

See supra, § 4043, nominations for county commissioners.

Cited in 59 Wash. 636, 638; 69 Wash. 218.

Nomination by Primary Election: See Remington's Digest, Elections, § 21; State ex rel. Zent v. Nichols, 50 Wash. 508,

97 Pac. 728; State ex rel. Doomer v. Nichols, 50 Wash. 529, 97 Pac. 733; State ex rel. Duryee v. Howell, 59 Wash. 634, 110 Pac. 543.

§ 5179. [4806.] Time for Holding Primaries.

A primary election held to nominate candidates to be voted for at the general election in November, 1908, shall be held at the regular polling places in each precinct on the second Tuesday of September, 1908, and biennially thereafter, for the nomination of all candidates to be voted for at the succeeding general election. Except as hereinafter provided, any primary other than the September primary shall be held four weeks before the election for which candidates are to be nominated at such primary: Provided, that primaries for the nomination of candidates to be voted upon at municipal elections held during 1907 shall be held two weeks prior to the date of said elections. [L. '07, p. 457, § 3.]

*AMENDED ACT.***§ 5180. [4807.*] Declaration of Candidacy—Form—Judges Nonpartisan.**

The name of no candidate shall be printed upon an official ballot used at any primary election unless at least thirty (30) and not more than sixty (60) days prior to such primary a declaration of candidacy shall have been filed by him, as provided in this act, in the following form:

I, —, declare upon honor that I reside at No. — street, — (city or town) of —, county of —, state of Washington, and am a qualified voter therein, and a member of — party, that I hereby declare myself a candidate for nomination to the office of —, to be made at the primary election to be held on the — day of —, and hereby request that my name be printed upon the official primary ballot as provided by law as a candidate of the — party, and I accompany herewith the sum of — dollars, the fee required by law of me for becoming such candidate.

Subscribed this — day of —, 190—.

— —.

Provided, that no person who desires to become a candidate for the office of supreme or superior court judge shall certify his party affiliations. [L. '07, p. 458, § 4. See references to next section.]

This section was amended by the next section but the amendment is subjected to referendum and suspended until the general election in November, 1922.

Penalty for violating this section, see § 5181.

*REFERRED ACT.***§ 5180-1. [4807.*] Declaration of Candidacy — Form — Judges Nonpartisan.**

The name of no candidate shall be printed upon an official ballot used at any primary election unless at least thirty (30) and not more than sixty (60) days prior to such primary, a declaration of candidacy shall have been filed by him, as provided in this act, in the following form:

I, —, being first duly sworn, declare that I reside at No. — street, — (city or town) of —, county of —, State of Washington, and am a qualified voter therein, and am duly registered with and am a member of the — party; that I hereby declare myself a candidate for nomination to the office of — to be made at the primary election to be held on the — day of —, and hereby request that my name be printed upon the official primary ballot as provided by law as a candidate of the — party, with which party I have either affiliated for at least two years last past or since gaining the right of suffrage, and in the principles of which I believe, and I accompany herewith the sum of — dollars, the fee required by law of me for becoming such candidate. I further declare that if nominated for said office I will accept said nomination and not withdraw, unless so authorized by my party committee, and I will qualify as such officer if nominated and elected. I further declare that I hereby accept and endorse the platform as heretofore adopted by the — party, at its last state convention. If elected, I

hereby agree to support the same generally, and endeavor to have enacted into law the principles therein enunciated.

Subscribed and sworn to this — day of —, 192—.

Provided, that no person who desires to become a candidate for the office of supreme or superior court judge shall certify his party affiliations. [L. '21, p. 690, § 15; L. 15, p. 174, § 2. Cf. L. '07, p. 458, § 4.]

This section is referred and suspended by referendum until November, 1922.

Superseded as to judges of the supreme court by § 5223, *infra*.

Penalty for violating this section, see next section.

REFERRED ACT.

§ 5181. Violations.

An person knowingly violating any of the provisions of this act, or making any false return or certificate, or knowingly making false canvass of the votes, or doing any other act for the purpose of preventing fair election of delegates, or for the purpose of falsifying any of the returns provided for in this act, shall be guilty of a misdemeanor. [L. '21, p. 692, § 16.]

This section is referred and suspended until November, 1922.

"Act" in this section refers to §§ 5180, 5180-1, 5183-1, and §§ 5214 to 5224-1, inclusive.

§ 5182. [4808.] Filing of Declaration—Fees—Division.

At least thirty (30) days before the primary election any person who shall be eligible, who shall desire to become a candidate for nomination for any office, subject to this act, shall file in the proper office a declaration of candidacy accompanied by the fee provided for in this act, which fee shall be as follows: For any office with a salary or compensation attached, of one thousand dollars or less per annum, ten (\$10) dollars; when such salary or compensation exceeds one thousand dollars per annum, an additional sum equal to one per cent on such excess; and in case of any precinct office without salary, the filing fee shall be one (\$1) dollar. Said fees shall be paid to the following officers: When the candidacy is for a state, congressional or district office, embracing more than one county, the fee shall be paid to the secretary of state, to be paid by him to the state treasurer, and when for district offices for more than one county, the same shall be divided equally between the counties composing such district and paid to the respective treasurers thereof and the secretary of state shall issue all necessary warrants for such payments on the state treasurer. When such fees are for county offices and offices for districts within counties, such fee shall be paid to the county auditors and by them to the respective county treasurers, and when for city or municipal offices, shall be paid to the respective clerks of such cities or municipalities and by them to the respective treasurers of the same. [L. '07, p. 458, § 5; L. '09, p. 170, § 2.]

Cited in 59 Wash. 636; 69 Wash. 218.

Collection of Fee in Cities of the First Class: State ex rel. Holtzner v. Bothwell, 69 Wash. 217, 124 Pac. 371.

The provisions in the primary election law requiring candidates for public office

to pay a fee for the privilege of running for office is valid: State ex rel. Zent v. Nichols, 50 Wash. 508, 97 Pac. 728.

Validity of fee exacted for filing nominations. L. R. A. 1915B, 197.

*AMENDED ACT.***§ 5183. [4809.*] Political Parties—Separate Tickets.**

Any political organization which at the general or city election last preceding the primary was represented on the official ballot by either regular party candidates or by individual nominees only, may, upon complying with the provisions of this act, have a separate primary election ticket as a political party, if any of its candidates or individual nominees received ten per cent of the total vote cast at such last preceding general or city election in this state, or subdivision thereof, in which the candidate seeks the nomination. [L. '07, p. 459, § 6. See references to next section.]

This section was amended by the next section, but the amendment is subjected to referendum and suspended until the general election in November, 1922.

Cited in 92 Wash. 382, 385.

Nominations by Political Parties in General: See Remington's Digest, Elections, § 20; State ex rel. Bloomfield v.

Weir, 5 Wash. 82, 31 Pac. 417; State ex rel. Cann v. Moore, 23 Wash. 276, 62 Pac. 769; State ex rel. Rogers v. Howell, 92 Wash. 381, 159 Pac. 118.

*REFERRED ACT.***§ 5183-1. [4809.*] Political Parties—Separate Tickets.**

Any political organization which at the general election last preceding the primary, was represented on the official ballot, either by regular party candidates or by individual nominees only, may, upon complying with the provisions of this act, have a separate primary election ticket as a political party, if any of its candidates or individual nominees received ten per cent of the total vote cast at such last preceding general election in the state, or subdivisions thereof, in which the candidate seeks the nomination: Provided, that such political party shall have held on or before the fifteenth day of June preceding said primary, a state convention in said state, at which convention said party shall have declared its political principles and its legislative program: And provided, further, that a copy of such declaration of political principles and legislative program shall have been signed by the officers of such convention and filed with the secretary of state within ten (10) days after the adjournment of such convention. [L. '21, p. 690, § 14. Cf. L. '15, p. 176, § 3; L. '07, p. 459, § 6.]

This section is subjected to referendum and suspended until November, 1922.

Penalty for violating this section see § 5181.

§ 5184. [4810.] Declarations, When Filed.

All declarations of candidacy shall be filed as follows:

First.—For state officers, United States senators, representatives in Congress and those members of the state legislature and judges of the superior court whose districts comprise more than one county, in the office of the secretary of state.

Second.—For officers to be voted for wholly in one county, in the office of the county auditor of such county.

Third.—For city officers in the office of the city clerk. [L. '07, p. 459, § 7.]

Superseded as to judges of the supreme court by § 5223, *infra*.

Cited in 50 Wash. 519; 59 Wash. 636.

§ 5185. [4811.*] List of Candidates—Publication of Notice.

First—At least twenty days before any September primary the secretary of state shall transmit to each county auditor a certified list containing the name, postoffice address and party designation of each person to be voted for at such primary, and the office for which he is a candidate, as appears by the nomination papers filed in his office.

Second—Each county auditor shall, at least fifteen days before the September primary, publish once, under the proper party designation and title of each office, the names and addresses of all persons for whom nomination papers have been filed in so far as the same shall affect the electors of his county, giving the date of the primary, the hours during which the polls will be open, and that the primary will be held in the regular polling place for each precinct, and shall cause to be posted copies of such notice in at least three public places in each precinct in his county: Provided, that the names of all candidates for the offices of supreme and superior court judge shall be published and posted in a separate list without party designation. [L. '21, p. 702, § 4. Cf. L. '07, p. 459, § 8.]

Superseded as to judges of the supreme court by § 5223, *infra*.

Cited in 59 Wash. 635.

§ 5186. [4812.] Publication in Two Papers.

Any publication required in this act shall be made in two newspapers in each county, or city, of general circulation, representing the two political parties that cast the largest vote in such county or city at the last preceding general election.

In any case where the publication of a notice cannot be made as hereinbefore required, it may be made in any newspaper having a general circulation in the county or city in which the notice is required to be published. [L. '07, p. 460, § 9.]

Cited in 50 Wash. 519.

§ 5187. [4813.*] Method of Voting—Ballots—Arrangement and Form.

The method of voting at such primary election shall be by ballot, and all ballots voted shall be printed as herein provided. On the fifteenth day before the primary election the county auditor shall group all the candidates for each party by themselves, and shall prepare at once in writing, a separate sample ballot for each party for public inspection, which he shall post in a conspicuous place in his office. He shall proceed to have printed a separate primary election ballot for each political party which has qualified as hereinbefore provided. These ballots to be prepared in the following manner: Every ticket shall be absolutely uniform in color and size, shall be white and printed in black ink. Across the head of each ballot shall be printed in plain, black type, first, the name of the political party, on each ticket, following the words, "Primary election ballot." On the next line shall be printed the name of the political party, and below that the county in which the ballot is to be used. Then shall follow the words, "To vote for a person mark a cross in the first square at the right of the name of the person for whom you desire to vote." Beginning at the top of the

left-hand column, at the left of the line, in black type, shall appear the position for which the names following are candidates, and to the extreme right of the same line the words, "Vote for," then the words "One," "Two," or a spelled number designating how many persons under that head are to be voted for. Following this shall come the name of each candidate for that position inclosed in a light-faced rule, with a square to the right of said name, said square being separated by a heavy black face rule, the parallel rules containing the names and squares to be one-sixth of an inch apart. Each position with the name running for that office, shall be separated from the following one by a black face rule to separate each position clearly. The position shall be arranged as follows: Provided, nominees for such positions are to be selected in said county under the provisions of this act hereinafter provided. First, United States senator; next, congressional; next, state; next, legislative; next, county officers; next, precinct officers; next, precinct committeemen; in all cases following under each heading here given, the rotation used in the make-up of the various ballots at the general election. In city elections it shall be the duty of the city clerk to prepare the ballots and arrange the position of the candidates on such ballots, commencing with the office of mayor and following with the offices for which candidates are to be selected, using his reasonable discretion as to such arrangement. The duties provided for in this act to be performed by the county auditor with reference to candidates for county and district offices or either of them shall in like manner be performed by the city clerk in each city with reference to the preparation of ballots any primary elections for candidates for city offices. The form of ballot shall be substantially as follows:

(Form of Ballot)

PRIMARY ELECTION BALLOT,

..... Party

Designation of Party.

.....County

To vote for a person, make a cross (X) in the square at the RIGHT of the name of the person for whom you desire to vote.

UNITED STATES SENATOR		COUNTY	
	Vote for one	COUNTY CLERK	Vote for one
CONGRESSIONAL		TREASURER	
REPRESENTATIVE	Vote for one		Vote for one
IN CONGRESS			
		SHERIFF	Vote for one
STATE		CORONER	
GOVERNOR	Vote for one		Vote for one
LIEUTENANT GOVERNOR		PROSECUTING ATTORNEY	
	Vote for one		Vote for one
SECRETARY OF STATE		STATE TREASURER	
	Vote for one		Vote for one
STATE AUDITOR		ATTORNEY GENERAL	
	Vote for one		Vote for one
MEMBER OF HOUSE		COMMISSIONER OF	
OF REPRESENTATIVES	Vote for	PUBLIC LANDS	Vote for one
.....DISTRICT			

INSURANCE COMMISSIONER		SUPERINTENDENT	
	Vote for one	OF SCHOOLS	Vote for one
STATE SUPERINTENDENT		COUNTY COMMISSIONERS	
OF PUBLIC INSTRUCTION		Vote for	
	Vote for one		
LEGISLATIVE		JUSTICE OF THE PEACE	
STATE SENATOR		Vote for	
.....DISTRICT	Vote for one		
COUNTY AUDITOR		CONSTABLE	
	Vote for one	Vote for	
COUNTY ENGINEER		PRECINCT COMMITTEEMAN	
	Vote for one	(Write one name)	

[L. '17, p. 233, § 1; L. '07, p. 460, § 10; L. '09, p. 170, § 3.]
Cited in 59 Wash. 636, 638, 639.

§ 5188. [4814.] Separate Party Ballots—Time and Manner of Holding Election.

The primary election ballots for the several political parties shall be separate ballots, and the primary election of all parties shall be held at the same time and place and under the same officers and in all respects as a general election, under the laws of the state of Washington, except as otherwise changed by this act. [L. '07, p. 464, § 11.]

AMENDED ACT.

§ 5189-1. [4815.*] Party Ballots—Designation of Choice—Challenges—Method of Voting.

Every qualified person, properly registered as a voter in his election precinct, shall be entitled to participate in the primary election. When he desires to vote at said primary each elector shall have the right to receive the ballot only of the party for which he asks; and in the latter event, he shall, if challenged, be required to make oath or affirmation that he intends to affiliate with said party at the ensuing election and intends to support its candidates generally. Thereupon he shall

retire to one of the booths and without undue delay mark the ballot received by him and fold it so that its face shall be concealed. He shall thereafter deliver said ballot received by him to the election officers. In the event said voter shall soil or deface the ballot he desires to vote he shall at once return the ballot received by him and get a new ballot and the election officers shall destroy or render unfit for use the ballot so returned. The elector shall designate his choice on his ballot by making a cross in each of the small squares nearest the names of the candidates for whom he desires to vote and shall not vote for more candidates for an office than are to be elected thereto at the election to follow the primary election as indicated on the ballot at the right of each office for which candidates are to be selected. [L. '19, p. 471, § 15. See references to next section.]

This section was amended by the next section, but the amendment is subjected to referendum and suspended until the general election in November, 1922.

Cited in 55 Wash. 514, 515, 516.

This section does not impliedly repeal § 5125, supra, explicitly providing the mode of registration, as it is not a complete act on that subject and repeals by implication cannot be invoked piecemeal: State ex rel. Arnold v. Mitchell, 55 Wash. 513, 104 Pac. 791.

The constitutional qualifications for electors at a general election have no application to primary elections for the

nomination of candidates for public office: State ex rel. Zent v. Nichols, 50 Wash. 508, 97 Pac. 728.

The provision requiring any elector who may be challenged to make oath or affirmation that he intends to affiliate with the party whose ballot he demands is a reasonable provision to protect the integrity of political parties, and constitutional: Id.

REFERRED ACT.

§ 5189-1. [4815.*] Party Ballots—Designation of Choice—Challengers—Method of Voting.

Every qualified person, properly registered as a voter in his election precinct, shall be entitled to participate in the primary election. When he desires to vote at said primary each elector shall have the right to receive the ballot only of the party with which affiliated as shown on the registration-books; and he shall, if challenged, be required to make oath or affirmation that he intends to affiliate with said party at the ensuing election and intends to support its candidates generally. Thereupon he shall retire to one of the booths and without undue delay mark the ballot received by him and fold it so that its face shall be concealed. He shall thereafter deliver said ballot received by him to the election officers. In the event said voter shall soil or deface the ballot he desires to vote he shall at once return the ballot received by him and get a new ballot and the election officers shall destroy or render unfit for use the ballot so returned. The elector shall designate his choice on his ballot by making a cross in each of the small squares nearest the names of the candidates for whom he desires to vote and shall not vote for more candidates for an office than are to be elected thereto at the election to follow the primary election as indicated on the ballot at the right of each office for which candidates are to be elected. [L. '21, p. 692, § 1; L. '07, p. 464, § 12; L. '09, p. 174, § 4; L. '17, p. 236, § 2; L. '19, p. 471, § 15.]

This section is subjected to referendum and suspended until November, 1922.

§ 5190. [4816.] Ballots, Arrangement of Names on—Numbered.

The names of candidates for each office upon the ballot and under the heading designating each official position upon the ballots to be used in voting, shall be first arranged in the order in which their declarations of candidacy shall have been filed. In printing each set of ballots for the several counties, the positions of the names of candidates shall be changed in each office division as many times as there are candidates in the office division in which there are the most names. As nearly as possible an equal number of ballots shall be printed after each change. In making the changes of position, the printer shall take the line of type at the head of each office division and place it at the bottom of the division, and shove up the column so that the name that before was second, shall be first, after the change. After the ballots are printed they shall be kept in separate piles, one pile for each change of position, and shall then be gathered by taking one from each pile; the intention being that every other ballot in such pile shall have the names in a different position. There shall be no printing upon the back of the ballots or any mark to distinguish them. After the ballots have been gathered as above provided they shall be numbered consecutively, said numbering to be perforated and torn off by the election officers on the voting of the ballot. Sample ballots shall be substantially in the same form as the official ballot, but upon colored paper, and the names thereon need not be alternated. [L. '07, p. 465, § 13; L. '09, p. 175, § 5.]

Cited in 69 Wash. 218.

§ 5191. [4818.] General Election Laws to Govern.

Except as herein otherwise provided, all primary elections shall be conducted as required for general elections under the general election laws of the state of Washington, as far as the provisions thereof are applicable, and the election officers for such primary elections shall have the same powers as those for general elections. [L. '07, p. 465, § 14.]

Constitutional or statutory provisions
relating to elections as applicable
to primary elections. 2 Ann. Cas.

251; 16 Ann. Cas. 251; Ann. Cas.
1913A, 702; Ann. Cas. 1918E, 79;
18 L. R. A. (N. S.) 412.

§ 5192. [4819.] Inspectors and Judges of Election—Fees.

Inspectors and judges of election shall be appointed and designated in the manner provided by said general election law at least ten (10) days prior to the primary election day: Provided, that one of the judges may act and perform the duties of the clerk of election; And provided, further, that the members of each political party, in any precinct entitled to participate in any primary election, may in any appointed meeting held at least fifteen (15) days before such primary election, select three (3) members of that party who are duly qualified electors and certify the names of the persons so selected, to the board of county commissioners or the city council, whose duty it is to appoint the election officers, and one of said persons shall be appointed and designated as a judge or inspector for that precinct. The same fees shall be allowed and paid from the public funds for the services of any one so serving as a judge, inspector or clerk as for general elections. [L. '07, p. 465, § 15.]

§ 5193. [4820.] Secretary of State to Provide Copies of Laws.

The secretary of state shall provide copies of this law in conjunction with the general election law of the state, and transmit the same to the county auditor of each county, at least twenty (20) days before any such primary election, and the same shall be in lieu of any such copies of said general election law required to be transmitted to county auditors by the secretary of state for use in such counties. [L. '07, p. 465, § 16.]

§ 5194. [4821.*] Opening Polls—No Adjournment.

The polls in the several election precincts on the primary election day shall be kept open from 8 o'clock in the morning until 8 o'clock in the evening of said day. If at the hour of closing there are any electors in the polling place desiring to vote, and who are qualified to participate therein, and who have not been able to do so since appearing at the polling place, said polls shall be kept open reasonably long enough after the hour of closing to allow those so present at that hour to vote. No one not present at the hour of closing shall be entitled to vote because the polls may not be actually closed when he arrives. No adjournment or intermission whatever shall take place until the polls shall be closed, and until all the votes cast at such poll have been counted and the result publicly announced. [L. '19, p. 472, § 16; L. '07, p. 466, § 17.]

§ 5195. [4823.*] Counting Votes—Tally-sheets—Sealed Returns.

As soon as the polls are finally closed, the inspector and judges of election shall immediately open the ballot-boxes at each polling place and proceed to take therefrom the ballots. Said officers shall count the number of ballots cast by each party, at the same time bunching the tickets cast for each party together in separate piles, and shall then fasten each pile together. As soon as the inspectors and judges shall have assorted and fastened together the ballots of each separate party, they shall take the tally-sheets provided by the county auditor or city clerk, and shall count all the ballots for each party separately, until the count is completed, and shall certify to the number of votes cast for each candidate. The tally-sheets shall be so kept that such sheets shall show the number of votes received, the total votes cast for each candidate, and the total of all ballots cast. They shall then place the counted ballots in the box, but in no case shall they intermingle party votes. After all have been counted and certified to by the clerks and judges, they shall seal the returns for all parties in one envelope, to be returned to the county auditor or city clerk. [L. '19, p. 472, § 17. Cf. L. '07, p. 466, § 19.]

§ 5196. [4824.] Tally-sheets, Form—Order of Candidates.

Two sets of tally-sheets for each political party having candidates to be voted for at said primary election shall be furnished for each election precinct by the county auditor or city clerk, at the same time and in the same manner that the ballots are furnished, and shall be as follows:

Each tally-sheet, or the first sheet of each tally-book to be furnished,

shall be headed, "Tally-sheet for — (name of political party) — (name of city or village) — (county) — (ward) — (election precinct), for a primary election held — date)."

The names of candidates shall be placed on the tally-sheets in the order in which they appear on the official ballots, and in each case have the proper party designation at the head thereof. [L. '07, p. 467, § 20.]

§ 5197. [4825.*] Returns—Same as General Elections.

In making out the returns of the primary election in the several election precincts, the same shall be done and all matter pertaining thereto conducted in accordance with the provisions of the general election laws for the returns of general elections. [L. '21, p. 702, § 5; L. '07, p. 467, § 21.]

Amended Act.

§ 5198. [4826.*] Election of Committeemen—Party Powers.

At the September primary each voter may write in the space left on the ticket for that purpose the name of one qualified elector of the precinct for member of the party county committee. The one having the highest number of votes shall be such committeeman of such party for such precinct. The party committee of each county shall consist of the precinct committeemen from the several precincts of such county. The state committee shall consist of one committeeman from each county, elected by the county committee, which shall meet for such purpose and organization at the courthouse at the county seat of each county at 2 o'clock P. M. on the second Saturday after such primary election, unless some other time and place of such meeting shall be designated by a regular call of the properly authorized officers of the retiring committee. Each political party organization shall have the power to make its own rules and regulations, call conventions, elect delegates to conventions, state and national, fill vacancies on the ticket, provide for the nomination of presidential electors, and perform all other functions inherent to such organizations, the same as though this act had not been passed: Provided, that in no instance shall any convention have the power to nominate any candidate to be voted for at any primary election. City committeemen may be elected at municipal elections in the manner provided in this section, as near as may be. [L. '09, p. 175, § 6. See references to next section.]

This section was amended by the next section, but the amendment is subjected to referendum and suspended until the general election in November, 1922.

Cited in 70 Wash. 600; 92 Wash. 392, 394.

by the courts: State ex rel. Rogers v. Howell, 92 Wash. 381, 159 Pac. 118.

This section is not unconstitutional as denying a less than ten per cent party participation in a primary election, since such party has a right to participate under section 5203, *infra*; also, since the integrity of political parties is a political question, which cannot be interfered with

Under this section, a person nominated at a convention is not thereby disqualified from afterward becoming a candidate at the September primaries: State ex rel. Wells v. Dykeman, 70 Wash. 599, 127 Pac. 218.

REFERRED ACT.

§ 5198-1. [4826.*] Election of Committeemen—Party Powers.

The precinct committeemen of each party entitled to participate in the September primaries shall be elected at the September primaries.

Any elector duly registered to vote in his precinct may file, at a cost of one dollar, with the county auditor, a declaration of candidacy for precinct committeemen for the party only with which he is duly registered, and for the election precinct in which he resides. Said filing shall be in all respects and follow the form provided in section 5180-1, and be governed by its provisions. The name of such candidates so filing for precinct committeemen shall be printed or stamped upon the ballot provided for in section 5187: Provided, that nothing herein contained shall prevent any voter from writing in on the ticket the name of one qualified registered elector of the precinct, for member of the party committee of the party with which said elector is registered. The one having the highest number of votes shall be such committeeman of such party for such precinct: Provided, that the auditor shall determine all cases of ties as provided by the primary election laws of this state. The county auditor shall certify to each county committee the names of the duly elected committeemen of that party, on or before the Monday following the said primary election.

(b) The party committee of each county shall consist of the precinct committeemen from the several precincts of such county. The state committee shall consist of one committeeman from each county, elected by the county committee: Provided, that the state committee of each party may, by resolution duly passed, provide for the election of the state committeemen of each county by the county convention to be held in accordance with the provisions of this act. The county committee shall meet for the purpose of electing the state committeemen, and for the purpose of organization, at the courthouse at the county seat of each county at 2 o'clock P. M. on the second Saturday after the primary election, unless some other time and place of such meeting shall be designated by a regular call of the properly authorized officers of the retiring committee. The county auditors of the various counties shall issue certificates of election to the said committeemen as is provided in the case of other primary nominations.

(c). Each county committee shall have power to make its own rules and regulations, to call conventions, to provide for the election of delegates to such county conventions, to fill all vacancies on the ticket, to delegate the whole or any part of its functions to duly authorized and elected officers or committees, and to perform all other functions regularly inherent in such organizations for political purposes, the same as though this act had not been passed.

(d) The state committee shall have the power to make its own rules and regulations, to call conventions, state, district, and national, to provide for nominating presidential electors, to fill all vacancies which may occur on the ticket, to delegate the whole or any part of its functions to duly authorized and elected officers or committees, and to perform all other functions usually inherent in organizations for political purposes. [L. '21, p. 682, § 1. Cf. L. '07, p. 468, § 22; L. '09, p. 175, § 6.]

This section is subjected to referendum and suspended until November, 1922.

§ 5199. [4827.*] Nominations—Number of Votes Required.

Candidates for party offices who receive a plurality of the votes cast for such candidates shall be the party nominees of such party: Provided, however, that no person who has offered himself as a candidate for nomination on one party ticket shall have his name printed on the ballot of another political party in the succeeding general election.

In the event that there are more than one position of the same kind to be filled and more candidates of any political party receive majorities of the votes of such party cast at such election than there are positions to be filled, then in that event the number of candidates equal to the number of positions to be filled receiving the highest number of votes shall be the nominees of such political party for such positions. [L. '19, p. 473, § 18. Cf. L. '07, p. 468, § 23.]

Cited in 93 Wash. 265.

§ 5200. Votes Necessary for Nomination.

No candidate for a party nomination shall be the party nominee unless he shall receive a number of votes at least equal to ten per centum of the total number of the party ballots of his party cast at the primary election in the district in which he is a candidate, and no party committee shall fill a vacancy caused by the failure of any of its candidates to receive such required number of votes. [L. '19, p. 478, § 24.]

§ 5201. [4828.] Canvass of Returns—Report of Canvass—Contents—Tie Votes—Notice of Nomination—Vacancies.

The canvassing of the vote and the returns of reports of the primary elections, as to candidates for state offices, United States senators and representatives in Congress, and any other candidate whose district extends beyond the limits of a single county, shall be done by a canvassing board consisting of the secretary of state, state treasurer and state auditor. Said state canvassing board shall meet at the office of the secretary of state on the third Tuesday at 10 o'clock A. M. next after the September primary. As soon as said board has canvassed said vote it shall file a certificate with the secretary of state which certificate shall show the vote of each candidate of each political party for each office. A copy of such certificate shall be published once in some newspaper published at the state capital, which publication shall be made by the secretary of state immediately after the same is filed in his office. The vote for all county, city and municipal officers shall be canvassed and the returns made by the same officers and in the same manner as returns of the votes cast at general elections are by law now required to be made. Such canvassing board and other officers canvassing votes cast at such primary elections shall file with the proper officer a statement and report of such canvass which statement and report of said primary election shall contain:

First.—A statement duly certified to containing the names of all candidates voted for at the primary election with the number of votes received, and also the number of first choice votes received by each and the number of second choice votes received by each and the total number of votes received by each and for what office, said statement to be made as to each political party separately.

Second.—A statement of the names of the persons or candidates, of each political party who are nominated as hereinbefore provided. Where there is more than one person to be elected to a given office at the ensuing election, there shall be included in said statement of nominations the names of so many candidates for said office, nominated under the provisions of this act, as there are persons to be elected to said office at the ensuing election. Said statement shall, in like manner, be made separately as to each political party.

Third.—A statement of the whole number of electors registered and the number of ballots cast at said primary election. If two or more of the candidates of the same political party are "tied" for the same office, the "tie" shall be determined by a lot to be cast then and there by and as the canvassing board may determine. It shall be the duty of the county auditor upon the completion of its canvass by the canvassing board to immediately mail, or deliver, in person to each candidate so nominated, a notice of such fact and that his name will be placed upon the official ballot at the ensuing election. The persons whose names are so placed in said statement of nomination shall be and constitute the nominees of the said political parties of which they are candidates, and such names shall be printed upon the official ballot prepared for the ensuing election. No names of candidates of any political party which is required to make nominations under this act shall be placed upon the official election ballot, unless such candidate shall have been chosen in accordance with this act, except in cases of a vacancy occasioned by the death, removal or resignation of any candidate so chosen, or arising otherwise, and in such a case the campaign or party committee of the political party on whose ticket the same occurs, or if there be no such committee, then a convention of such party may fill such vacancy. The name of such new candidate shall be certified under oath to the county auditor, or the city clerk, as the case may be, by the chairman and secretary of said committee or convention. [L. '07, p. 469, § 24.]

Cited in 50 Wash. 519; 70 Wash. 432, 433; 93 Wash. 258.

§ 5202. [4829.] Errors in Printing Ballots.

Whenever it shall appear by affidavit to any judge of the supreme court or superior court of the county that any error or omission has occurred or is about to occur in the printing in the name of any candidate on official ballots, or that any error has been or is about to be committed in printing the ballots, or that the name of any person has been or is about to be wrongfully placed upon such ballots, or that any wrongful act has been performed or is about to be performed by any judge or clerk of the primary election, the county auditor, canvassing board or member thereof, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons aforesaid has occurred, or is about to occur, such judge shall, by order, require the officer or person or persons charged with the error, wrongful act or neglect, to forthwith correct the error, desist from the wrongful act, or perform the duty, and to do as the court shall order, or to show cause forthwith why such error should not be corrected, wrongful act desisted from, or such duty or order not performed. Failing to obey the order of such court shall be con-

tempt. Any candidate at such primary election who may desire to contest the nomination of any candidate for the same office at said primary election may proceed by such affidavit so presented: Provided, that such affidavit may be presented within five days after the completion of the canvass by said canvassing board, and not later, and the candidate whose nomination is so contested shall, by order of such judge, duly served, be required to appear and abide by the orders of the court to be made therein. [L. '07, p. 471, § 25.]

Cited in 50 Wash. 517; 59 Wash. 635; 60 Wash. 422; 70 Wash. 469; 82 Wash. 135, 145; 93 Wash. 259.

Contests, Trial and Determination by Courts: See Remington's Digest, Elections, § 28; State ex rel. Cann v. Moore, 23 Wash. 276, 62 Pac. 769; State ex rel. Socialist Labor Party v. Nichols, 51 Wash. 79, 97 Pac. 1087; Hill v. Howell, 70 Wash. 603, 127 Pac. 211; State ex rel. Peters v. Superior Court, 70 Wash. 662, 127 Pac. 310; State ex rel. Case v. Superior Court, 70 Wash. 428, 126 Pac. 937; State ex rel. Blackman v. Superior Court, 82 Wash. 134, 143 Pac. 889; State ex rel. Murphy v. Tallman, 82 Wash. 141, 143 Pac. 874.

This section authorizes any candidate for nomination at a primary election to contest the nomination of any other candidate for the same office, and provides a tribunal to try the question; and the fixing of the specific procedure is not essential to the validity of the statute: State ex rel. McAvoy v. Gilliam, 60 Wash. 420, 111 Pac. 401.

Where a primary election contest was filed within five days as required by this section, the statute prescribing no time for service of citation, the court has jurisdiction, after quashing a citation, to issue another citation: State ex rel. McAvoy v. Gilliam, 60 Wash. 420, 111 Pac. 401.

§ 5203. [4830.] Minority Parties—Nominations by Convention—Fee.

Any political party which at the last preceding election cast less than ten per cent of the votes, may nominate candidates in the manner provided by existing laws for conventions: Provided, however, that all such conventions must be held upon the same day as the primary elections are held: And provided further, that no candidate's name shall be printed upon the election ballot until he shall have paid the fee provided by law to be paid by candidates to be nominated at primary elections for like offices. Persons nominated as provided in this section shall be subject to the provisions and penalties of sections 4832, 4833, 4834 and 4835 of Remington & Ballinger's Annotated Codes and Statutes of Washington. [L. '07, p. 471, § 26.]

Sections 4832 and 4835 repealed. For §§ 4833 and 4834, see infra, §§ 5205 and 5206.

Cited in 50 Wash. 530; 70 Wash. 666; 82 Wash. 145; 92 Wash. 393, 394.

§ 5204. [4831.] Forms Prepared by Secretary of State and Attorney General.

It shall be the duty of the secretary of state and attorney general, on or before July 1, 1907, to prepare all forms necessary to carry out the provisions of this act, which forms shall be substantially followed in all primaries held in pursuance hereof. Such forms shall be printed with copies of this act for public use and distribution. [L. '07, p. 472, § 27.]

Cited in 50 Wash. 581-590; 59 Wash. 635.

§ 5205. [4833.] Newspapers not to Receive Consideration for Their Support—"Paid Advertisements."

It shall be unlawful for any owner, proprietor, editor, manager, officer, clerk, agent, reporter or employee of any newspaper, magazine, or periodical printed or published in this state, to take, accept or receive,

or agree to take, accept or receive, for himself or any other person or persons, firm or corporation either by himself or any other person, persons, firm, or corporation, any money, gratuity or other valuable consideration or article of value for or on account of or as a consideration for such newspaper, magazine or other periodical supporting or advocating the election or defeat of any candidate or candidates at any primary election. Any such owner, proprietor, editor, manager, officer, clerk, agent, reporter or employee of any newspaper, magazine or other periodical violating the provisions of this act shall be deemed guilty of a misdemeanor and shall be fined in any sum not less than twenty-five dollars and not more than five hundred dollars, or confined in the county jail not less than ten days nor more than six months, or be punished by both such fine and imprisonment: Provided, however, that nothing herein shall prevent any person or persons, firm or corporation engaged in the publication of any newspaper, magazine or periodical from receiving from any person other than a candidate, for publication, and publishing, any matter, article or articles advocating the election or defeat of any candidate or candidates, and receiving from such person not a candidate, a consideration therefor, if such article so published or printed have placed at the beginning thereof in plain type in black face Roman capitals, in a conspicuous place, the statement "Paid advertisement, paid for by" (here insert name of person, persons, firm or corporation making such payment and if such person, persons, firm or corporation is agent for another, then must follow a statement as to whom such person, persons, firm or corporation is or are agent for). But this section shall not be construed as permitting the payment for such publication, either directly or indirectly, by a candidate, or for any publication prohibited by section 4832 of Remington and Ballinger's Code. [L. '07, p. 473, § 29; L. '09, p. 177, § 8.]

Section 4832 is repealed. See L. 1919, p. 475, § 22.

Cited in 100 Wash. 666.

This section, permitting the publication of "paid advertisements" of candidates for office, is restrictive, and does not extend the law of privilege or exempt the publisher from responsibility for libel: *McKillip v. Grays Harbor Publishing Co.*, 100 Wash. 657, 171 Pac. 1026.

Photograph, as "Paid Advertisement":

See *State ex rel. Coon v. Hay*, 51 Wash. 576, 99 Pac. 748.

Statute prohibiting advertising with respect to political candidacy
Ann. Cas. 1916A, 907.

§ 5206. [4834.] Sworn Statement of Expenses to be Filed by Candidates.

Every candidate for nomination under the terms of this act, or any amendment thereto shall, within ten days after the day of holding the primary election at which he is a candidate, file an itemized statement in writing, duly sworn to as to its correctness, with the officer with whom his declaration of candidacy or other nomination paper is filed, setting forth each sum of money and thing of value, or any consideration whatever, contributed, paid or promised by him, or anyone for him, with his knowledge or acquiescence, for the purpose of securing or influencing, or in any way affecting, his nomination, to said office. Said statement to set forth the sums paid as personal expenses and stating fully the nature, kind and character of the expense for which the sums were expended separately, and the party or parties to whom the sums were paid and the

purposes for which such payments were made; and in this statement all sums or other considerations promised and not paid shall be included. Such statement, when so filed shall immediately be subject to the inspection and examination of any elector and shall be and become a part of the public records. [L. '07, p. 473, § 30; L. '09, p. 178, § 9.]

Validity and construction of statute
requiring filing of statement of elec-
tion expenses of candidate at

primary or other election. Ann.
Cas. 1915A, 366.

§ 5207. [4836.] Corrupt Solicitation Prohibited.

Any person who shall solicit, request or demand, directly or indirectly, any money, intoxicating liquor, or anything of value, or promise thereof, either to influence his vote or to be used, or under the pretense of being used to procure the vote of any other person or persons, or to be used at any poll or other place prior to or on the day of any election under this act, for or against any candidate for office or for or against any measure or question to be voted upon at such election, shall be guilty of a misdemeanor, and upon trial and conviction thereof, be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. [L. '07, p. 474, § 32.]

Treating of voters by candidate for
office as violation of corrupt

practices or similar act. 2 A. L. R.
402.

§ 5208. [4837.] General Election Laws Apply.

The provisions of the statute in relation to the holding of elections, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making returns thereof, and all other kindred subjects, including the sale of intoxicating liquors during the hours the polls are open, shall apply to all primaries in so far as they are consistent with this act. [L. '07, p. 475, § 33; L. '09, p. 179, § 10.]

Cited in 69 Wash. 174.

This section only adopts provisions of
the statutes with relation to the holding
of elections and not general criminal

statutes which are no part of the election
laws: State v. Robinson, 69 Wash. 172,
124 Pac. 379.

§ 5209. [4838.] Perjury, to Swear Falsely When Challenged.

If any person whose vote is challenged under the provisions of this act shall knowingly, willfully and corruptly swear or affirm falsely, he shall be deemed guilty of perjury, and on conviction thereof shall be punished accordingly. [L. '07, p. 475, § 34.]

Cited in 65 Wash. 618; 83 Wash. 423.

§ 5210. [4839.] Forgery.

Any person who shall forge any name of a person as a signer or witness to a nomination paper shall be deemed guilty of forgery, and on conviction thereof punished accordingly. [L. '07, p. 475, § 35.]

§ 5211. [4841.] Pledge of Party Choice for United States Senator.

Any candidate under this act for office of state senator, or member of the house of representatives, if he desires to do so, may sign and file with his declaration of candidacy or nomination paper, a declaration as follows:

I hereby declare to the people of the state of Washington, and particularly of my legislative district, that during my term of office I will always vote for the candidate for United States senator who has received the highest number of votes upon my party ticket for the position at the primary election next preceding the election of United States senator; and in such case there shall be printed on the official primary ballot, opposite or just below said candidate's name, the following: "Pledged to vote for party choice for United States senator." [L. '07, p. 475, § 37.]

§ 5212. [4842.*] Supreme and Superior Court Judges—Nomination—Ballots—Form.

When there are to be elected at any general election one or more judges of the supreme court, the candidates for each respective office whose names are to be placed on the general election ticket shall be determined as follows: The number of candidates equaling the number of judicial positions to be filled who receive the highest number of votes at the primary election, and an equal number of candidates for such positions, providing there are such candidates, who receive the next highest number of votes, shall be the candidates for such respective offices and their names shall appear on the general election ballot under the designation of such respective offices: Provided, however, that where any candidate for any such office shall receive a majority of all votes cast at such primary election for such office, the name or names of such candidates receiving such majority shall be printed separately on the general election ballot, under the designation "Vote for —," and the name or names of no opposing candidate or candidates shall be printed on such ballot in opposition to such candidate or candidates, but spaces equaling the number of such majority candidates shall be left following such name or names, in which the voter may insert the name of any person for whom he wishes to cast his ballot. Following the names of such majority candidates, under the designation "Vote for —," the names of the minority candidates who have received the highest number of votes at the primary election equal to twice the number of the remaining places to be filled shall be printed: Provided further, that the secretary of state, in certifying to the several county auditors of the state the names of candidates for judges of the supreme court shall specify the names of those who have received a majority vote at such primary election, together with the names of the minority candidates who are entitled to have their names placed upon the official ballot. For the purpose of determining whether any candidate or candidates shall have received a majority of the votes cast under the provisions of this section the number of votes cast shall be determined by adding together the number of votes cast for each candidate and dividing the sum of such votes by the number of positions to be

filled, and any candidate who receives a number of votes in excess of one-half of the votes cast as thus determined shall be deemed to have received a majority of the votes cast. If it shall appear that a number of candidates in excess of the number of positions to be filled shall have received a majority of votes cast, then there shall be printed upon the ballot only the names of the candidates who received the highest number of votes and equal to the number of places to be filled. Where a vacancy or other cause shall necessitate the election of a judge of the supreme court for a short term, and at the same election one or more judges are to be elected for the full term candidates may announce themselves for either the short or full term, and the ballots shall be arranged accordingly. Where there are to be elected at any general election one or more judges of the superior court of any county or judicial district the candidates for each respective office whose names are to be placed on the general election ticket shall be determined as follows: Not less than ten days before the time for filing declaration of candidacy, the secretary of state or the county auditor, as the case may be, shall designate by number each position to be filled upon the superior court of the county or judicial district. Each candidate at the time of the filing of his declaration of candidacy shall designate by the number so assigned, the position for which he is a candidate and the name of such candidate shall appear on the ballot only for such position. The name of the person who received the greatest number of votes and of the person who received the next greatest number of votes for each position, shall appear on the general election ballot under the designation for each such respective office: Provided, however, that where any candidate for such office shall receive a majority of all votes cast at such primary election for such office, the name of such candidate receiving such majority shall be printed separately on the general election ballot under the designation "Vote for One" and the name of no opposing candidate shall be printed on such ballot in opposition to such candidate, but one space shall be left following such name in which the voter may insert the name of any person for whom he wishes to cast his ballot. The names of all such candidates for such judicial offices shall appear on the general election ballot under the heading "Judicial ticket." There shall be a separate ballot for the candidates for nomination for such judicial offices, for use in the primary election, and such ballots shall be printed, delivered, voted and counted as hereinbefore provided for the general primary election ballot: Provided, that any voter shall have the privilege of voting this ticket alone. The form of said ballot shall be substantially as follows:

JUDICIAL ELECTION BALLOT.

To vote for a person make a cross (X) in the square at the right of the name of the person for whom you desire to vote.

Judges of Supreme
Court.
Vote for —.

Judges of Superior
Court.
— to be nominated.

1. VOTE FOR ONE.	
2. VOTE FOR ONE.	
3. VOTE FOR ONE.	

[L. '21, p. 373, § 1; L. '19, p. 199, § 1; L. '11, p. 489, § 1.]
See notes to § 5274.

Cited in 60 Wash. 380; 70 Wash. 430;
93 Wash. 254, 264.
This section superseded all other forms
of nomination, and a candidate for judge
of the superior court nominated by a peti-

tion or certificate of electors, is not en-
titled to have his name appear on the
official ballot: State ex rel. Zent v.
Nichols, 50 Wash. 508, 97 Pac. 728.

§ 5213. [4843.] Writing or Pasting Name, Permitted.

Nothing in this act contained shall prevent any voter from writing or pasting on his ballot or ballots the name of any person for whom he desires to vote for any office, and such vote shall be counted the same as if printed upon the ballot and marked by the voter. [L. '09, p. 180, § 12.]

Cited in 82 Wash. 143; 93 Wash. 254.
Under this section, candidates are not
required to pay any filing fee when they
were nominated at a primary election by
the writing of their names on the ballots,
or otherwise than by filing a regular
declaration of candidacy or by seeking
nomination at the hands of a nominating
convention: State ex rel. Murphy v.
Tallman, 82 Wash. 141, 143 Pac. 874.
A person cannot be nominated for an

unexpired term of judge of the superior
court by the use of stickers or the writ-
ing of names on the primary election
ballot, where there has been no filing for
such unexpired term and hence no notice
to electors of such an office to be filed,
as contemplated by this section; and
stickers may be used only for offices
designated on the ballot: State ex rel.
Sears v. Gilliam, 93 Wash. 248, 160 Pac.
757.

CHAPTER V.
PARTY CONVENTIONS.

REFERRED ACT.

§ 5214. County and State Conventions.

Hereafter, each political party of this state, entitled under the existing laws to participate in the September primaries, shall hold county and state conventions prior to May 15, and June 15, respectively, of 1922, and each biennial year thereafter. Each county party committee at a meeting duly called and held not more than thirty (30) days nor less than ten (10) days before the holding of the party primary for the selecting of delegates to the county conventions, as hereinafter provided, shall determine the date, the hour and the place of holding the county convention, determine the total number of delegates to be elected thereto, fix the basis of representation in each precinct, which basis shall be the same for each voting precinct in said county, and determine the number of delegates from each voting precinct: Provided, that each voting precinct shall be entitled to at least one delegate. The said list, matters, and things herein provided for, shall thereupon be filed in the office of the county auditor, without charge, duly certified by the chairman and secretary of each party, within three days after the holding of said meeting. Not less than ten days' notice of the time and place of holding the county convention shall be given through the press of the county by the county executive officers of each party. [L. '21, p. 684, § 2.]

This chapter is subjected to referendum and suspended until November, 1922.

Penalty for violating any of the provisions of this chapter, see *supra*, § 5181.

For § 1 of this act, see § 5198-1, *supra*.

REFERRED ACT.

§ 5215. Delegates to County Conventions.

Delegates to county conventions of each party shall be selected in pursuance of the rules and regulations passed by the party committee of each respective county in conformity to this act. Such rules must cover at least: First, the date, the time and place of holding the elections in the precincts and the hours between which the polls are to be kept open: Provided, that the date of holding such party precinct elections shall be at least five days prior to the holdings of the county conventions, and: Provided further, that the polls shall, in all cases, be kept open for a period of at least two hours, between 1 o'clock P. M. and 8 o'clock P. M. on the day on which the election is to be held. Second, reasonable and proper provision must be made for judges or officers at such election, to be qualified voters of the precinct for which they are designated and registered with the party. Third, the qualifications required for voters in order to participate in such party election of delegates: Provided, that if the right of any voter to vote is challenged, such voter shall be required to make an affidavit, which may be administered by any of the officers of the said election, to the fact that he is a qualified voter of said precinct and complies with the qualifications enabling him to participate in such party election of delegates and in-

tends to support and vote for the party nominees at the ensuing general election. Fourth, the method and manner of making returns of the said party election of delegates to the county party committee. Fifth, the manner of giving the notice in each precinct of the time, place and hours of holding the said precinct party election. [L. '21, p. 685, § 3.]

Subjected to referendum. See note to § 5214.

REFERRED ACT.

§ 5216. Notice of Election.

At least ten days prior to any such election of delegates to a county convention, there shall be published in one or more newspapers of general circulation in the county, in and for which such party election is to be called, a notice which must state the time, place or places of such election, the date, the number of delegates to be selected from each precinct, and a general statement of the manner and conditions of holding such election, and the authority by which the call for which such election is published by such county committee. Likewise there shall be posted, at least ten days prior to such election, in at least one public place in each precinct, a notice signed by the chairman or secretary of the county committee, calling such election, and which notice must also state in brief the date and place of such election and the number of delegates to be selected from such precinct. [L. '21, p. 686, § 4.]

Subjected to referendum. See note to § 5214.

REFERRED ACT.

§ 5217. Election Board.

The qualifications and duties of judges and officers of the party election, designated by such county committee, and their organization for the purposes of conducting such election, shall be the same as those provided in the general election, in so far as the same may be reasonably applicable; and such election officers shall have the power to administer oaths and the right to question any voter as to his party affiliation and intention to support the nominees of the party at whose party election he is proposing to vote. In case the judges or officers designated by the county committee fail to attend, the voters present may select others in lieu of such as fail to attend. [L. '21, p. 686, § 5.]

Subjected to referendum. See note to § 5214.

REFERRED ACT.

§ 5218. Ticket—Poll-list.

The ticket to be voted at said party election may be either printed or written, or partly printed and partly written. [L. '21, p. 687, § 6.]

Subjected to referendum. See note to § 5214.

§ 5219. List of Voters—Contest.

REFERRED ACT.

It shall be the duty of one of the officers of each party election board to keep a list of the names of all persons voting at such election,

numbered in order of their voting; and the said board shall, immediately upon the closing of the polls proceed to canvass the vote, publicly, and shall deliver the tabulated returns to the county party committee, showing the names of all persons voted for and the number of votes cast for each person, and certify the same to be correct, which certificate shall be attested by the officer of said party election. The chairman of the party election board shall preserve the ballots cast and the list of names of those voting at such election, for a period of at least fifteen (15) days: Provided, however, that in case of a contest of the election in any precinct, the said chairman shall deliver said ballots and the said list to the secretary of the county committee upon his demand. [L. '21, p. 687, § 7.]

Subjected to referendum. See note to § 5214.

REFERRED ACT.

§ 5220. Ballot-box.

Before receiving any ballots the officers of said party election, in the presence of all persons assembled at the respective precinct polling places, shall open and exhibit the ballot-box, so that no ballots shall be therein at the time the polls are open, and thereafter said ballot-box must not be removed from the polling places by any person, nor from the view of the bystanders, until all the ballots are counted, nor must it be opened for the purpose of counting the votes until the polls are closed. [L. '21, p. 687, § 8.]

Subjected to referendum. See note to § 5214.

REFERRED ACT.

§ 5221. County Delegates—Duties.

The delegates elected to county conventions provided for in this act shall assemble in their respective counties on the date fixed by the county committee calling for the election of such delegates, at the hour and place named by such committee. In addition to the usual powers exercised by county conventions, each county convention shall adopt a platform, select the number of delegates to the state convention provided for in the call of the state committee, and shall select one member of a state advisory platform committee. [L. '21, p. 688, § 9.]

Subjected to referendum. See note to § 5214.

REFERRED ACT.

§ 5222. Scope of Act—Parties Casting Less than Ten Per Cent of Vote.

The provisions of this act shall not apply to special elections for filling vacancies for unexpired terms, or to any city, town or school, dike, waterway, port, or metropolitan park district, or any local improvement district election; nor shall the provisions of this act apply or be made applicable in any way to any party casting less than ten per cent (10%) of the votes for candidates for governor at the last preceding general election; nor shall the provisions of this act be considered as repealing any existing statutes of this state providing for the selection

of delegates to county conventions where any party committee elects by resolution to accept the provisions of existing laws in the manner provided by existing law. [L. '21, p. 688, § 10.]

Subjected to referendum. See note to § 5214.

REFERRED ACT.

§ 5223. Platform Advisory Committee.

It shall be the duty of the members of the platform advisory committee, as provided for in this act, to meet at the place of holding the state convention at ten (10) o'clock A. M. on the second day preceding the holding of the said state convention, and shall hold public hearings and submit to the state convention an advisory platform. [L. '21, p. 688, § 11.]

Subjected to referendum. See note to § 5214.

REFERRED ACT.

§ 5224. State Convention—Powers and Duties.

It shall be the duty of the state committee of each of the political parties entitled to hold conventions under this act, to issue a call for their state conventions, specifying the time and place of holding the conventions, and which call shall be issued not less than thirty (30) days before the holding of the party election for selection of delegates to county conventions, by giving due notice thereof through the press and by mailing a copy of said call to each state committeeman, and to the executive officers of each of the county organizations of that party, and to the county auditor of each county. The state committee, in its call, shall determine upon the total number of delegates to attend the state convention, and shall fix the basis of representation for, and the number of delegates from each county: Provided, however, that the basis of representation for each county shall be the same and that each county shall be entitled to at least one (1) delegate. No proxies shall be allowed in any conventions provided for in this act, and it is further provided that no convention held under the provisions of this act shall make indorsements of the candidacy of any person for either United States senatorial, congressional, state or county office. In case the state committee of any such party should fail or neglect prior to May 1st of any even-numbered years to issue a call for a state convention for such party, then a state convention of such party for the purposes outlined in this act shall be held upon the petition of one hundred electors, filed with the secretary of state, and which petition shall set forth the manner, method and conditions of holding such state convention: Provided, however, if such convention is called under such petition, the date of such convention shall be the first Thursday of June of such year. [L. '21, p. 688, § 12.]

Penalty for violating this chapter. See § 5181.

Subjected to referendum. See note to § 5214.

*REFERRED ACT.***§ 5224-1. Adoption of Platform—Nomination of Presidential Electors.**

It shall be the duty of the state conventions of each of the parties required to hold conventions as herein provided, to adopt a platform and to make a clear and concise statement of its principles and its general legislative program. In addition thereto, the said state conventions shall have the powers and perform the duties usually held and performed by state conventions; and shall have the power to nominate the presidential electors to which the said state shall be entitled, and the names of which said electors shall be printed under the party designated on the ballots to be used in the succeeding general election. [L. '21, p. 689, § 13.]

Penalty for violating this chapter. See § 5181.

Subjected to referendum. See note to § 5214.

CHAPTER VI.

MINOR PARTY AND SPECIAL PRIMARY ELECTIONS.

§ 5225. [4844.] Authority to Hold, and How Regulated.

All elections hereafter to be held by any voluntary political association or party, for any delegates or managing committee [or for the nomination of candidates for public office], shall be held under the provisions of this chapter, whenever any committee or body authorized by the rules or customs of such political association shall elect to accept and act under such provisions. [L. '90, p. 419, § 1; 1 H. C., § 468.]

This and the following sections are in the main superseded as to the bracketed words. This chapter can now apply only to parties polling less than ten per cent of the votes cast at the last preceding election; to special elections for filling vacancies for unexpired terms; to elections for towns of the fourth class and school, and certain district elections; to elections for presidential electors and judges of the supreme court; to municipal elections under nonpartisan charter provisions, and to elections for political party delegates, managers, etc. See *supra*, § 5178.

§ 5226. [4845.] Desire to Hold Election to be Manifested by Resolution.

Whenever it shall be the desire of any such committee or body that such election shall be held under the provisions of this chapter, such desire and acceptance shall be expressed by a resolution duly passed by such committee or body. [L. '90, p. 419, § 2; 1 H. C., § 469.]

§ 5227. [4846.] Resolution must Declare What.

The resolution must declare,—

1. The time and place of holding the election, and the hours between which the polls are to be kept open; and the polls shall, in all cases, be kept open from 12 o'clock, noon, to 7 o'clock P. M. of the day on which the election is held;

2. The names of three reputable persons to act as judges;

3. The object of the election;

4. That such election will be held under the provisions of the primary election law;

5. The qualifications required for voters, in addition to those prescribed by law. [L. '90, p. 419, § 3; 1 H. C., § 470.]

§ 5228. [4847.] Publication of Notice of Election—Requisites of.

At least five days prior to any such election, a notice of such election shall be published in some newspaper or newspapers of general circulation in the district, ward, precinct, township, city, or county in and for which the election is called, and shall be posted in at least three public places in each polling precinct or district for which such election is to be held. Such notice must be signed by the secretary of the committee or body calling such election, and must state the purpose, time, manner, and conditions, together with the place or places of holding such election; also the authority by which the call or notice is published; and the three persons shall be named therein who are appointed for each polling place to act as judges of said election, and who shall supervise or preside at such election in the polling precinct or district for which they are respectively appointed, and such judges shall be legal voters of and householders in the township, precinct, ward or election district for which they are named. And said notice shall likewise declare the qualifications of the persons to vote at such election: Provided, that such prescribed qualifications shall not be inconsistent with those expressed in this chapter. Such notice shall also declare that such election therein called will be held in pursuance of and subject to the provisions of this chapter, under the title of "primary election law"; and any election held in pursuance of any notice calling for an election under the "primary election law" shall be taken and deemed to be a primary election within the meaning of this chapter. [L. '90, p. 420, § 4; 1 H. C., § 471.]

§ 5229. [4848.] Judges to Take Oath and Appoint Clerks—Vacancy—Penalty.

The persons named as judges of election in the notice required by the last preceding section, or any persons assuming or chosen to be such judges, in the absence, refusal, or failure to act of any of the judges named in such notice, shall first make oath or affirmation that they are legal voters of and householders in the precinct, ward, or election district for which they are appointed to serve; that they will faithfully and correctly conduct such election, protect it against all frauds and unfairness, carefully and truly canvass all votes cast thereat, and in every way conform to the provisions of this chapter, and of the notice or call for the election, which oath may be administered by any one of the judges, or by any person authorized under the laws of this state to administer oaths. And if one or all of the judges appointed to serve at the election be absent, or refuse or fail to serve at the hour appointed for the election to begin, then the electors present, to the number of not less than five, possessing the qualifications of persons entitled to vote at said election, shall choose a person or persons to fill any vacancy or vacancies that may exist. The judges, before proceeding with the election, shall appoint two clerks to assist them in receiving and counting the votes cast, to each of whom shall be administered, by one of the judges, an oath similar to that taken by the judges of election, omitting the statement that affiant is a householder. Any violation of the provisions of this section shall be deemed a misdemeanor, and shall subject the offender, on conviction, to punishment by a fine of not less than fifty dollars nor more than two hundred dollars,

or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment, in the discretion of the court. [L. '90, p. 420, § 5; 1 H. C., § 472.]

§ 5230. [4849.] Duty of Judges—Vote may be Rejected, When—Penalties.

It shall be the duty of the judges of said election to entertain objections made by any qualified elector under said published call or notice to any vote which may be offered, on the ground that the person offering it is not entitled to vote under the terms of said call for said election, or that he is not a citizen of the United States, or a legal resident and voter under the general election laws of the state, in the election precinct, ward, township, or district for which the election is held, or that he has received or been promised, directly or indirectly, any money, fee, or reward for his vote for any candidate, or that he has voted before at that place, or some other place, on that day, or at the same election; and it shall be the duty of one of the judges of the election, if such objection be not withdrawn, to administer to the person so offering to vote an oath or affirmation to the general effect that he will truly testify to all matters relating to his qualifications, under said published call or notice, and under the general election laws of the state. It shall then be the duty of the judges to interrogate the person so objected to as to all matters in particular upon which said objection was made, and generally as to all of his qualifications as an elector at such election. If the person so objected to shall refuse to answer any questions asked, after said oath, or affirmations shall have been administered, or shall refuse to take such oath, it shall be the duty of the judges to reject such vote; and they shall also reject such vote, unless such person shall file with them a written or printed, or partly written or partly printed, statement, by him signed, that he is a qualified voter of the election district in which such election is held, and entitled to vote at such election; and unless such statement shall be accompanied by a similar statement of some person known to at least one of the judges to be a qualified voter in that district, to the effect that he knows the person so challenged, and that his statement is true, which said last statement must also be subscribed by the party making it. If such statements shall be filed, and such oath be taken, and such questions answered in such a manner as to show that the applicant is qualified to vote at such election, it shall be the duty of the judges of the election to receive such vote, and the word "sworn" shall be noted opposite the person's name on the poll-list, to be kept as hereinafter provided. Any violation of the provisions of this section by the judges or clerks of the election, or either of them, shall be deemed a misdemeanor, and upon conviction shall subject the party so offending to punishment by a fine of not less than one hundred dollars nor more than three hundred dollars, or by imprisonment in the county jail for not less than two nor more than six months, or by both such fine and imprisonment, in the discretion of the court; and any person who shall, upon taking such oath or affirmation, and under the examination herein authorized, willfully make a false statement as to a matter pertinent and material in

such examination, shall be deemed guilty of perjury, and upon conviction thereof be punished as prescribed by law for such offense. [L. '90, p. 421, § 6; 1 H. C., § 473.]

§ 5231. [4850.] Illegal Voting, Bribery, Fraud, etc., How Punished.

Whoever fraudulently votes at any primary election, or offers to vote, after having once voted at such election, or knowing that he is not a qualified voter at such election, willfully votes or offers to vote at such election; or willfully aids or abets anyone not qualified to vote at such primary election in voting or attempting to vote at such election; or by offering a reward or bribe, or by treating or giving to him any spirituous, malt, or other liquors, either directly or indirectly, influences or attempts to influence any voter in giving or withholding his vote at such election; or furnishes a voter with a ticket or ballot, informing him that it contains a name or names different from those which appear thereon with intent to induce him to vote contrary to his intention; or fraudulently or deceitfully changes a ballot of a voter with intent to prevent such voter from voting for such person as he intended; or endeavors to prevent the voting of any voter, or the exercise of [un]lawful influence by any person over a voter at any such election, for himself or for or against any person, by means of violence or threats of violence or threats of withdrawing custom, or dealing in business or trade, or enforcing the payment of a debt, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him or by such means; or by bribery, or by corrupt or unlawful means, prevents or attempts to prevent any voter from attending or voting at such election; or gives or offers to give any valuable thing or bribe to any judge or clerk of such election, as a consideration for some act to be done, or omitted to be done, contrary to his duty in relation to such election, or shall interfere with or disturb, in any manner, any election held under the provisions of this chapter,—shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not less than two nor more than six months, or by both such fine and imprisonment, in the discretion of the court. [L. '90, p. 422, § 7; 1 H. C., § 474.]

§ 5232. [4851.] Clerk must Keep Poll-list.

Each clerk must keep a list of persons voting, and the name and residence of each person who votes must be entered thereon and numbered in the order of voting. [L. '90, p. 423, § 8; 1 H. C., § 475.]

§ 5233. [4852.] Each Clerk must Keep Record of Challenges.

The judges must cause one of the clerks to keep a list, showing,—

1. The names and residences of all persons challenged;
2. The grounds of such challenge;
3. The determination of the board upon the challenge. [L. '90, p. 423, § 9; 1 H. C., § 476.]

§ 5234. [4853.] Keep Form of Poll-lists and Tally-lists.

The following is substantially the form of the poll-lists and tally-lists to be kept by the clerks of election:—

POLL-LIST.

Of the primary election held in the — precinct of the — ward of —, in the county of —, on the — day of —, in the year —. A B, C D, and E F, judges, and G H and J K, clerks, of said — election, were respectively sworn (or affirmed) as the law directs. previous to their entering on the duties of their respective offices.

Numbers and names of electors voting:—

No.	Name and Residence.		No.	Name and Residence.	
1	A	B	3	E	F
2	C	D	4	G	H

We hereby certify that the number of electors voting at this election is —.

Attest:
G H,
J K,
Clerks.

A B,
C D,
E F,
Judges of Election.

TALLY-LIST.

Names of persons voted for and for what position, and number of votes given for each candidate.

We hereby certify that A B had — votes for —; and that C D had — votes for —; that E F had — votes for —, etc.

G H,
J K,
Clerks.

A B,
C D,
E F,
Judges of Election.

[L. '90, p. 424, § 10; 1 H. C., § 477.]

§ 5235. [4854.] Oaths, Who may Administer and Certify.

Any one of the judges or either clerk may administer and certify oaths required to be administered during the progress of an election held under this chapter. [L. '90, p. 424, § 11; 1 H. C., § 478.]

Cited in 73 Wash. 68.

§ 5236. [4855.] Duty of Judges as to Ballot-box.

Before receiving any ballots, the judges must, in the presence of the persons assembled at the polling place, open and exhibit and then close the ballot-box; and thereafter it must not be removed from the polling place nor the view of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed. [L. '90, p. 424, § 12; 1 H. C., § 479.]

§ 5237. [4856.] Polls, How Opened—Ballots Cast to Contain What.

Before the judges receive any ballots, they must cause it to be proclaimed aloud, at the place of election, that the polls are open. All

ballots cast shall contain the full name or initial of the candidate voted for. [L. '90, p. 424, § 13; 1 H. C., § 480.]

§ 5238. [4857.] Proclamation as to Closing Polls.

Fifteen minutes before the time when the polls are to be closed, that fact must be proclaimed aloud at the place of election; and after the polls are closed no ballots must be received. [L. '90, p. 425, § 14; 1 H. C., § 481.]

§ 5239. [4858.] Ballots, How Canvassed—Proclamation of Result.

As soon as the polls are finally closed the judges must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of the bystanders, and must be continued without adjournment until completed and the result thereof is declared; and must also be conducted at the polling place where the election is held; where, also the result as to each candidate voted for must be, immediately on the completion of such canvass, publicly proclaimed by one of the judges, in a loud voice, and such proclamation shall be prima facie evidence of the result. [L. '90, p. 425, § 15; 1 H. C., § 482.]

§ 5240. [4859.] Equalizing Number of Ballots with Number of Names on Poll-lists.

In conducting the canvass, the judges shall first count the whole number of ballots in the box, and if the number of such ballots shall be found to exceed the number of names entered on the polling-list, they shall reject so many thereof, without opening the same, or examining or looking at the names thereon, as may be necessary to make the number of ballots correspond to the number of names entered on the polling-lists. [L. '90, p. 425, § 16.]

§ 5241. [4860.] Poll-lists must be Signed and Attested.

The number of ballots agreeing, or being thus made to agree, with the number of names on the list, the lists must be signed by the judges of election and attested by the clerks, and the number of names thereon must be set down in words and figures at the foot of each list, and over the signatures of the judges and the attestation of the clerks, substantially in the form prescribed in section 5234. [L. '90, p. 425, § 17; 1 H. C., § 484.]

§ 5242. [4861.] Counting Ballots, How Conducted.

After the lists are thus signed, the judges must proceed to count and ascertain the number of votes cast for each person voted for. The ballots must be taken out and opened by one of the judges, and by him distinctly read aloud, and inspected by the other two judges. [L. '90, p. 425, § 18; 1 H. C., § 485.]

§ 5243. [4862.] Clerks must Keep Tally.

Each clerk must write down each office or position to be filled, and the name of each person voted for to fill such office, and keep the number of votes for each person for each office by tallies, as they are read aloud. [L. '90, p. 425, § 19; 1 H. C., § 486.]

§ 5244. [4863.] Lists to be Signed and Attested, How.

As soon as all the votes are counted there must be attached to the tally-lists, lists containing the names of persons voted for and for what office, and the number of votes given for each candidate, the number being written at full length, and such lists must be signed by the judges and attested by the clerks substantially in the form in section 5234. [L. '90, p. 426, § 20; 1. H. C., § 487.]

§ 5245. [4864.] Ballots, Lists, and Statements, Duty of Officers as to.

After counting the votes, proclaiming the result, and signing the lists as above provided, the judges must cause the statements provided for in section 5230, the ballots and one copy of the lists, to be delivered to the clerk signing the notice of election, and one of the judges must retain the other lists for twenty days after the election, and such statements, ballots, and lists returned to the said clerk shall be by him, after the expiration of twenty days, delivered to the county clerk of the county in which such election was held, and by that officer kept with the books and papers of his office, open like other public records to public inspection, for the space of three months, at the end of which time, if no legal proceedings have been instituted in which such lists, ballots, or statements may be useful as evidence, said county clerk may then destroy the same. [L. '90, p. 426, § 21; 1 H. C., § 488.]

§ 5246. [4865.] Certificates of Election to be Issued.

The board of election must issue certificates of election to all persons who are chosen to fill any position by the vote of their election district. [L. '90, p. 426, § 22; 1 H. C., § 489.]

§ 5247. [4866.] Who may Vote.

It shall be unlawful for any person to vote at any primary election, or at any election to select delegates to any convention, called either for the purpose of nominating a candidate or candidates for any elective office, or for the purpose of selecting other delegates to such convention, unless such person so voting, or offering to vote, has the qualifications of an elector in the district embraced within the call for said primary election, at a general or special election held under and in conformity with the general election laws of this state. [L. '90, p. 426, § 23; 1 H. C., § 490.]

§ 5248. [4867.] Penalty for Violation of Preceding Section.

Any person violating the provisions of the foregoing section shall, on conviction thereof, be fined in any sum not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not less than two nor more than six months, or both, in the discretion of the court. [L. '90, p. 426, § 24; 1 H. C., § 491.]

Cited in 4 Wash. 2; 5 Wash. 640.

§ 5249. [4868.] Violation of This Chapter a Misdemeanor—Penalty.

Any person who shall be convicted of the violation of any of the provisions of this chapter, for which no punishment is herein especially

provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned in the county jail not less than one month nor more than six months, or punished by both such fine and imprisonment, in the discretion of the court. [L. '90, p. 427, § 25; 1 H. C., § 492.]

CHAPTER VII.

PRIMARY ELECTIONS FOR DELEGATES TO CONVENTIONS IN CITIES AND TOWNS.

§ 5250. [4869.] Primary Elections Regulated by This Chapter.

All primary elections hereafter to be held by any voluntary political associations or party for delegates to any nominating convention of such party for candidates for public office shall be held under the provisions of this chapter in the incorporated cities and towns of this state. [L. '95, p. 361, § 1.]

§ 5251. [4870.] How Called.

Whenever such primary elections are called by any managing committee authorized under the rules or customs of such voluntary political association or party to call such primary elections such call shall be made by resolution duly passed by such managing committee and attested by the chairman and secretary of such committee. [L. '95, p. 361, § 2.]

§ 5252. [4871.] Notice Published.

This resolution shall be published in some newspaper of general circulation in the city or town where such primary election is to be held, at least ten days previous to the time set for such election; and if there be no newspaper published therein, then written copies of such resolution shall be posted in two of the most public places in each precinct in said city or town. [L. '95, p. 361, § 3.]

§ 5253. [4872.] Resolutions to Contain What.

The resolutions shall declare,—

First. The time and places of holding such primary elections and the hours between which the polls are to be kept open;

Second: The object of the election;

Third: The qualifications required of voters in addition to those prescribed by law;

Fourth: The number of persons to be elected as such delegates in each polling precinct, and such other matters as such managing committee, in accordance with the custom of such voluntary political associations or party, usually submit in an official call for such primary elections. [L. '95, p. 362, § 4.]

§ 5254. [4873.] Voters, Qualifications of.

The qualifications of voters at such primary elections, in addition to those prescribed by such resolution, shall be the same as those at a general election held under the general election law of this state. [L. '95, p. 362, § 5.]

Cited in 8 Wash. 66.

§ 5255. [4874.] Delegates, Qualifications of.

The persons to be voted for as such delegates at such primary election shall possess all the qualifications required of a voter at such primary election in the respective voting precincts. [L. '95, p. 362, § 6.]

§ 5256. [4875.] Relative Number of Delegates Voted for.

The persons to be voted for as such delegates shall be selected in excess by at least twice the number to be elected in each polling precinct, and such selection shall be made at least one day previous to such primary election by a caucus of the qualified voters in each precinct, under such call or resolution, and such caucus shall also select three reputable citizens, two to act as judges and one as clerk of such primary election. Such selection shall be certified to such managing committee by the officers of such caucus. [L. '95, p. 362, § 7.]

§ 5257. [4876.] Judges and Clerks, Qualification of.

The qualifications and duties of the judges and clerks selected by such caucus and their organization into an election board for their respective precincts shall be similar to those in the general election law, and such election board shall have the right to question the voter as to his previous party affiliation, and shall have the same power in administering oaths, questioning voters as to their qualification, rejecting ballots, etc., as the election board has under the general election law of this state. [L. '95, p. 362, § 8.]

§ 5258. [4877.] List of Delegates Elected to be Printed.

The managing committee shall cause a list of the names of such delegates so selected to be printed on one ballot of convenient form for each polling precinct, which ballot shall be the only ballot voted at such primary election and shall be obtained only by the voters from the primary election officers immediately before voting. [L. '95, p. 362, § 9.]

§ 5259. [4878.] Designation of Persons Voted for.

The voters [voter] shall designate the persons for whom he wishes to vote by marking a cross (X) opposite their names [his name] on such printed ballot, voting for as many persons only as the respective precinct is entitled to elect under such call or resolution: Provided, that nothing in this section shall prevent the voter from inserting or adding any name or names on such printed ballot he may wish to vote for. [L. '95, p. 363, § 10.]

§ 5260. [4879.] Registered Voters, List of.

It shall be the duty of the registration officer under the general election law of this state to permit the judges or managing committee of such primary elections to make a list of the registered voters in the respective precincts. [L. '95, p. 363, § 11.]

§ 5261. [4880.] List of Voters kept.

It shall be the duty of the clerks of each primary election board to keep a tally-list of the names and residences of all persons voting, num-

bered in the order of the voting, and upon canvassing the vote such clerk shall make a return of all persons voted for, with the number of ballots cast for each person. [L. '95, p. 363, § 12.]

§ 5262. [4881.] Ballot-boxes Opened Before Election Begins.

Before receiving any ballots the judges, in the presence of the persons assembled at the polling places, shall open and exhibit and then close the ballot-box, and thereafter it must not be removed from the polling place nor from the view of the bystanders until all the ballots are counted, nor must it be opened until the polls are finally closed. [L. '95, p. 363, § 13.]

§ 5263. [4882.] Proclamation of Opening and Closing Polls.

Before the judges receive any ballots they must cause it to be proclaimed aloud at the places of election that the polls are open, and fifteen minutes before the time of closing that fact must be proclaimed in like manner, and after the final closing of the polls no ballots must be received. [L. '95, p. 363, § 14.]

§ 5264. [4883.] Votes, When Canvassed.

On closing the polls the judges must immediately proceed to canvass the votes in the presence of the bystanders, and must continue the canvass without adjournment at the polling place until complete and the results thereof declared. [L. '95, p. 363, § 15.]

§ 5265. [4884.] Judges, Duty of.

After counting the votes, proclaiming the result and signing the return, the judges shall cause the tally-list and ballots to be filed with the clerk of the county wherein such election is held, which tally-list and ballots shall be kept by him as part of the public records until after the adjournment of the convention for which such primary election was held, and they shall cause the return to be filed with the managing committee under whose authority such primary election was called, whereupon such managing committee shall issue certificates of election in accordance with the result therein declared. Such certificates shall be prima facie evidence of the person's selection. [L. '95, p. 364, § 16.]

§ 5266. [4885.] Penalty for Falsifying Returns.

Any judge or clerk who shall falsify any primary election return, or in any manner violate the provisions of this chapter, or make it possible to secure a return of such primary election other than the true one by fraudulently canvassing the votes of such primary election, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than one hundred nor more than three hundred dollars, or by imprisonment in the county jail for not less than two nor more than six months, or by both fine and imprisonment, in the discretion of the court. [L. '95, p. 364, § 17.]

§ 5267. [4886.] Penalty for Fraudulent Voting.

(1) Whoever fraudulently votes at any primary election; or (2) offers to vote after having voted at such election; or (3) knowing that he

is not a qualified voter under the resolution or call of such managing committee at such primary election, willfully votes or offers to vote at such primary election; or (4) aids or abets anyone not a qualified voter at such primary election in voting; or (5) by offering a reward or bribe, either directly or indirectly, to influence or attempt to influence any elector at such primary election to give or withhold his vote at such primary election; or (6) furnishes a voter, or himself votes, a ballot other than the lawful ballot obtained from the officers of such primary election; or (7) fraudulently or deceitfully changes a ballot of a voter; or (8) prevents the voting of any qualified voter; or (9) exercises an unlawful influence over a qualified voter at such primary election by means of violence or threats of violence or any other injury, or by bribery or by corrupt means prevents or attempts to prevent any qualified voter from attending or voting at such primary election; or (10) gives, or offers to give, any valuable thing or bribe to any judge or clerk of such primary election as a consideration for some act to be done, or omitted to be done, contrary to his duty in relation to such primary election; or (11) shall in any manner interfere with or disturb any primary election held under the provisions of this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than one nor more than six months, or by both fine and imprisonment, in the discretion of the court. [L.'95, p. 364, § 18.]

§ 5268. [4887.] Penalty for Violating Other Provisions of This Chapter.

Any person who shall violate any section of this chapter for which no punishment is herein especially provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than two hundred dollars, or by imprisonment in the county jail for not less than one nor more than three months, or by both fine and imprisonment, in the discretion of the court. [L.'95, p. 365, § 19.]

See *infra*, § 5383, penalty for fraudulent voting.

CHAPTER VIII.

BALLOTS AND ABSENT VOTING.

§ 5269. [4888.] Ballots Printed and Distributed at Public Expense.

All ballots cast at elections for public officers within this state (except school and irrigation district officers and road overseers) shall be printed and distributed at public expense, as hereinafter provided. The printing of ballots and cards of instruction for the electors in each county, and the delivery of the same to the election officers, as hereinafter provided, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses; but the expense of printing and delivering the ballots shall, in the case of municipal elections, be a charge upon the city or town in which such election shall be held. [L. '90, p. 400, § 1; 1 H. C., § 363.]

Cited in 4 Wash. 303; 17 Wash. 21.

§ 5270. [4889.] Change of Name by Stickers, When.

When any vacancy occurs before election day and after the printing of the tickets, and any person is nominated according to the provisions of this chapter to fill such vacancy, the officer whose duty it is to have the stickers printed and distributed shall thereupon have printed a requisite number of stickers, and shall mail them by registered letter to the judges of election in the various precincts interested in such election, and the judges of election whose duty it is made by the provisions of this chapter to distribute the tickets shall affix such stickers in the proper place on each ticket before it is given out to the elector. [L. '90, p. 405, § 13; 1 H. C., § 375.]

§ 5271. [4890.] Questions for Popular Vote, How Submitted.

Whenever a proposed constitution or constitutional amendment, or other question is to be submitted to the people of the state for popular vote, the secretary of state shall duly, and not less than thirty days before election, certify the same to the clerk of the board of county commissioners of each county in the state, and the clerk of the board of county commissioners of each county shall include the same in the publication provided for in section 5174. Questions to be submitted to the people of a county or municipality shall be advertised as provided for nominees for offices by said section, and in submitting said amendment or question, there shall be printed on the ballot a concise statement, not exceeding seventy-five words, of its essential features in such manner that the voters may clearly identify the proposition in which they are voting. Such statement shall be prepared by the attorney general for the secretary of state, by the prosecuting attorney for the board of county commissioners, and by the legal department of the municipality for the proper officer thereof: Provided, that where the legislature shall have prescribed any particular form, the same shall be used. [L. '13, p. 415, § 1. Cf. L. '90, p. 405, § 14; 1 H. C., § 376.]

§ 5272. [4891.] County to Provide Ballots—Preparation of by Voter.

Except as in this chapter otherwise provided, it shall be the duty of the clerk of the board of county commissioners of each county to provide ballot-boxes, or pouches, printed ballots, and duplicate poll-books for every election for public officers in which electors, or any of the electors within the county, participate, and to cause to be printed on the ballot the name of every candidate whose name has been certified to or filed with the county auditor in the manner provided for in this chapter. Ballots other than those printed by the respective clerks of boards of county commissioners, according to the provisions of this chapter, shall not be cast or counted in any election. Nothing in this chapter contained shall prevent any voter from writing or pasting on his ballot the names of any person for whom he desires to vote for any office, and such vote shall be counted, the same as if printed upon the ballot and marked by the voter, and any voter may take with him into the polling place any printed or written memorandum or paper to assist him in marking or preparing his ballot, except as hereinafter otherwise provided. [L. '90, p. 405, § 15; 1 H. C., § 377; L. '05, p. 64, § 1.]

See *infra*, § 5288, which is to same effect as last part of this section.

Cited in 28 Wash. 673; 58 Wash. 651. tions, § 34; State ex rel. Harkins v. Roundtree, 28 Wash. 669, 69 Pac. 404.
Pasters: See Remington's Digest, Elec-

§ 5273. [4892.] Exception as to the Election of Certain Officers.

Elections for school and irrigation district officers and road overseers are excepted from the provisions of the preceding section, and in all municipal elections the duties specified in the preceding section as devolving on the clerk of the board of county commissioners shall devolve on the municipal clerk. [L.'90, p. 406, § 16; 1 H. C., § 378.]

Cited in 1 Wash. 155.

§ 5274. [4893.] Ballots, Contents, How Prepared and Printed.

All ballots prepared under the provisions of this chapter shall conform to the following requirements:

First. Shall be of white and a good quality of paper, and the names shall be printed thereon in black ink.

Second. Every ballot shall contain the name of every candidate whose nomination for any office specified in the ballot has been filed according to the provisions of this act and no other names.

Third. All nominations of any party or group of petitioners shall be placed under the title of such party or petitioners as designated by them in their certificate of nomination or petition, and the name of each nominee shall be placed under the designation of the office for which he has been nominated.

Fourth. There shall be a ○ under the party designated and a □ at the right of the name of each of its nominees so that the voter may clearly indicate the party or the candidate or the candidates for whom he wishes to cast his ballot; the circle shall be one-half inch in diameter and the square one-fourth of an inch. The size of type for the designation of the office shall be nonpareil caps; that of the candidates not smaller than brevier or larger than small pica caps and shall be connected with squares by leaders.

Fifth. The list of candidates of the republican party shall be placed in the first column of the left-hand side of the ballot, the democratic party the second column and of other party [parties] in the order in which the certificates of nomination have been filed.

The line of demarcation between the party columns shall be inverted nonpareil rule.

If any of the above-named parties shall fail to nominate a ticket, the name of such party shall not appear upon the ballot.

Sixth. No candidates' [candidate's] name shall appear more than once upon the ballot: Provided, that any candidate who has been nominated by two or more political parties may, upon a written notice filed with the clerk of the board of county commissioners at least twenty days before the election is to be held, designate the political party under whose title he desires to have his name placed.

Seventh. Under the designation of the office if more than one candidate is to be voted for there shall be indicated the number of candidates to such office to be voted for at such election.

Eighth. Upon each official ballot a perforated line one-half inch from the left-hand edge of said ballot shall extend from the top of said ballot

towards the bottom of the same two inches thence to the left-hand edge of the ballot and upon the space thus formed there shall be no printing except the number of such ballot which shall be upon the back of such space in such position that it shall appear on the outside when the ballot is folded. The county auditor shall cause official ballots to be numbered consecutively beginning with number 1, for each separate voting precinct.

Ninth. Official ballots for a given precinct shall not contain the names of nominees for justices of the peace and constables of any other precinct except in cases of municipalities where a number of precincts vote for the same nominee for justices of the peace and constables and in the latter case the ballots shall contain only the names to be voted for by the electors of such precinct. Each party column shall be two and five-eighths inches wide.

Tenth. On the top of each of said ballots and extending across the party groups, there shall be printed instructions directing the voters how to mark the ballot before the same shall be deposited with the judges of election. Next after the instructions and before the party group shall be placed the questions of adopting constitutional amendments or any other question authorized by law to be submitted to the voters of such election. The arrangement of the ballot shall in general conform as nearly as possible to the form hereinafter given.

INSTRUCTIONS.—Mark \times in \bigcirc under party name, for whose candidate you wish to vote.

If you desire to vote for any candidate of any other party place \times in \square at the right of the name of such candidate.

(Here place any state or local questions to be voted on.)

REPUBLICAN TICKET.	DEMOCRATIC TICKET.	PROHIBITION TICKET.
<div><div>\bigcirc</div></div>	<div><div>\bigcirc</div></div>	<div><div>\bigcirc</div></div>
<div><div>PRESIDENTIAL ELECTORS.</div><div>S. G. COSGROVE.....<input type="checkbox"/></div><div>F. W. HASTINGS.....<input type="checkbox"/></div><div>C. SWEENEY<input type="checkbox"/></div><div>J. BOYD<input type="checkbox"/></div></div>		
<div><div>REPRESENTATIVES IN CONG.</div><div>F. W. CUSHMAN.....<input type="checkbox"/></div><div>W. L. JONES.....<input type="checkbox"/></div></div>		
<div><div>JUDGES SUPREME COURT.</div><div>W. MOUNT<input type="checkbox"/></div><div>R. O. DUNBAR.....<input type="checkbox"/></div></div>		
<div><div>GOVERNOR.</div><div>J. M. FRINK.....<input type="checkbox"/></div></div>		
<div><div>LIEUTENANT GOVERNOR.</div><div>H. McBRIDE<input type="checkbox"/></div></div>		
<div><div>SECRETARY OF STATE.</div><div>S. H. NICHOLS.....<input type="checkbox"/></div></div>		
<div><div>STATE TREASURER.</div><div>C. W. MAYNARD.....<input type="checkbox"/></div></div>		
<div><div>STATE AUDITOR.</div><div>J. D. ATKINSON.....<input type="checkbox"/></div></div>		
<div><div>ATTORNEY GENERAL.</div><div>W. B. STRATTON.....<input type="checkbox"/></div></div>		
<div><div>SUPT. PUBLIC INSTRUCTION.</div><div>R. B. BRYAN.....<input type="checkbox"/></div></div>		
<div><div>COM. PUBLIC LANDS.</div><div>S. A. CALLVERT.....<input type="checkbox"/></div></div>		
<div><div>STATE SENATOR 18TH DIST.</div><div>A. S. RUTH.....<input type="checkbox"/></div></div>		

[L. '01, p. 186, § 1. Cf. L. '90, p. 406, § 17; L. '91, p. 200, § 1; 1 H. C., § 379; L. '95, p. 387, § 4.]

See infra, §§ 5394, 5395, unlawful printing or counterfeiting official ballots, etc. As to requisites of ballots, see § 5323, infra.

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Cited in 21 Wash. 246; 58 Wash. 650, 651; 60 Wash. 371, 380.

This section, subdivision 6, is a reasonable regulation of the elective franchise, and violates no constitutional right of the voter to vote for a candidate of his choice: State ex rel. Shepard v. Superior Court, 60 Wash. 370, 111 Pac. 233, 140 Am. St. Rep. 925.

Form and Contents of Official Ballots:
See Remington's Digest, Elections, §§ 30,

31; State ex rel. Bloomfield v. Weir, 5 Wash. 82, 31 Pac. 417; State ex rel. Hewen v. Elliott, 17 Wash. 18, 48 Pac. 734; State ex rel. Zent v. Nichols, 50 Wash. 508, 97 Pac. 728; Williams v. Shoudy, 12 Wash. 362, 41 Pac. 169; State ex rel. Shepard v. Superior Court, 60 Wash. 370, 111 Pac. 233, 140 Am. St. Rep. 925; Edes v. Hadley, 94 Wash. 232, 162 Pac. 50.

§ 5275. [4894.] Number to be Furnished.

The clerk of the board of county commissioners of each county shall provide for each election precinct in the county a number of ballots equal to one hundred and ten per centum of the registered electors in the precinct or such further number as the county auditor may certify to be necessary and two tallying books, that shall be printed in relation with the ballots. Provided, however, that in municipal elections it shall be the duty of the city or town clerk to provide ballots as specified in this section. [L. '15, p. 348, § 1. Cf. L. '90, p. 407, § 18; 1 H. C., § 380; L. '95, p. 390, § 5.]

Compare L. '95, p. 35, § 1, amending § 380 of 1 Hill's Code, omitted as superseded by the above section, this being the later enactment.

Validity and effect of statute requiring ballots to be numbered. 6

Ann. Cas. 969; 8 L. B. A. (N. S.) 888.

§ 5276. [4895.] Error of Omission of Name from, How Cured.

Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names of the candidates nominated for office, or in the printing of the ballots, the superior court of the county may, upon application of any elector, by order, require the clerk of the board of county commissioners or municipal clerk to correct such error, or to show cause why such error should not be corrected. [L. '90, p. 407, § 19; 1 H. C., § 381.]

Cited in 1 Wash. 66.

§ 5277. [4896.] When and to Whom Delivered.

Before the opening of the polls, the clerk of the board of county commissioners (or the municipal clerk in the case of municipal elections) shall cause to be delivered to the judges of election of each election precinct which is within the county (or within the municipality in case of municipal elections), and in which the election is to be held, at the polling place of the precinct, the proper number of ballots provided for in section 5275 of this chapter. The ballots shall be given to the inspector of each election precinct; but in case it may be impracticable to deliver such ballots to the inspector, then they may be delivered to one of the judges of election of any such precinct, and in making the appointment of judges of election under this chapter and other election laws of this state, not more than a majority of such judges of election shall be appointed from any one political party for each precinct. [L. '90, p. 407, § 20; 1 H. C., § 382; L. '95, p. 390, § 6.]

This section is not in the enacting clause of the Laws of 1895.

Cited in 12 Wash. 381.

§ 5278. [4897.] Provision for Polling Places—Division of Precincts.

The inspectors of election shall provide in their respective polling place a sufficient number of places, booths or compartments, which shall be furnished with such supplies and conveniences as shall enable the voter conveniently to prepare his ballot for voting, and in which electors may mark their ballots, screened from observation, and a guard-rail so constructed that only persons within such rail can approach within fifty feet of the ballot-boxes, or the places, booths or compartments herein provided for. The number of such places, booths or compartments shall not be less than one for every fifty electors or fraction thereof registered in the precinct, or voting at the last preceding election where there is no registration. In precincts containing less than twenty-five voters, the election may be conducted under the provisions of this act without the preparation of such booths or compartments as required in this section. No person other than electors engaged in receiving, preparing or depositing their ballots, or a person present for the purpose of challenging the vote of an elector about to cast his ballot, shall be permitted to be within said rail, and in case of small precincts where places, booths or compartments are not required, no person engaged in preparing their ballots shall in any way be interfered with by any person, unless it be someone authorized by the provisions of this act to assist him or them in preparing his or their ballot. The expense of providing such places or compartments and guard-rails shall be a public charge, and shall be provided for in the same manner as the other election expenses. Subsequent to the first Tuesday after the first Monday in November and prior to the first day of December thereafter, the officers charged by law with the division or alteration of election precincts shall, as far as necessary, alter or divide the existing election precincts in such manner that each election precinct shall not contain more than three hundred voters. [L. '90, p. 408, § 21; 1 H. C., § 383; L. '07, p. 242, § 2.]

See *supra*, § 5171, division of precincts.

See *infra*, § 7548, precincts for justice of peace.

See *infra*, § 11479, abolished under township government.

Cited in 70 Wash. 598.

The fact that election officers fail to have booths erected which comply with the law is a mere irregularity, insufficient to vitiate the election: *Moyer v.*

Van de Vanter, 12 Wash. 377, 41 Pac. 60, 50 Am. St. Rep. 900, 29 L. R. A. 670.

Effect of failure to comply with statute for arrangement of voting rooms or booths. *Ann. Cas.* 1916E, 917.

§ 5279. [4898.] Delivery of Ballots to Electors—Challenge.

At any election it shall be the duty of the inspector, or one of the judges of election, to deliver ballots to the qualified electors. Any elector desiring to vote shall give his name to the inspector or one of the judges, who shall then, in an audible tone of voice, announce the same, whereupon a challenge may be interposed in the manner provided by law. If no challenge be interposed, or if the challenge be overruled, the inspector or one of the judges shall give him a ballot, at the same time calling to the clerks of election the number of such ballot. In precincts where there is a registration of voters it shall be the duty of such clerks to write the number of the ballot against the name of such

elector as the same appears upon the certified copy of poll-books of registration in their possession. In precincts where there are no registration of voters, it shall be the duty of the clerks to transcribe the name of the elector in the poll-books, and against such name the number of the ballot delivered to the elector. Each qualified elector shall be entitled to receive from the said judges one ballot. [L. '90, p. 409, § 22; 1 H. C., § 384; L. '95, p. 391, § 7.]

Cited in 7 Wash. 195; 12 Wash. 381.

§ 5280. [4898-1.*] Authorizing Absent Voting.

Any elector of the state who believes that he will be unavoidably absent from his home, and more than twenty-five miles distant from the precinct in which he is qualified to vote, may vote at general elections to be held for federal, United States senatorial and congressional, state or legislative officers, or propositions, or at any primary held for the purpose of nomination for any such election, in the manner provided for in this act. [L. '21, p. 529, § 1; L. '15, p. 691, § 1; L. '17, p. 712, § 1.]

Validity, construction and effect of absentee voters' law. 14 A. L. R. 1256.

§ 5281. [4898-2.*] Certificate of Home Registration Officer—Oath.

Any elector desiring to vote at any primary or general election under the provisions of this act shall, not more than twenty days prior to any such general or primary election, procure a certificate from the registration officer of the home precinct of said elector certifying that said registration officer is personally acquainted with said elector; that said elector is duly registered and qualified to vote in said home precinct, stating the place of residence of said elector; that said elector has in the presence of said registration officer affixed his signature to said certificate at a place to be designated "for Signature of Absent Voter"; which certificate shall be executed and signed in duplicate, the registration officer retaining one in his permanent files; and the elector shall in person, at any time not less than six days prior to any such general or primary election, present said certificate to the county auditor of the county of his residence, and shall make, subscribe and file with the county auditor an affidavit as follows:

State of Washington, } ss.
County of —, }

I, —, do solemnly swear (or affirm) that I am a resident and qualified elector in the — precinct of — city, in the county of —, state of Washington, duly registered as such, and am entitled to vote at the primary or general election to be held therein on the — day of —, 19—, that I will be absent from said precinct and more than twenty-five miles distant from said precinct on the day of said election, and that I shall lose my vote by reason thereof unless permitted to vote in the manner provided by law for absent voting.

Subscribed and sworn to before me this — day of —, 19—.

— —,
County Auditor of — County.

By — —,
Deputy.

[L. '21, p. 529, § 2; L. '15, p. 691, § 2; L. '17, p. 713, § 2.]

§ 5282. [4898-3.*] Method of Voting.

Upon the making and filing of the affidavit provided for in the preceding section, the auditor shall compare the signature thereon with the signature upon the certificate presented therewith, and if he is satisfied that the signatures are made by the same person, and if the official ballots for such general or primary election are in the possession of the auditor, he shall deliver to the elector a blank ballot for such election, or in the case of a primary election a blank ballot of the party for the candidate of which the elector desires to vote, and also a small envelope that shall have no mark upon it which may serve to identify it or the ballot within it with the voter; also a larger envelope upon which there shall be printed the name and postoffice address of the auditor issuing the same, and a blank affidavit in the following form:

State of ——— }
County of ——— } ss.

I, ———, do solemnly swear that I am a resident of and a qualified voter in ——— precinct of ——— city in ——— county, Washington; that I have the legal right to vote at the election to be held in said precinct on the ——— day of ———, 19—, and that I have herein inclosed my ballot for such election, duly marked as required by law in the presence of ———, a ——— in and for ——— county, state of ———.

(Signed) ———, ———,
Voter.

—————, ———,
Residence and address.

Subscribed and sworn to before me, a ——— in and for ——— county, state of ———, this ——— day of ———, 19—; and I hereby certify that the affiant ——— has proven himself to be the person whom he represents himself to be by exhibiting to me his registration certificate bearing his signature and by making his signature in my presence, and that I have compared said signatures and find them to be the same; that the affiant has exhibited to me the inclosed ballot and the same was unmarked; that the affiant before me at the same time and place marked his ballot, but in such manner that I did not see his vote; that he then folded, inclosed and sealed said ballot, so marked, in a small envelope, and then inclosed and sealed said small envelope in this envelope which he handed to me sealed, to be forwarded by me by registered mail to the auditor of ——— county, at ———, in the state of Washington.

(Seal)

(Signed) ———, ———
————— in and for the county of ——— state of ———
the day and year in this certificate first above written.

Upon receiving such blank ballot and envelope the voter shall proceed, in the presence of the auditor, to mark the ballot in such manner that the auditor cannot see his vote, and fold, inclose and seal the ballot in the smaller envelope, and then inclose the smaller envelope containing the ballot in the larger envelope, and make, subscribe and swear to the affidavit printed on the larger envelope, and deliver such larger envelope, together with his certificate of registration, to the auditor, who shall file

and safely keep the same until the votes are canvassed as hereinafter provided, and shall immediately notify the officer having possession of the registration-books of precinct of the voter of the fact that such voter has voted, and the registration officer shall thereupon note upon the registration-books opposite the name of the voter, in the column provided for that purpose, the word "Voted." [L. '21, p. 530, § 3; L. '15, p. 692, § 3; L. '17, p. 714, § 3.]

§ 5283. Procedure When Ballots not Ready for Delivery to Elector.

In case the official ballots for the ensuing election are not in the possession of the auditor at the time the elector requests the right to vote as an absent voter as in this act provided, the auditor shall take from the elector a written statement giving his name and the address, which address shall be more than twenty-five miles from his home precinct, to which he desires to have a ballot sent, and in case of a primary election a statement of the party for the candidates of which the elector desires to vote, and shall return to the voter his certificate of registration. As soon as the auditor shall receive the official ballots, he shall forward to the absent elector at the address given on the statement a blank ballot of the kind requested, together with the blank smaller and larger envelopes provided for in the preceding sections, and shall notify the registration officer of the absent voter's precinct of the fact that he has issued and mailed to the absent voter such ballot, and the registration officer shall thereupon note upon the registration-books opposite the name of the voter, in the column provided for noting the votes cast, the word "Absent."

The elector upon receiving the blank ballot and envelopes shall have the right thereupon to appear before any officer of any city, county or state authorized by law to administer oaths, and present his certificate of registration and identify himself by making his signature in the presence of the officer for comparison with that upon the certificate of registration, and shall then first display the blank ballot to such officer as evidence that the same is unmarked, and then proceed to mark the ballot in the presence of such officer but in such manner that such officer is unable to see how the same is marked, and shall then fold said ballot and inclose and seal the same in the smaller envelope and then inclose said smaller envelope, together with his certificate of registration, in the larger envelope and make, subscribe and swear to the affidavit printed on the larger envelope before the officer, who shall thereupon mail said larger envelope to the county auditor whose name and address are printed thereon, by registered mail, at the expense of the voter; and the county auditor, upon receiving such absentee voter envelopes, shall file the same in his office and shall keep the same until the votes are canvassed as hereinafter provided, and shall notify the registration officer of the precinct, or, if the ballot is received on election day, the election officers of the precinct that the voter, giving his name and address, has voted, and the registration officer or election officers as the case may be shall thereupon note upon the registration-books opposite the name of the voter the word "Voted." [L. '21, p. 533, § 4.]

§ 5284. Surrender of Blank Ballot upon Voting in Home Precinct.

No elector opposite whose name there shall appear on the registration-books the word "voted" shall be allowed to vote at the election, and no person opposite whose name there shall appear upon the registration-books the word "Absent" shall be permitted to vote at such election, unless he shall deliver to the election officer the blank ballot received from the county auditor and his certificate of registration, as evidence that he has not availed himself of the privilege of voting as an absent voter. [L. '21, p. 534, § 5.]

§ 5285. [4898-4.*] Return of Ballot to Home County—Canvass.

On the sixth day after any general or primary election it shall be the duty of the county auditor in the presence of the chairman of the board of county commissioners and the prosecuting attorney to open each larger outside envelope in such a way as not to injure the seal or in any way open the smaller inside envelope containing the ballot, or deface the affidavit of the larger outside envelope, and to remove said smaller envelope containing the ballot and mark upon the outside of said inside envelope the name or number of the precinct, city and county in which the ballot is to be counted and nothing whereby the identity of the voter can be known. If the voter's affidavit on the larger envelope is in due and regular form the envelope containing the ballot shall be signed by the opening officers above named and approved as a valid vote. The opening officers shall then seal securely in one package the larger outside envelopes, certificates and affidavits of voters filed as herein provided, attached securely together and the same shall be kept by said auditor for future use in case any question shall arise as to the validity of the vote. The smaller inside envelopes containing the ballots shall be filed by the auditor and kept securely locked until the time for canvassing the votes of such county. Upon the canvassing of the votes by the canvassing board of such county, whenever any precinct is called in which there shall be on file one or more such envelopes, the board shall cause such envelopes to be opened, and shall canvass and count the same for such precinct as nearly as possible in the same manner as such votes would have been counted had they been cast in such precinct, entering the same in the poll-book as absent voters, and shall modify the election returns of such precinct accordingly. Such ballots shall become a part of the returns of such precinct and shall be kept or destroyed accordingly: Provided, however, no such ballot shall be canvassed or counted unless received by the auditor within six days from the date of said general or primary election. [L. '21, p. 535, § 6. Cf. L. '15, p. 693, § 4; L. '17, p. 715, § 4.]

§ 5286. [4898-5.*] Challenges.

The vote of any absent voter may be challenged for any cause at the time the same is canvassed by the canvassing board of the county, and the said canvassing board shall have all the power and authority given by law to officers of election to determine herein the legality of such ballot. [L. '17, p. 716, § 5. Cf. L. '15, p. 694, § 5.]

§ 5287. [4898-7.] Penalty.

Any person who violates any of the provisions of this act, relating to swearing and voting, shall be guilty of a felony and shall be punished by imprisonment of not more than five years. [L. '15, p. 694, § 7; L. '17, p. 717, § 7.]

§ 5288. [4899.] Ballot, How Prepared by Voter.

On receipt of his ballot the elector shall forthwith and without leaving the polling place retire alone to one of the places, booths or apartments provided to prepare his ballot. If he desires to vote for all the candidates of any political party he may mark a cross "X" after the name, against the political designation of such party, and shall then be deemed to have voted for all the persons named as the candidates of such party. If he desires to vote for any particular candidate of any other political party he may do so by placing after the name of such candidate a mark "X": Provided, that if two or more candidates for such office are to be elected, then such voter shall place his mark "X" after the name of each of the candidates for whom he wishes to vote for that particular office, and in that case such voter shall then be deemed to have voted for all the persons named as the candidates of the political party after which he shall have made his mark "X," except those who are otherwise designated as herein provided. Each elector may prepare his ballot by marking a cross "X" after the name of every person or candidate for whom he wishes to vote. In case of a ballot containing a constitutional amendment or other question to be submitted to the vote of the people the voter shall mark a cross "X" after the question, for or against the amendment or proposition, as the case may be. Any elector may write in the blank spaces, or paste over any other name, the name of any person for whom he may wish to vote. Before leaving the booth or compartment the elector shall fold his ballot in such a manner that the number of the ballot shall appear on the outside thereof, without displaying the marks on the face thereof, and he shall keep it folded until he has voted. Having folded the ballot, the elector shall deliver it folded to the inspector, who shall, in an audible tone of voice, repeat the name of the elector and the number of the ballot. The election clerks having the certified copies of the poll-books of registration or poll-books in charge, shall, if they find the number marked opposite the elector's name on the register or poll-books to correspond with the number of the ballot handed to the inspector, mark opposite the name of such elector the word "voted," and one of the clerks shall call back, in an audible tone, the name of the elector and the number of his ballot. The inspector shall separate the slip containing the number of the ballot from the ballot and shall deposit the ballot in the ballot-box. The numbers removed from ballots shall be immediately destroyed. [L. '90, p. 409, § 23; 1 H. C., § 385; L. '95, p. 391, § 8.]

Cited in 5 Wash. 86; 17 Wash. 22; 28 Wash. 673, 674.

Indication of Choice by Voter: See Remington's Digest, Elections, § 33;

Moyer v. Van de Vanter, 12 Wash. 377, 41 Pac. 60, 50 Am. St. Rep. 900, 29 L. R. A. 670; State ex rel. Orr v. Fawcett, 17 Wash. 188, 49 Pac. 346; State ex rel.

Hyland v. Peter, 21 Wash. 243, 57 Pac. 814; State ex rel. Harkins v. Roundtree, 28 Wash. 669, 69 Pac. 404.

Under this section, and sections 5291, 5298, votes are illegal where the wife of a candidate who was not a member of the election board went into the booth with six named voters and assisted them in preparing their ballots, without request therefor: State ex rel. Hanson v. Wilson, 113 Wash. 49, 192 Pac. 913.

Kind of mark for candidate as affecting validity of ballot. *Ann. Cas.* 1918A, 1131, 1160, 1165.

Validity of ballot with respect to place of marking for candidate: 20

Ann. Cas. 672; *Ann. Cas.* 1912E, 657.

Validity and construction of law as to marking ballots. 47 *L. R. A.* 806.

Does marking some but not all of the candidates on a party ticket defeat the effect of marking under the party emblem as a vote for the omitted candidates, where no votes were cast for their opponents. 28 *L. R. A. (N. S.)* 461.

Distinguishing marks which invalidate ballots. 49 *Am. St. Rep.* 240; 13 *L. R. A.* 761; 47 *L. R. A.* 820.

§ 5289. [4900.] Restriction upon Occupation of Voting Booths.

Not more than one person shall be permitted to occupy any one booth at one time, and no person shall remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes: Provided, that the other booths or compartments are occupied. [L. '90, p. 410, § 24; 1 H. C., § 386.]

§ 5290. [4901.] Voter may Receive Ballot in Lieu of One Spoiled.

Any voter who shall, by accident or mistake, spoil his ballot may, on returning said spoiled ballot, receive another in place thereof. [L. '90, p. 410, § 25; 1 H. C., § 387.]

§ 5291. [4902.] Disabled or Illiterate Voter, How Assisted.

Any voter who declares to the judges of election, or when it shall appear to the judges of election that he cannot read, and was at the time of the taking effect of this act a qualified elector, or that by blindness or other physical disability he is unable to mark his ballot, shall upon request receive the assistance of one or two of the election officers in the marking thereof, and such officer or officers shall certify on the outside thereof that it has been so marked, with his or their assistance, and shall thereafter give no information regarding the same. The judges may in their discretion require from such person so offering to vote a declaration of such disability, that he was at the time of the taking effect of this act a qualified elector and of his disability to read and speak the English language, to be made by the voter under oath before them and they are hereby qualified to administer the same. No elector, other than the one who may, because of his inability to read, or physical disability, be unable to mark his ballot, shall divulge to any person within the polling place the name of any candidate for whom he intends to vote or [to] ask or receive the assistance of anyone within the polling place in the preparation of his ballot. [L. '01, p. 287, § 6. Cf. L. '90, p. 410, § 26; 1 H. C., § 388.]

See notes to § 5288.

Assistance of voter. *Ann. Cas.* 1912B, 109; 40 *L. R. A. (N. S.)* 535.

§ 5292. [4903.] Election Officers not to Deposit Ballots Unless Stamped.

No inspector or judge of election shall deposit in any ballot-box any ballot upon which the official stamp as hereinbefore provided for does

not appear. Every person violating the provisions of this section shall be deemed guilty of a misdemeanor. [L. '90, p. 410, § 27; 1 H. C., § 389.]

This section is probably impliedly repealed by the amendment to Bal. Code, § 1369, dispensing with official stamps. See § 5279, *supra*.

Cited in 3 Wash. 23, 122, 123, 414, 416; 12 Wash. 384.

§ 5293. [4904.*] Instructions for Voting—Posting.

The clerk of the board of county commissioners of each county shall cause to be printed in large type on cards in English instructions for the guidance of electors in preparing their ballots. He shall furnish two such cards to the judges of election of each election precinct, which shall be posted by said judges in and about the polling places upon the day of election. Such cards shall be printed in large, clear type, and shall contain full instruction to the voters as to what should be done, viz.:

1. To obtain ballots for voting.
2. To prepare the ballots for deposit in the ballot-boxes.
3. To obtain a new ballot in the place of one spoiled by accident or mistake.

[L. '19, p. 473, § 20. Cf. L. '90, p. 411, § 28; 1 H. C., § 390; L. '95, p. 392, § 9.]

§ 5294. [4905.] Ballots Void, When.

In the canvass of the votes, any ballot or parts of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted: Provided, that when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, it shall be the duty of the judges of election to count such part. [L. '90, p. 411, § 29; 1 H. C., § 391; L. '95, p. 393, § 10.]

See notes to § 5288, *supra*.

Cited in 12 Wash. 381; 17 Wash. 196; 28 Wash. 672; 86 Wash. 236.

The provisions of this section prior to amendment, directing that ballots not indorsed by the initials of one of the election officers shall not be counted, was in

conflict with the constitution as depriving voters of their right to vote without fault on their part: *Moyer v. Van de Vanter*, 12 Wash. 377, 41 Pac. 60, 50 Am. St. Rep. 900, 29 L. R. A. 670.

§ 5295. [4906.] Fraud as to Certificates of Nomination or Ballots a Felony.

Any person who shall falsely make, or make oath to or fraudulently deface or fraudulently destroy, any certificate of nomination, or any part thereof, or file or receive for filing any certificate of nomination knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof, or forge or falsely make the official indorsement on any ballot, shall be deemed guilty of a felony, and upon conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years. [L. '90, p. 411, § 30; 1 H. C., § 392.]

§ 5296. [4907.] Defacing or Destroying Supplies, Lists, etc., How Punished.

Any person who shall during the election willfully remove or destroy any of the supplies, or other conveniences placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot, or prior to or on the day of election willfully deface or destroy any list of candidates posted in accordance with the provisions of this chapter, or who shall during an election tear down or deface the cards printed for the instruction of voters, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars. [L. '90, p. 412, § 31; 1 H. C., § 393.]

See *infra*, § 5383, penalty for fraudulent voting. •

§ 5297. [4908.] Duty of Public Officers at Elections — Punishment for Violation of.

Any public officer upon whom any duty is imposed by this chapter, who shall willfully do or perform any act or thing herein prohibited, or willfully neglect or omit to perform any duty as imposed upon him by the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit his office, and shall be punished by imprisonment in the county jail for a term of not less than one month nor more than six months, or by a fine of not less than fifty dollars, and not more than five hundred dollars, or by both such fine and imprisonment. [L. '90, p. 412, § 32; 1 H. C., § 394.]

See note to § 5296.

§ 5298. [4909.] Electioneering Prohibited—What Ballot must be Voted—Secrecy.

No officer of election shall do any electioneering on election day. No person shall do any electioneering on election day within any polling place, or any building in which an election is being held, or within fifty feet thereof, nor obstruct the doors or entries thereto, or prevent free ingress to and egress from said building. Any election officer, sheriff, constable, or other peace officer, is hereby authorized and empowered, and it is hereby made his duty, to clear the passageway and prevent such obstruction, and to arrest any person creating such obstruction. No person shall remove any ballot from the polling place before the closing of the polls. No person shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof, or the name of any candidate or candidates for whom he has marked his vote, nor shall any person solicit the elector to show the same; nor shall any person, except a judge of election, receive from any elector a ballot prepared for voting. No elector shall receive a ballot from any other person than one of the judges of election having charge of the ballots, nor shall any person other than such inspector or judges of election deliver a ballot to such elector. No elector shall vote or offer to vote any ballot except such as he has received from the judges of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterward be identified as the one

voted by him. Any elector who does not vote a ballot delivered to him by the judges of election having charge of the ballots shall before leaving the polling place, return such ballot to such judges. Whoever shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined in any sum not exceeding one hundred dollars, and adjudged to pay the costs of prosecution. [L. '90, p. 412, § 33; 1 H. C., § 395.]

See note to § 5288.

Cited in 21 Wash. 249.

Illegality — Distinguishing Marks: See Remington's Digest, Elections, § 36; State ex rel. Orr v. Fawcett, 17 Wash. 188, 49 Pac. 346; State ex rel. Hyland v. Peter, 21 Wash. 243, 57 Pac. 814; State ex rel.

Harkins v. Roundtree, 28 Wash. 669, 69 Pac. 404; State ex rel. Hufford v. Eddings, 86 Wash. 233, 149 Pac. 945.

Criminal liability for electioneering near polls. 1 Ann. Cas. 145.

§ 5299.. [4910.] Secretary of State must Distribute Election Laws.

It shall be the duty of the secretary of state to cause to be published, in pamphlet form, and distributed through the clerks of the boards of county commissioners of the respective counties, a sufficient number of copies of this law, together with the registration law of the state and such other laws as bear upon the subject of election, as will place a copy thereof in the hands of all officers of elections. [L. '90, p. 413, § 34.]

CHAPTER IX.

VOTING MACHINES.

§ 5300. [4910-1.] Use of Voting Machines at Elections.

At all state, county, city, town, township and district elections of any character, primary, general, special or otherwise, hereafter held in the state of Washington, ballots or votes may be cast, registered, recorded and counted by means of voting machines, as hereinafter provided. [L. '13, p. 177, § 1.]

Cited in 78 Wash. 84.

Use of Voting Machines: See Remington's Digest, Elections, § 40; State ex rel. Empire Voting Machine Co. v. Carroll, 78 Wash. 83, 138 Pac. 306.

Use of voting-machines at elections. 2 Ann. Cas. 840; 5 Ann. Cas. 864; 9 Ann. Cas. 275; 12 Ann. Cas. 474; 7 L. R. A. (N. S.) 621; 24 L. R. A. (N. S.) 188.

§ 5301. [4910-2.] State Board of Voting Machine Examiners.

The governor, the secretary of state, and the state treasurer and their successors in office are hereby created and constituted the state board of voting machine examiners. It shall be the duty of said board to examine all makes of voting machines submitted to it and determine whether such machines comply with the requirements of this act, and can safely be used by voters at elections under the provisions of this act. Any person or corporation owning or being interested in a voting machine may submit same to said board for examination, and said board shall thereupon publicly examine and report upon such machine, pursuant to the provisions of this act. For the purpose of assistance in examining such machine the said board may employ not more than three expert machinists at a cost of not more than ten dollars for each day

employed. The compensation of said machinists shall be paid by the person or corporation submitting the machine. Within thirty days after completing the examination of any voting machine the board shall make and file with the secretary of state its report on such machine, together with such written or printed description and such drawings and photographs as shall clearly identify such machine and the mechanical operation thereof; and within ten days after receiving such report, the secretary of state shall send a copy thereof to the county commissioners of each county, to the common council of each city, and to the board or governing body of each district or other municipality within the state. Any voting machine that shall receive the approval of a majority of said board may be used for conducting any or all elections subject to the provisions of this act. Any machine that shall not receive said approval shall not be adopted for or used at any election. After a voting machine has been approved by said board, any change, or improvement therein that does not impair its accuracy, efficiency, or capacity, shall not render necessary a re-examination or reapproval thereof. [L. '13, p. 178, § 2.]

§ 5302. [4910-3.] Definition of Terms Employed in This Act.

The list of offices and candidates, and the statements of questions used on the voting machines shall be deemed an official ballot and the words "ballot labels," as used in this act shall mean the cards, paper, or other material containing the names of offices and candidates, and statements of questions to be voted on. The word "diagram" shall mean an illustration of the official ballot when placed upon the machine, showing the names of the parties, offices and candidates, and statements of the questions in their proper places, together with the voting devices therefor, and shall be considered a sample ballot. The word "question" shall mean a statement of such constitutional amendment or other proposition as shall be submitted to a popular vote at any election. The words "irregular ballot" shall mean the paper or other material on which a vote is cast for persons whose names do not appear on the ballot labels. The words "vote indicators" shall mean those devices with which votes are indicated for parties, candidates, or for or against questions. The words "candidate counters" and "question counters" shall mean the counters on which are registered the votes cast for candidates and on questions respectively. The words "public counter" shall mean a counter or other device, which shall at all times publicly indicate how many times the machine has been voted on at an election. The words "protective counter" or "protective devices" shall mean a counter or device that will register each time the machine is operated and shall be so constructed, and so connected that it cannot be reset, altered or operated, except by operating the machine. The words "voting machine booth" shall mean the inclosure occupied by the voter when voting. The word "model" shall mean a mechanically operated model of a portion of the face of the machine illustrating the manner of voting. The word "custodian" shall mean the person charged with the duty of testing and preparing the voting machine for the election. The words "statement of canvass" shall mean a statement and return in book form of the votes

cast at any election, together with suitable certificates of its correctness. [L. '13, p. 179, § 3.]

§ 5303. [4910-4.] Requirements of Voting Machines.

No voting machine shall be approved by the state board of voting machine examiners unless it be so constructed as to fulfill the following requirements: It shall secure to the voter secrecy in the act of voting. It shall provide facilities for voting for the candidates of as many political parties or organizations as may make nominations, and for or against as many questions as may be submitted. The voting devices for the candidates shall be arranged in separate parallel party lines, one or more lines for each party and in parallel office rows transverse thereto. It shall permit the voter to vote for any person for any office that he shall have the right to vote for but none other. It shall, except at primary elections, permit the voter to vote for all the candidates of one party or in part for the candidates of one party and in part for the candidates of one or more other parties. It shall, except at primary elections, provide means whereby the voter can by a single operation vote for all the candidates of one party. It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for but no more. It shall prevent the voter from voting for the same person more than once for the same office. It shall permit the voter to vote for or against any question he may have the right to vote on but none other. It shall correctly register or record all votes cast for any and all persons and for or against any and all questions. It shall be provided with a lock or locks by which all operation of the registering mechanism can be prevented as soon as the polls of the election are closed. It shall be provided with a "protective counter," or "protective device" whereby any operating or tampering with the machine before or after the election will be detected. It shall be provided with a counter which shall show at all times during an election how many persons have voted. It shall be provided with a mechanical model, illustrating the manner of voting on the machine suitable for the instruction of voters. It may also be provided with one device for each party, for voting for all the presidential electors of that party by one operation, and a ballot label therefor containing only the words "presidential electors" preceded by the name of that party and followed by the names of the candidates thereof for the offices of President and Vice-president, and a registering device therefor which shall register the vote cast for said electors when thus voted for collectively: Provided, however, that means shall be furnished whereby the voter can cast a vote in part for the candidates for presidential electors of one party and in part for those of one or more other parties or in part or in whole for persons not nominated by any party. [L. '13, p. 180, § 4.]

§ 5304. [4910-5.] Voting Machines may be Adopted, Procured and Used.

The county commissioners of any county, the common council of any city or town, the township board of any township or the board or governing body of any district or municipality, at any regular meeting or at a special meeting called for the purpose, may adopt, purchase, or otherwise procure, and provide for the use of, any voting machine ap-

proved by the state board of voting machine examiners, in all or a portion of the election precincts thereof; and thereafter said machine may be used for voting at all primaries and elections for public offices and on all questions and for receiving, registering and counting the votes thereof in such election district or districts as such county commissioners, council or board shall direct. The county commissioners or council may, not later than forty days before any election, create, unite, combine, or divide one or more election districts or precincts for the purpose of using one or more voting machines therein at such election, and such uniting, combining or dividing shall be done in the manner now prescribed by law for the change of election districts. More than one voting machine may be used in the same election district. The number of voters to be in each of said districts or precincts shall be determined by said commissioners, council or board, but shall not exceed six hundred for each machine. [L. '15, p. 324, § 1; L. '13, p. 181, § 5.]

Cited in 78 Wash. 87.

Under this section the city council may provide for the use of voting machines

in a limited number of voting places:
State ex rel. Empire Voting Machine Co.
v. Carroll, 78 Wash. 83, 138 Pac. 306.

§ 5305. [4910-6.] Payment for Voting Machines.

The county commissioners of any county, the council of any city, the supervisors of any town or township, or the governing board of any district or municipality may, on the adoption and purchase of a voting machine or machines, provide for the payment thereof in such a manner as they may deem for the best interest of the county, city, town or township, district or municipality, and may for that purpose issue bonds, warrants, certificates of indebtedness, notes or other negotiable obligations, which shall be a charge upon such county, city, town, township, district, or municipality, or may pay for the same in cash out of the general fund or otherwise; and may make such contract for the purchase of such machines with regard to price, manner of purchase and time of payment as to the said officials shall seem proper, and in estimating the amount of taxes for the general fund, if any, such amount shall be added, extending over such time as may be required to fully pay for such machines. Such bonds, certificates, warrants, notes or other obligations may be issued to bear interest not to exceed five per cent per annum. They may be made payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par. [L. '13, p. 182, § 6.]

§ 5306. [4910-7.*] Printed Matter and Supplies.

Within a proper and reasonable time before the first election at which voting machines are to be used, the secretary of state shall prepare samples of the printed matter and supplies named in this section, and shall furnish one of each thereof to the board or official in charge of the election of each county, city, township or district in which the machines are to be used; such samples to meet the requirements of the election to be held and to suit the construction of the machine to be used. The board or officials charged with the duty of providing ballots shall provide for each voting machine for each election the following

printed matter and supplies: Suitable printed or written directions to the custodian for testing and preparing the voting machines for the election; one certificate on which the custodian can certify that he has properly tested and prepared the voting machine for the election; one certificate on which some person other than the custodian can certify that the voting machine has been examined and found to have been properly prepared for the election; one certificate on which the party representatives can certify that they have witnessed the testing and preparation of the machines; one certificate on which the deliverer of the machines can certify that he has delivered the machines to the polling places in good order; one card stating the penalty for tampering with or injuring a voting machine; two seals for sealing a voting machine; one envelope in which the keys to the voting machine can be sealed and delivered to the election officers, said envelope to have printed or written thereon the designation and location of the election district in which the machine is to be used, the number of the machine, the number shown on the protective counter thereof after the machine has been prepared for the election and the number or other designation on such seal as the machine is sealed with; said envelope to have attached to it a detachable receipt for the delivery of the keys of the voting machine to the inspector of election; one envelope in which the keys to the voting machine can be returned by the inspector of election; one card stating the name and telephone address of the custodian on the day of election; one statement of canvass on which the election officers can report the canvass of the votes as shown on the voting machine together with other necessary information relating to the election, said statements of canvass to take the place of all tally-keepers, statements and returns as provided heretofore; three complete sets of ballot labels; two diagrams; five suitable printed instructions to the inspector of election; three notices to inspectors and judges of election to attend the instruction meetings; three certificates that the inspector and judges of an election have attended the instruction meeting, have received the necessary instruction, and are qualified to conduct the election with the machine and they may supply a sufficient number of extra ballots for use in case it shall be impossible to make use of the voting machine in any such precinct or precincts.

The ballot labels shall be printed in black ink on clear white material of such size and arrangements as to suit the construction of the machine: Provided, however, the ballot labels for questions may contain a condensed statement of each question to be voted on, accompanied by the words "Yes" and "No"; the titles of the offices on the ballot labels shall be printed in type as large as the space for such office will reasonably permit, and where more than one candidate can be voted for an office, there shall be printed below the office title the words "vote for any two," or such number as the voter is lawfully entitled to vote for out of the whole number of candidates nominated.

If the election be one at which all the candidates for the office of presidential electors are to be voted for with one device, the county commissioners shall furnish for each machine at least five lists of the names of the presidential electors nominated and at least fifty paper

ballots with which the voter can vote thereon for part of the candidates for the office of the presidential electors of one party and part of the candidates therefor of one or more other parties or for persons for that office not nominated by any party. For election districts in which voting machines are to be used no paper ballots shall be furnished for any offices to be voted for on the machine except as hereinafter provided. [L. '21, p. 703, § 6; L. '15, p. 325, § 2; L. '13, p. 182, § 7.]

§ 5307. [4910-8.] Instructions to Voters Before Election.

Before each election at which voting machines are to be used the custodian shall place on public exhibition a suitable number of machines for the proper instruction of voters. Such machines shall be so arranged and so equipped with ballot labels as to best illustrate the method of voting at that election, and so far as practical shall contain the names of the offices to be filled, the names of the candidates to be voted for, together with their proper party designations, in case of party elections, and statements of the questions to be voted on. Not more than ten nor less than three days before each election at which voting machines are to be used the board or officials charged with the duty of providing ballots shall publish in newspapers representing at least two political parties a diagram of reduced size showing the face of the voting machine after the official ballot labels are arranged thereon, together with illustrated instructions how to vote and a statement of the locations of such voting machines as shall be on public exhibition; or in lieu of such publication said board or officials may send by mail or otherwise at least three days before the elections a printed copy of same to each registered voter. [L. '15, p. 327, § 3; L. '13, p. 184, § 8.]

§ 5308. [4910-9.] Instructions to Election Officers.

The election board of each election district in which a voting machine is used shall consist of one inspector, and two judges of election who shall also act as clerks of election. Where more than one machine is to be used in an election district, one additional inspector of election shall be appointed for each additional machine. In any voting precinct or district where the number of registered voters is less than one hundred the election board may consist of one inspector, one judge and one clerk. Before each election at which voting machines are to be used, the custodian shall instruct all inspectors and judges of election that are to serve thereat in the use of the machine and their duties in connection therewith; and he shall give to each inspector and judge that has received such instructions and is fully qualified to conduct the election with the machine a certificate to that effect. For the purpose of giving such instructions, the custodian shall call such meeting or meetings of the inspectors and judges as shall be necessary. Each inspector and judge shall attend such meeting or meetings and receive such instructions as shall be necessary for the proper conduct of the election with the machine; and, as compensation for the time spent in receiving such instruction each inspector and judge that shall qualify for and serve in the election shall receive the sum of one dollar, to be paid to him at the same time and in the same manner as compensation is paid to him for his services on election day. No inspector or judge

of election shall serve in any election at which a voting machine is used unless he shall have received such instruction and is fully qualified to perform his duties in connection with the machine and has received a certificate to that effect from the custodian of the machines: Provided, however, that this shall not prevent the appointment of an inspector, or judge of election to fill a vacancy in an emergency. [L. '15, p. 327, § 4; L. 13, p. 185, § 9.]

§ 5309. [4910-10.*] Testing and Preparing Machines—Custodian—Bonds.

The county auditor of a county, the clerk of a city, or other district in which voting machines are to be used shall cause same to be properly prepared therefor; and for that purpose shall employ for such time as is necessary one or more competent persons who shall be known as the voting machine custodians, who shall be sworn to perform their duties honestly and faithfully, and for such purpose shall be considered as officers of election, and shall be paid for the time actually spent in the discharge of their duties in the same manner as other election officers are paid. One custodian shall be employed for each twenty machines; if more than one be employed they shall be selected from the political parties entitled to representation on a board of election officers: Provided, however, the county auditor of a county, the clerk of a city, or other district having two hundred (200) voting machines or more, shall appoint as a permanent employee, a competent mechanic who shall be known as the chief custodian of voting machines, who shall be sworn to perform his duties honestly and faithfully, and shall furnish a corporate surety bond in the sum of five thousand (\$5,000) dollars for the honest and faithful performance of his duties, and whose salary shall be the sum of two hundred dollars per month, to be paid out of the general fund of said county, city or other district, in the same manner as provided by law for the payment of salaries.

Said chief custodian of voting machines shall supervise the work of all other voting machine custodians provided for by law, and shall school and instruct said custodians and have general charge and supervision of the work of said custodians in the preparation of voting machines for elections and shall check and approve the work of all custodians after the preparation of the voting machines for elections by said custodians, and shall also have charge of the instruction schools for election officials provided for by law, and shall have charge of the procuring and rental of all polling places in precincts where voting machines are to be used, and shall have continuous charge of the maintenance, upkeep and care of the voting machines of said county, city or district.

No persons shall be eligible for appointment to the office of chief custodian of voting machines who shall not have had an actual experience in the duties as prescribed herein for the period of at least two (2) years in the conduct of elections with voting machines in a county, city or district conducting its elections with at least one hundred (100) machines.

In preparing a voting machine for an election, the custodian shall, according to the printed directions furnished by such auditor or clerk,

arrange the machine and labels therefor so that it will in every particular meet the requirements for voting and counting at such elections, thoroughly test same, and certify thereto to said auditor or clerk. A voting machine may be so arranged for an election that the names of candidates nominated independently may be placed in the same party row with those nominated by a political party entitled to the use of a party voting device, provided such placing does not prevent such independently nominated candidates from being voted for individually, and provided it does not prevent or interfere with the operating of the party voting device of such party. It may also be so arranged that candidates nominated independently, or by political organizations which have nominated but one candidate, each shall be placed in the same party row and voted for individually; and in that event the party voting device of such party row shall be locked against movement, and the political designations of such candidates shall be printed upon the ballot labels in connection with their names. The auditor or clerk shall direct the arrangement of all ballot labels on such machine in case of nonpartisan primaries and elections in cities of the first class operating under freeholders' charters, the arrangement of the names of candidates upon ballot labels shall conform as nearly as practicable to such charter provisions for the arrangement of names on paper ballots. In all other cases of nonpartisan primaries and elections, and in all cases of party primaries and elections, the arrangement of names of candidates upon the ballot labels shall conform as nearly as practicable to the provisions of law for the arrangement of names on paper ballots.

After being prepared for the primary or election, each machine shall be examined by the auditor or clerk, and if the same be prepared in accordance with law for use thereat, he shall file a certificate thereof in his office. The custodian shall cause all voting machines to be delivered to the polling places in charge of an authorized official who shall certify to their delivery in good order on the certificate furnished therefor. After such delivery the auditor or clerk shall provide proper protection therefor. The custodian shall provide a lantern or proper light for every machine, which light shall be in good order and give sufficient light to enable voters while in the booth to read the ballot labels, and suitable for use by the election officers in examining the counters. [L. '19, p. 475, § 23. Cf. L. '15, p. 328, § 5; L. '13, p. 186, § 10.]

§ 5311. [4910-11.] Delivery of Election Supplies and Keys.

The auditor or clerk shall cause to be delivered to the inspector or one of the judges of election not later than forty-five minutes before the time for opening the polls the keys for the voting machine, which shall be delivered in a sealed envelope on which shall be written the designation and location of the election district, the number of the voting machine, the number or other designative mark on the seal, and the number registered on the protective counter as reported by the custodian for which a receipt shall be taken on the blank attached thereto, two diagrams, one extra set of ballot labels, one envelope containing seal for sealing the machine after the polls are closed, one envelope for the return of the keys, two statements of canvass, and all

other supplies necessary for conducting the election. [L. '15, p. 330, § 6; L. '13, p. 188, § 11.]

§ 5312. [4910-12.] Opening of Polls.

The election officers of each election district in which a voting machine is to be used shall meet at the polling place thereof at least forty-five minutes before the time set for opening the polls, and before unlocking the machine for voting shall proceed as follows: They shall see that the voting machine is placed where it can be conveniently attended by the election officers and conveniently operated by the voters, and where, unless its construction requires otherwise, the ballot labels thereon can be plainly seen by the election officers and the public when not being voted on. They shall see that the model is placed where each voter can conveniently operate it and receive instructions thereon as to the manner of voting, before entering the machine booth. They shall post one diagram inside the polling-room and one outside, in places where the voters can conveniently examine them. They shall see that the lantern or other means provided for giving light is in such condition that the voting machine is sufficiently lighted to enable voters to readily read the names on the ballot labels. They shall see that the ballot labels are in the proper places on the machine. They shall see if the number or other designating mark on the seal sealing the machine, also the number registered on the protective counter agree with the number written on the envelope containing the keys; and if same do not agree they shall at once notify the custodian and delay unlocking the machine and opening the polls until he shall have re-examined the machine. If such numbers or marks do so agree the election officers shall then proceed to see if the public counter and all the candidate and question counters register "000." If any of such counters shall be found to register some number other than "000," the judge of election shall at once notify the custodian who shall set such counter at "000." After performing their duties as provided in this section, the election officers shall certify thereto in the appropriate places on the statement of canvass as provided thereon. When the polls are declared open, the inspector or judge of election shall break the seal and unlock the machine for voting. [L. '13, p. 188, § 12.]

§ 5313. [4910-13.] Conducting the Election.

Before each voter enters the voting machine booth each clerk shall insert in his list of voters opposite the voter's name the letter V and the number of his vote. The election officers shall, so far as possible, inform him how to operate the machine and illustrate same upon the model, and call his attention to the diagram. No voter shall remain within the voting machine booth longer than two minutes, and if he shall refuse to leave at the end of that time, he shall be removed by the election officers: Provided, however, that they may grant him a longer time if other voters are not waiting to vote. Whenever a voter who has the right to vote only on certain offices and certain questions shall enter the [voting] machine [booth], the election officer shall so adjust same that he can vote on such office and questions, but on no others. If any voter shall, in the presence of the election officers, declare that by reason of physical dis-

ability he is unable to register or record his vote upon the machine, two election officers of opposite political parties, in case of party primaries or elections, or two officials in case of nonpartisan primaries, or elections, shall enter the voting machine booth with him and indicate and register his vote for such candidates and for or against such questions as he shall designate. If any voter shall, after entering the voting machine booth, ask for information regarding its operation, the election officers shall give him such necessary information. Any election officer who shall deceive any voter in registering or recording his vote under this section, or who shall register or record such vote in any other way than as designated by such voter, or who shall give information to any person as to what candidates or for or against what questions such voters voted, or who shall seek to suggest or persuade any voter to vote for any party, or for any candidate, or for or against any question shall be guilty of a felony and shall be punished by being fined not less than fifty dollars nor more than five hundred dollars or imprisoned in a state prison for not less than six months or more than one year or by both such fine and imprisonment. Except as herein provided for in cases of physically disabled voters, the operation of voting shall be secret. The election officers shall occasionally examine the face of the machine and the ballot labels to determine if same have been injured or tampered with. No voter shall be permitted to enter the machine booth or move the operating lever more than once.

In case any voting machine used in any election district shall, during or before the time the polls are opened, become injured so as to render it inoperative in whole or in part, it shall be the duty of the judge immediately to give notice thereof to the officials charged with the care of the machine, and it shall be the duty of said official, if possible, to repair the machine at once, or to substitute another machine for the injured machine; and, at the close of the polls, if a machine has been so substituted the records of both machines shall be taken and the votes shown on their corresponding counters shall be added together in ascertaining the results of the election. If no other machine can be procured for use at such election, and the injured machine cannot be repaired in time for further use at such election the officers of said election shall permit the use by voters of paper ballots prepared as in cases where paper ballots are used, and which shall be furnished the election officers by the auditor or clerk, which ballots shall be received by the election officers, and placed by them in a receptacle, to be provided therefor and counted with the votes registered on the voting machine, and the result declared the same as though there had been no accident to the voting machine; any marking of such paper ballots by the voters which shall clearly indicate their intentions shall be deemed a proper and sufficient method of marking such ballots; the paper ballots thus voted shall be preserved and returned to the auditor or clerk with a certificate or statement setting forth how and why the same came to be voted. For this purpose the printed diagram of reduced size referred to in section 5307, may be used if such can be procured. [L. '15, p. 331, § 7; L. '13, p. 189, § 13.]

§ 5314. [4910-14.] Canvassing the Vote.

At the hour for closing the polls, the judge of election shall declare the polls of the election closed and shall not permit any further operation of the machine except provided as follows, namely: That such voters as shall at the hour of closing be within the polling-room and awaiting their turn to vote shall be considered as having begun the act of voting and shall be permitted to cast their votes upon the machine. As soon as such voters have voted, the election officers shall lock and seal the machine, unlock and open the doors of the counter compartment, and canvass the votes registered on the counters therein and the votes recorded on or in the device or devices for voting for persons not nominated and shall make two statements of canvass thereof in the following manner: One election officer shall call the designating number and letter of each candidate's counter in the order given on the statement of canvass, and another election officer shall repeat such number and letter as it is read, and announce the vote registered on such counter, which shall thereupon be entered in ink on each of the statements of canvass. The canvass of each office shall be completed before proceeding to the next. The vote on each question shall be canvassed in the same manner. The votes cast on the irregular ballots and paper ballots shall then be canvassed. All votes for persons or questions, the names or propositions of which do not appear on the ballot labels, must be cast in the proper places on or in the device for irregular ballots, and all votes for persons or questions whose names or propositions do appear upon the ballot labels must be cast on the counters therefor, and any votes not so cast shall not be counted, except in case of the use of paper ballots: Provided, however, that all elections at which presidential electors are voted for with one device, the voter may vote on or in the device for irregular ballots in part for the presidential electors of one party and in part for those of one or more other parties, or in part or in whole for persons not nominated by any party. After completing and writing down the canvass of the votes cast, the election officers shall verify the same by comparing the figures on the statements of canvass with the figures on the counters in the machine and the names recorded on or in the device for voting for persons not nominated, and shall then certify, in the appropriate place on each of these statements of canvass, as to the number of voters that voted at the election as shown by the poll-list and by the number registered on the public counter; the number registered on the protective counter and the number or other designating marks on the seal with which the machine has been sealed. After completing and certifying to the statements of canvass, the inspector or judge shall read therefrom in a distinct voice the name of each candidate, the designating number and letter of his counter as stated thereon, and the vote entered for each; also the vote for or against each question. During the canvassing and announcing of the vote, the counter compartment shall remain open, and opportunity shall be given any person lawfully present to examine the counters to determine the correctness of the vote as announced. The counter compartment shall then be locked and all the keys of the machine shall be delivered in a sealed envelope to the officers or board in charge of the election. One copy of the statement of canvass shall be delivered forthwith in a sealed

envelope to the office of the county auditor, city comptroller, city clerk, or other governing body, and if the election be one at which state or county offices are voted for, one copy of the returns shall be delivered in a sealed envelope to the county clerk. The word "election" as used in this act shall mean general, special or primary election. The word "city" shall mean city or town. [L. '15, p. 332, § 8; L. '13, p. 191, § 14.]

§ 5315. [4910-15.*] Provisions for Recanvass of Vote.

The registering mechanism of each voting machine used in any election shall remain locked and sealed against operation until the time for filing contests of election has expired which shall not exceed a period of thirty (30) days following any state, primary, general or special election or a period of eight (8) days following any such city, town or other election, held by any municipal corporation or subdivision of this state at which voting machines are used in any or all of the precincts: Provided, however, that whenever it shall appear that there is a discrepancy in the returns of any election district the county commissioners, council, board of [or] other governing body shall summon the inspector and judges of election thereof, who shall in their presence make a record of the number or other designating mark on the seal, and the number on the protective counter, open the counter compartment, and, without unlocking said machine against voting, shall recanvass the vote cast thereon. Before making such recanvass the county commissioners, council or board, shall give notice in writing to the custodian and to each political party or organization that shall have nominated candidates for the election, of the time and place where said recanvass is to be made; and each of such political parties or organization may send two representatives to be present at such recanvass. If, upon such recanvass, it should be found that the original canvass of the returns has been correctly made from the machine, and that the discrepancy still remains unaccounted for, the county commissioners, council, board or other governing body, with the assistance of the custodian, shall in the presence of said inspector and judges of election and the authorized representatives of the several political parties or organizations, unlock the voting and counting mechanism of said machine and proceed to thoroughly examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in the returns from said machine. Before being tested the counter shall be set at "000," after which each counter shall be operated at least one hundred times. After the completion of said examination and test, the custodian shall then and there prepare a statement in writing giving in detail the result thereof and said statement shall be witnessed by the persons present and shall be filed with the officer or board in charge of the election. [L. '17, p. 30, § 1; L. '13, p. 193, § 15.]

§ 5316. [4910-16.] Penalty for Injuring or Tampering With a Voting Machine.

Any person who shall tamper with or injure or attempt to injure any voting machine to be used or being used in an election, or who shall prevent or attempt to prevent the correct operation of such machine, or any unauthorized person who shall make or have in his possession a key to a voting machine to be used or being used in an election, shall be

guilty of a felony and shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars or imprisonment in the state prison for not less than one year or more than five years, or both such fine and imprisonment. [L. '13, p. 194, § 16.]

§ 5317. [4910-17.] Joint Purchase and Use of Machine.

In purchasing the necessary voting machines to be used at general, primary or other elections, as herein provided, the board of county commissioners of the several counties, and the legislative bodies of the incorporated cities, towns or districts therein, may by agreement entered into by said board of county commissioners and the legislative body of any incorporated city, town or district in such county, provide for the joint purchase and subsequent ownership thereof, and for the care, maintenance and use of the same. [L. '13, p. 194, § 17.]

§ 5318. [4910-18.] Primary and Election Laws Made Applicable to Use of Voting Machines.

All the provisions of the primary and election laws and of any city charter or ordinance not inconsistent with this act shall apply to all elections in districts or precincts where voting machines are used; and any provisions of law or of any city charter or ordinance which conflict with the use of such machines as herein set forth, shall not apply to the districts or precincts in which voting machines are used; and all acts or parts of acts or city charters or ordinances in conflict with any of the provisions of this act, shall be of no force or effect in election districts or precincts where voting machines are used. [L. '13, p. 194, § 18.]

CHAPTER X.

OPENING POLLS AND VOTING.

§ 5319. [4911.*] Time for Opening and Closing Polls.

At all elections where national, state, county or municipal officers are elected, the polls shall be opened at 8 o'clock A. M. and closed at 8 o'clock P. M. [L. '21, p. 705, § 7; L. '90, p. 413, § 35; 1 H. C., § 397; L. '07, p. 581, § 1.]

Conduct of Election: See Remington's Digest, Elections, §§ 37-39. **Constitutional and Statutory Provisions:** State ex rel. Zent v. Nichols, 50 Wash. 508, 97 Pac. 728; Murphy v. Spokane, 64 Wash. 681, 117 Pac. 476.

Moyer v. Van de Vanter, 12 Wash. 377, 41 Pac. 60, 50 Am. St. Rep. 900, 29 L. R. A. 670.

§ 39. Time for Voting—Closing Polls: Murphy v. Spokane, 64 Wash. 681, 117 Pac. 476.

§ 38. Establishment of Polling Places:

§ 5320. Duty to Display Flag.

At all state, county, or municipal elections the flag of the United States shall be conspicuously displayed in front of each polling place and it is hereby made the duty of the officers now charged by law with the duty of furnishing election supplies to provide therefor. [L. '21, p. 203, § 1.]

§ 5321. [4912.] Proclamation.

The board of judges, before they commence receiving ballots, shall cause it to be proclaimed aloud at the place of voting that the polls are now open. [L. '66, p. 34, § 2; Cd. '81, § 3077; 1 H. C., § 399.]

§ 5322. [4913.*] Auditors to Furnish Poll-books.

It shall be the duty of the auditors of the several counties to furnish the inspectors of each election precinct at all general or primary elections with one poll-book at least five days before the time of holding the election. [L. '21, p. 705, § 8. Cf. L. '66, p. 34, § 31; Cd. '81, § 3078; 1 H. C., § 400.]

§ 5323. [4914.] Voting, Manner of—Ballots, Requisites of.

The voting shall be by ballot. No ballot shall bear any impression, device, color, or thing designated to distinguish such ballot from other legal ballots, or whereby the same may be known or designated. The ballots shall be eight inches in width and of such length as shall be necessary to print the names of all the candidates, who shall be duly nominated according to law, and whose nominations shall be duly certified to the clerk of the board of county commissioners, such length to be determined by the said clerk of said board of county commissioners. All of the official ballots, after the same shall be so prepared by the said clerk, shall be of the same size for each and every precinct, and shall not vary one-eighth of an inch in breadth from the above specification. [Cf. L. '66, p. 34, § 4; Cd. '81, § 3079; L. '86, p. 128, § 1; 1 H. C., § 401; L. '95, p. 393, § 11.]

See notes and references to § 5298.

Cited in 17 Wash. 196; 86 Wash. 237.

§ 5324. [4915.] Poll-list, How Kept—Ballots Rejected to be Preserved.

The name of each elector whose ballot has been thus received shall be immediately entered by each clerk in the column of his poll-list headed "Names of voters," numbering each name in the additional column as it is taken down, so that it may be seen at any time whether the two lists agree. Whenever the board of election rejects a ballot, it must at the time of such rejection cause to be made thereon, and signed by a majority of the board, an indorsement of such rejection, and of the cause thereof. All rejected ballots must be preserved and returned in the same manner as other ballots. Whenever a question arises in the board as to the legality of a ballot, or any part thereof, and the board decide in favor of the legality, such action, together with a concise statement of the facts that gave rise to the objection, must be indorsed upon the ballot, and signed by a majority of the board. [L. '66, p. 34, § 5; Cd. '81, § 3080; 1 H. C., § 402.]

§ 5325. [4916.] Challenging Votes, Regulations Concerning.

Any person offering to vote may be challenged as unqualified by the inspector or either of the judges, or by any legal voter, and it shall in all cases be the duty of the inspector and each of the judges to challenge any person offering to vote whom they shall know or suspect not to be

duly qualified as an elector. [L. '66, p. 34, § 6; Cd. '81, § 3081; 1 H. C., § 403.]

§ 5326. [4917.] Duty of Officers Where Person is Challenged—Oath.

When any person offering to vote is challenged, it shall be the duty of the judges to declare to him the qualifications of an elector, and the inspector or one of the judges shall tender him the following oath: "You do swear (or affirm) that you will truly and fully answer all questions as shall be put to you touching your place of residence and qualifications as an elector." The inspector or one of the judges shall then proceed to question the person challenged in relation to his name, place of residence, how long he has resided in the precinct and county, where his last place of residence was, also as to his citizenship and whether a native or naturalized citizen and if the latter, when, where, and in what county or before what officer he was naturalized; whether he can read and speak the English language, and may submit to him for reading extracts of English prose, and all such other questions as shall tend to test his qualifications as to citizenship and the right to vote. [L. '01, p. 288, § 7. Cf. L. '66, p. 34, § 7; Cd. '81, § 3082; 1 H. C., § 404.]

§ 5327. [4918.] Vote is to be Rejected, When.

If any person shall refuse to take the aforesaid oath, when so tendered, or to answer any and all pertinent questions as to qualifications, his vote shall be rejected; and if the board of judges are satisfied, from answers as aforesaid, that such person is not a legal voter, they shall reject his vote. [L. '66, p. 34, § 8; Cd. '81, § 3083; 1 H. C., § 405.]

§ 5328. [4919.] Oath of Voter—Evidence of Citizenship.

If such person shall insist that he is entitled to vote, and the board of judges find no cause to reject his vote under the preliminary examination, and the challenge shall not be withdrawn, he shall not be entitled to vote unless he takes the following oath to be administered by the inspector or one of the judges, viz.: "You do swear (or affirm as the case may be) that you have resided in this state twelve months preceding this election; in this county ninety days; and in this precinct or ward thirty days, and have not voted this day, and that you are otherwise qualified to vote at this election"; and in case the person offering a vote is a naturalized citizen he shall produce evidence of his citizenship. [L. '01, p. 288, § 8. Cf. L. '66, p. 35, § 9; Cd. '81, § 3084; L. '86, p. 128, § 1; 1 H. C., § 406.]

See Const., Art. VI, §§ 1—4, qualifications of electors.

Cited in 3 Wash. 540; 12 Wash. 198, 271, 593.

§ 5329. [4920.] Person Challenged may Vote, When—Identification.

If any person shall take the oath as tendered to him by the inspector or judges and no evidence is offered to traverse the same, by the officer or party challenging, and shall otherwise comply with the requirements of law regulating the balloting, he shall be admitted to vote: but before the ballot of the voter shall be deposited he shall be required to sign the registration book in the column headed "Iden-

tification," provided for that purpose, and on the same line as, and opposite to the original signature of the voter offering to vote, which original signature shall be so concealed as not to be seen by the voter offering to vote; and in case such voter is incapable of writing his name he shall, at the left-hand side of the column, make a cross or other mark usually employed by such voter for indicating his signature, and some person who is personally known to the inspector and who personally knows the voter, shall sign the registration book in his behalf as identifying witness. If such voter offering to vote shall refuse to take the oath or affirmation so tendered him or to write his signature as required, his vote shall be rejected. [L. '05, p. 65, § 2. Cf. L. '66, p. 36, § 10; Cd. '81, § 3085; 1 H. C., § 407; L. '93, p. 273, § 1.]

§ 5330. [4921.] Infamous Crime, Challenge on Ground of—Proceedings.

If the vote of any person be challenged, on the ground that he has been convicted of an infamous crime, and shall remain unpardoned or disfranchised by any court of a competent jurisdiction, he shall not be required to answer any questions respecting such alleged conviction, and in the absence of any authenticated record of such fact, it may be competent for two disinterested witnesses, upon oath, to prove the same. [L. '66, p. 36, § 11; Cd. '81, § 3086; 1 H. C., § 408.]

§ 5331. [4922.] Closing of Polls—Proclamation.

When the polls are closed, proclamation thereof shall be made at the place of voting, and no votes shall be afterwards received. [L. '66, p. 36, § 12; Cd. '81, § 3087; 1 H. C., § 409.]

§ 5332. [4923.] Surplus Ballots to be Destroyed.

It is hereby made the duty of the judges of election for each election precinct immediately upon the closing of the polls, and before the ballots are counted, to destroy all unused ballots furnished for use at such precinct. [L. '93, p. 222, § 2.]

CHAPTER XI.

COUNTING BALLOTS AND DECLARING RESULT.

§ 5333. [4924.] Counting Votes—Ballot-box not to be Removed.

As soon as the polls are closed on the afternoon of the day of election, the judges shall open the ballot-box and commence counting the votes, and in no case shall the box be removed from the room in which any election may be held until all the ballots are counted. [L. '66, p. 37, § 1; Cd. '81, § 3088; 1 H. C., § 410.]

Count of Votes, Returns and Canvass:
See Remington's Digest, Elections, §§ 43—47. **Number of Votes Necessary to Choice:** Metcalfe v. Seattle, 1 Wash. 297, 29 Pac. 1010; State ex rel. Baker v. Snodgrass, 1 Wash. 305, 25 Pac. 1014; Yesler v. Seattle, 1 Wash. 308, 25 Pac. 1014; State ex rel. Wiesenthal v. Denny, 4 Wash. 135, 29 Pac. 791, 16 L. R. A. 214; Strain v. Young, 25 Wash. 578, 66

Pac. 64; Fox v. Seattle, 43 Wash. 74, 86 Pac. 379, 117 Am. St. Rep. 1037; State ex rel. Milliken v. Board of Commrs., 49 Wash. 70, 94 Pac. 897; State ex rel. Short v. Clausen, 72 Wash. 409, 130 Pac. 479, 45 L. R. A. (N. S.) 714.

§ 44. Count of Votes: State ex rel. Hyland v. Peter, 21 Wash. 243, 57 Pac. 814; State ex rel. Blake v. Morris, 14 Wash. 262, 44 Pac. 266.

§ 45. **Canvass of Returns in General:** Nichols v. School District, 39 Wash. 137, 81 Pac. 325.

§ 46. — **Canvassing Boards or Officers:** State ex rel. Swerdfiger v. Whitney, 12 Wash. 420, 41 Pac. 189; Edes v. Haley, 94 Wash. 232, 162 Pac. 50.

§ 47. — **Powers and Proceedings of Canvassers as to Returns:** State ex rel. King v. Trimbell, 12 Wash. 440, 41 Pac. 183; Heffner v. County Commrs., 16 Wash. 273, 47 Pac. 430; State ex rel. Harvey v. Mason, 45 Wash. 234, 88 Pac. 126, 9 L. R. A. (N. S.) 1221.

§ 5334. [4925.] **Details as to Counting.**

The counting of ballots shall in all cases be public. The ballots shall be taken out carefully, one by one, by the inspector or one of the judges, who shall open them and read aloud the name of each person contained therein, and the office for which every such person is voted for. [L. '66, p. 37, § 1; Cd. '81, § 3089; 1 H. C., § 411.]

§ 5335. [4926.] **Duty of Clerks as to Keeping Tally, etc.**

Each clerk shall write down each office to be filled, and the name of each person voted for for such office, and shall keep the number of votes by tally, as they are read aloud by the inspector or judge. The counting of the votes shall be continued without adjournment until all are counted. [L. '66, p. 38, § 1; Cd. '81, § 3090; 1 H. C., § 412.]

§ 5336. [4927.] **Tickets, When to be Rejected.**

If two tickets are found folded together they shall both be rejected, and if more persons are designated on any ticket for any office than are to be elected to such office, such part of the ticket shall not be counted for any of them; but no ticket shall be lost for want of form, or mistake in initials of names, if the board of judges can determine to their satisfaction the person voted for and the office intended. [L. '66, p. 38, § 2; Cd. '81, § 3091; 1 H. C., § 413.]

Cited in 17 Wash. 197; 28 Wash. 672; 86 Wash. 237.

Ballots, when not to be rejected under this section: State ex rel. Orr v. Fawcett,

17 Wash. 188, 49 Pac. 346; State ex rel. Hufford v. Eddings, 86 Wash. 233, 149 Pac. 945.

§ 5337. [4928.] **Disposition of Tickets.**

It shall be the duty of the inspector, or one of the judges, to string the ballots at the time of counting, and after all the ballots have been counted and strung, it shall be the duty of the inspector to place them in a sealed envelope, and write thereon, "Ballots of — precinct, — county, state of Washington, of election held this — day of —, 18—," and send said sealed envelope to the auditor of the county where said election is held, who shall keep said sealed envelope containing said ballots unopened for the period of six months, to be used only as evidence in case or cases of contest when called for, at the end of which time it shall be the duty of said county auditor to burn said ballots in presence of two other county officers. [L. '68, p. 19, § 2; Cd. '81, § 3092; 1 H. C., § 414.]

Cited in 56 Wash. 602; 71 Wash. 505.

§ 5338. [4929.] Certificates — Election Returns—How Made Out, and Contents.

As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers, containing the poll-list and tallies, or attached thereto, stating the number of votes each person voted for has received, and designating the office to fill which he was voted for, which number shall be written in words at full length. Each certificate shall be signed by the clerks, the judges, and inspector; one of said certificates, with ballots, poll-list, and tally paper, oath of inspector, judges, and clerks, shall be sealed up by the inspector and indorsed "Election returns," and be directed or sent by the inspector to the county auditor of the county in which the election is to be held. [L. '66, p. 38, § 3; Cd. '81, § 3093; 1 H. C., § 415.]

See *infra*, § 10992, returns certified by secretary of state to governor and legislature.

§ 5339. [4930.] Returns, Delivery of—Other Papers—Disposition of—Nonperformance of Judge's Duty.

The said package shall be delivered to the county auditor by one of the judges or clerks of the election in person, or may be sent by registered mail; and when the voting precinct is more than fifteen (15) miles from the county seat the said package shall be forthwith transmitted to the county auditor by registered mail. When sent by mail, it shall be mailed by one of the judges. The other of said certificates, with poll-list and tally papers, oaths of judges, inspector and clerks shall be retained by the inspector and preserved by him at least six months. Tally papers, poll-list or certificate returned from any election shall not be set aside, nor rejected for want of form, nor on account of not being strictly in accordance with the directions of this chapter, if the same be satisfactorily understood: Provided, that if any judge or inspector of election shall neglect or fail to seal and return the ballots, tally-list and poll-books in the manner provided by law, such judge or inspector shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than fifteen dollars. [L. '03, p. 124, § 1. Cf. L. '66, p. 38, § 4; Cd. '81, § 3094; 1 H. C., § 416.]

§ 5340. [4931.*] Canvass of Votes—Oath Required of Auditor—Penalty.

On the tenth day after the day of each election or as soon as he shall have received the returns from each precinct of the county, if he receive them within that time, it shall be the duty of the county auditor, to notify the chairman of the board of county commissioners and prosecuting attorney, who with the county auditor shall be the county canvassing board of election returns, for all special and general county and state elections in each county, to be present at the office of said county auditor on a day named by said county auditor for the purpose of canvassing the votes cast at election, in the different precincts of the county, and it shall be the duty of the chairman of the board of county commissioners, as one of the canvassers of said votes, to administer the following oath or affirmation to the county auditor having in his possession the election returns of said county: "I do solemnly swear (or

affirm) that the returns purporting to be the election returns of the several precincts in this county have been in no wise altered by additions, or erasures, and that they are the same as when I received them, so help me God." The said oath or affirmation to be in writing and signed by the county auditor and certified to, by the aforesaid chairman of the board of county commissioners, and placed on file in said auditor's office, among the papers appertaining to said election; and then the said auditor, with the assistance of the two officers aforesaid, shall proceed to count the votes of said county or precincts, a statement of which shall be drawn up and signed by them. And it shall be deemed a misdemeanor in the county auditor, if he shall neglect or refuse to return the total number of votes as counted, if such votes can be with reasonable certainty ascertained. [L. '19, p. 474, § 21. Cf. L. '66, p. 39, § 6; L. '68, p. 20, § 1; Cd. '81, § 3095; 1 H. C., § 417.]

Cited in 12 Wash. 423; 39 Wash. 253, 255.

Canvass of Votes: See Remington's Digest, Elections, §§ 48—50.

§ 48. — **Recount of Votes:** *Heffner v. Board of County Commrs.*, 16 Wash. 273, 47 Pac. 430.

§ 49. — **Compelling Canvass:** *State ex rel. Harvey v. Mason*, 45 Wash. 234, 88 Pac. 126, 9 L. R. A. (N. S.) 1221.

§ 50. — **Irregularities and Errors:** *State ex rel. Swerdfiger v. Whitney*, 12 Wash. 420, 41 Pac. 189.

Effect on election of irregular canvass of returns. *Ann. Cas.* 1916A, 710.

Mandamus to compel board of canvassers to reassemble for recanvass of votes. 2 *Ann. Cas.* 553; *Ann. Cas.* 1912C, 1257.

§ 5341. **Canvass, How Conducted—Proclamation by Governor.**

The votes on proposed amendments to the state Constitution, recommendations for the calling of constitutional conventions and other questions submitted to the people shall, unless otherwise provided by law, be counted, canvassed and returned by the regular precinct election officers and by the county auditors and canvassing boards in the manner provided by law for counting, canvassing and returning votes for candidates for state offices. It shall be the duty of the secretary of state in the presence of the governor, within thirty days after any such election, to canvass the votes upon each question and certify to the governor the result thereof, and the governor shall forthwith issue his proclamation giving the whole number of votes cast in the state for and against such measure and declaring the result. [L. '17, p. 71, § 1.]

§ 5342. [4933.] **Vacancy, How Filled.**

If for any reason there is a vacancy or vacancies in the canvassing board provided for in this chapter, the remaining member or members of the board shall have the power and it is hereby made his or their duty to choose the county officer or officers to fill such vacancy or vacancies. [L. '93, p. 271, § 2.]

§ 5343. [4934.] **Certificate of Election to be Issued, When.**

The person having the highest number of votes given for each office, to be filled by the voters of a single county, or of a precinct, shall be declared duly elected, and the county auditor shall immediately notify him of his election, and it shall be the duty of said auditor to make out and deliver to any person so notified a certificate of elec-

tion, upon his making application to the auditor. [Cf. L. '66, p. 39, § 7; L. '67, p. 6, § 2; Cd. '81, § 3096; 1 H. C., § 418.]

Cited in 39 Wash. 254.

§ 5344. [4935.] Tie Vote, How Decided—Certificate of Election.

If the requisite number of county or precinct officers shall not be elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the county auditor shall give notice to the several persons so having the highest and an equal number of votes to attend at the office of the auditor at the time to be appointed by said auditor, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected and the said auditor shall make out and deliver to the person thus declared duly elected a certificate of his election, as hereinbefore provided. [L. '67, p. 7, § 3; Cd. '81, § 3097; 1 H. C., § 419.]

See infra, § 5349, and references, special election to decide tie vote.

Certificate of Election—Compelling Issue—Conclusiveness and Effect: See Remington's Digest, Elections, §§ 51, 52; State ex rel. King v. Trimbell, 12 Wash. 440, 41 Pac. 183; Krieschel v. County Commrs.,

12 Wash. 428, 41 Pac. 186; Heffner v. County Commrs., 16 Wash. 273, 47 Pac. 430.

Decision of tie vote in election. 17 Ann. Cas. 574; 47 L. R. A. 551.

§ 5345. [4936.] Proceedings When Canvassing Officer a Candidate.

When a county auditor is to be elected, the superior judge shall examine the returns, as soon as they are filed, and issue to the person chosen a certificate of election in the form prescribed in the preceding section. [L. '66, p. 39, § 8; Cd. '81, § 3098; 1 H. C., § 420.]

See supra, §§ 5340—5342.

§ 5346. [4937.] Abstract of Votes to Secretary of State.

It shall be and is hereby made the duty of the county auditor in each county of this state, immediately after making abstracts of the vote, given in his county at the general or special election, for members of the legislature, county, state or district officers, or members of congress, to transmit by mail a certified copy of said abstract to the secretary of state, at the seat of government. It shall be the duty of the secretary of state to furnish uniform and proper blanks to each and every county auditor in the state, on which said county auditor shall make returns to the secretary's office. The county auditor shall make returns of all persons voted for for state, county and district officers. [Cf. L. '66, p. 40, § 12; Cd. '81, § 3101; 1 H. C., § 423; L. '95, p. 394, § 12.]

§ 5347. [4938.] Informality not to Deter Issuance of Certificate, When.

No certificate shall be withheld on account of any defect or informality in the returns of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such certificate, nor shall any commission be withheld by the governor on account of any defect or informality of any return made to the office of the secretary of state. [L. '66, p. 41, § 13; Cd. '81, § 3102; 1 H. C., § 424.]

§ 5348. [4939.] Returns Transmitted by Registered Mail, When.

Whenever returns are required to be transmitted by the county auditor to the secretary of state, it shall be the duty of the county auditor to deliver the same to some postmaster of the county at the postoffice, to be transmitted by registered mail. [L. '66, p. 41, § 14; Cd. '81, § 3103; 1 H. C., § 425.]

§ 5349. [4940.] Special Election Necessary to Decide Tie Vote, When.

If, at any election to fill any [state] district or legislative office, two or more persons receive the highest and equal number of votes, it shall be declared that there is no choice, and a special election to fill such office shall be ordered by the proper officer. [L. '66, p. 41, § 15; Cd. '81, § 3104; 1 H. C., § 426.]

See Const., Art. III, § 4, executive officers of state, how chosen when vote equal.

See Const., Art. II, § 15, writs of election to fill vacancies in legislature.

See Const., Art. VI, § 8, election of county and district officers to be biennial.

See supra, § 5344, tie vote decided by lot in case of county or precinct officers.

Cited in 54 Wash. 155; 76 Wash. 315, 316, 329, 333.

CHAPTER XII.**THE RECALL.****§ 5350. [4940-1.] Charges—How Formed.**

Whenever any legal voter or committee or organization of legal voters of the state or of any political subdivision thereof shall desire to demand the recall and discharge of any elective public officer of the state or such political subdivision, as the case may be, under the provisions of sections 33 and 34 of article I of the Constitution, he or they shall prepare a typewritten charge, reciting that such officer, naming him and giving the title of his office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated his oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall, which charge shall state the act or acts complained of in concise language, without unnecessary repetition, and shall be signed by the person or persons making the same, give their respective postoffice addresses, and be verified under oath that he or they believe the charge or charges to be true. [L. '13, p. 454, § 1.]

Cited in 77 Wash. 580; 80 Wash. 68; 81 Wash. 189; 89 Wash. 183; 102 Wash. 457; 113 Wash. 9.

Constitutionality of This Act: See Remington's Digest, Officers, §§ 25½, 26-1; Cudihee v. Phelps, 76 Wash. 314, 136 Pac. 367; State ex rel. Lynch v. Fairley, 76 Wash. 332, 136 Pac. 374.

This act supersedes the recall provisions under the act of 1911: Tabor v. Walla Walla, 77 Wash. 579, 137 Pac. 1040.

Under this section, and Const., Art. I, § 33, there can be no joint recall of several officers of a board upon joint charges

which do not permit the voter to express his wishes singly as to any one of the officers being recalled: McCush v. Pratt, 113 Wash. 7, 192 Pac. 964.

It is "malfeasance" in office within the meaning of this act, for councilmen to make an agreement for the trading of votes whereby each yielded his personal judgment in voting on certain appointments and matters in consideration of the promise of votes on other matters of special interest to him: Pybus v. Smith, 80 Wash. 65, 141 Pac. 203, Ann. Cas. 1915A, 1145, L. R. A. 1915A, 285.

Validity and construction of statute providing for recall of public offi-

cer. 21 *Ann. Cas.* 308; *Ann. Cas.* 1916A, 1155; 50 *L. B. A. (N. S.)* 227; *L. B. A.* 1916D, 1103.

Recall of commissioners under commission form of municipal government. *Ann. Cas.* 1917C, 1115, 1132.

§ 5351. [4940-2.] Charges, Where Filed.

In case the officer whose recall is to be demanded be a state officer, the person making the charge shall file the same with the secretary of state. In case the officer whose recall is to be demanded be a county officer, the person or persons making the charge shall file the same with the county auditor. In case the officer whose recall is to be demanded be an officer of an incorporated city or town, the persons making the charge shall file the same with the clerk of said city or town. In case the officer whose recall is to be demanded is an officer of any other political subdivision of the state, the persons making the charge shall file the same with the officer whose duty it is to receive and file petitions for nomination of candidates for the office concerning the incumbent of which the recall is to be demanded. [L. '13, p. 454, § 2.]

§ 5352. [4940-3.] Ballot Synopsis of Charges.

If the acts complained of in the charge are acts of malfeasance or misfeasance while in office, or a violation of the oath of office, as specified in the Constitution, the officer with whom the charge is filed shall formulate a ballot synopsis of such charge of not to exceed two hundred words, which shall set forth the name of the person charged, the title of his office, and a concise statement of the elements of the charge, and shall notify the persons filing the charge of the exact language of such ballot synopsis, and attach a copy thereof to and file the same with the charge, and thereafter such charge shall be designated on all petitions, ballots and other proceedings in relation thereto by such synopsis. [L. '13, p. 455, § 3.]

Cited in 102 Wash. 457.

§ 5353. [4940-4.] Form of Petition.

Upon being notified of the language of the ballot synopsis of the charge, the persons filing the charge shall cause to be printed on single sheets of white paper of good quality twelve inches in width by fourteen inches in length and with a margin of one and three-fourths inches at the top for binding, blank petitions for the recall and discharge of such officer. Such petitions shall be substantially in the following form:

WARNING.

Every person who shall sign this petition with any other than his true name, or who shall knowingly sign more than one of these petitions, or who shall sign this petition when he is not a legal voter, or who shall make herein any false statement, shall be fined, or imprisoned, or both.

Petition for the recall of (here insert the name of the office and of the person whose recall is petitioned for) to the honorable (here insert the name and title of the officer with whom the charge is filed).

We the undersigned citizens of (the state of Washington or the political subdivision in which the recall is invoked, as the case may be)

and legal voters of the respective precincts set opposite our respective names, respectfully direct that a special election be called to determine whether or not (here insert the name of the person charged and the office which he holds) be recalled and discharged from his office, for and on account of (his having committed the act or acts of malfeasance or misfeasance while in office, or having violated his oath of office, as the case may be), in the following particulars: (here insert the synopsis of the charge); and each of us for himself says: I have personally signed this petition; I am a legal voter of the state of Washington in the precinct and city (or town) and county written after my name, and my residence address is correctly stated.

Petitioner's signature	Residence address, Street and num- ber, if any	Precinct name or number	Ward number	City or town	County
(Here follow 20 numbered lines divided into columns as below.)					
1.
2.
3.
etc.					

I, the undersigned, hereby certify that I am the officer of the city (town or precinct) of —, county of —, state of Washington, having the custody of the registration books containing the signatures, addresses and precincts of the registered legal voters of said city (town or precinct); that I have carefully compared the signatures on the foregoing petitions with said registration books, and the signatures on the petitions opposite which I have written my initials are the signatures of legal voters of the state of Washington, and of the political subdivision from which said officer sought to be recalled was elected.

Dated the — day of —, 19—.

(Seal) of the city (town or precinct) of —.
By — —, Deputy.

[L. '13, p. 455, § 4.]

§ 5354. [4940-5.] Certificate of Precinct Officers.

Blank petitions for circulation in precincts where registration of voters is not required shall bear certificates in lieu of those contained in the foregoing form, which shall be signed by a justice of the peace, road supervisor, member of a school board or a postmaster, to the effect that he resides in the precinct, (naming it) and is acquainted with the legal voters thereof, and that he believes the signatures opposite which he has written his initials are the signatures of legal voters of such precinct. [L. '13, p. 456, § 5.]

§ 5355. [4940-6.] Size of Petition.

Each such recall petition for circulation and signing shall at the time of signing, certifying and filing with the officer with whom the charge is filed, as hereinafter in this act provided, consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title and form of petition on each sheet, but with the prescribed form of certificate only on the

last sheet, and a full, true and correct copy of the charge against such officer referred to therein, printed on sheets of paper of like size and quality as the petition and firmly fastened together. [L. '13, p. 457, § 6.]

§ 5356. [4940-7.] Petitions Checked—Omission.

Every recall petition, before it is filed with the officer with whom the charge is filed as hereinafter provided, shall be filed with the officer having custody of the registration books containing the signatures, addresses, and precincts of the registered voters of the city, town or precinct, as the case may be, where the persons who have signed such petition claim to be legal voters. Upon the filing of any such petition it shall be the duty of such officer to forthwith compare or cause a deputy to compare the signatures, addresses and precinct numbers on such petition with said registration books. The officer or deputy making the comparison shall place his initials in ink opposite the signatures of those persons who are shown by the registration books to be legal voters, and shall certify upon the last signature sheet of such petition that the signatures so initialed are the signatures of legal voters of the state of Washington and of the political subdivision affected by such recall petition, and shall sign such certificate and attach thereto the seal of the registration officer, if such officer have a seal, and return such petition to the person filing the same upon demand. The omission to fill any blank shall not prevent the initialing or certification of any name, if sufficient information is given to enable the officer, by a comparison of the signatures, to identify the voter. Every such petition bearing the signatures of persons residing in precincts where registration of voters is not required, before it is filed with the secretary of state, shall be submitted to and initialed and certified by a justice of the peace, road supervisor, member of a school board or a postmaster residing in such precinct in the form provided in section 5351. It shall be the duty of such justice of the peace, road supervisor or member of a school board to examine, and initial and certify the signatures of legal voters on any such petition upon demand. [L. '13, p. 457, § 7.]

§ 5357. [4940-8.] Names Necessary—Contributions—Expenditures.

When a person, committee or organization demanding the recall of any public officer shall have secured upon such recall petition the signatures of a number of legal voters equal to twenty-five per cent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election, in case such officer be a state officer, an officer of a city of the first class, a member of a school board in a city of the first class, or a county officer of a county of the first, second or third class; or the signatures of a number of legal voters equal to thirty-five per cent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election, if the officer whose recall is demanded is an officer of any other political subdivision, city, town, township, precinct or school district than those hereinbefore mentioned, or is a state senator or representative, he or they may submit said petition to the officer with whom the charge is filed for filing in his office. At the time of submitting such

petition the person, committee or organization submitting the same shall file with the officer to whom such petition is submitted a full, true and detailed statement, giving the names and postoffice addresses of all persons, corporations and organizations who have contributed or aided in the preparation of the charge and in the preparation, circulation and filing of the petition, with the amount contributed by each, and a full, true and detailed statement of all expenditures, giving the amounts expended, the purpose for which expended and the names and postoffice addresses of the persons and corporations to whom paid, which statement shall be verified by the affidavit of the person or some member of the committee or organization making the charge, and until such statement is filed the officer shall refuse to receive such petition. [L. '13, p. 458, § 8.]

Cited in 81 Wash. 187, 189; 102 Wash. 458.

Sufficiency of statement filed by the proponents of a recall: State ex rel. McCauley v. Gilliam, 81 Wash. 186, 142 Pac. 470.

Duty of county auditor to file a statement if duly verified, without investigating its truth: Thiemens v. Sanders, 102 Wash. 453, 173 Pac. 26.

§ 5358. [4940-9.] Canvassing Petitions—Election.

Upon the filing of such petition in his office, the officer with whom the charge was filed shall stamp on each of said petitions the date of filing, and shall notify the persons filing the same and the officer whose recall is demanded by said petition of the date when said petitions will be canvassed, which date shall be not less than five or more than ten days from the date of filing, and shall, at the time set for said canvass, in the presence of at least one person representing the petitioners and in the presence of the person charged, or some one representing him, if either should desire to be present, detach the sheets containing the signatures and certificates from the copies of the charge, and cause them to be firmly attached to one or more copies of the charge in such volumes as will be most convenient for canvassing and filing, and shall proceed to canvass and count the names of certified legal voters on such petitions. If he shall find the same person has signed more than one petition, he shall reject all signatures of such person from the count. If at the conclusion of the canvass and count, it shall be found that such petition bears the requisite number of signatures of certified legal voters, the officer with whom the petition is filed shall fix a date not less than ten or more than fifteen days after the conclusion of the canvass, for calling a special election to determine whether or not the officer charged shall be recalled and discharged from his office, and shall on said date call such special election, to be held not less than thirty nor more than forty days from the date of the call, and give notice thereof in the manner required by law for calling special elections in the state or in the political subdivision, as the case may be. But if it be found that the petition does not contain the requisite number of signatures of certified legal voters, the officer shall so notify the persons filing the petition, and at the expiration of thirty days from the conclusion of the count shall, unless prevented therefrom by the injunction or mandate of the courts as hereinafter provided, destroy the petitions. [L. '13, p. 459, § 9.]

§ 5359. [4940-10.] Illegal Signatures.

The officer making the canvass as hereinabove provided shall keep a record of all names appearing on said petitions which are not certified to be legal voters of the state or of the political subdivision, as the case may be, and of all names appearing more than once on said petition, and shall report the same to the prosecuting attorneys of the respective counties where such names appear to have been signed, to the end that prosecutions may be had for violation of this act. [L. 13, p. 460, § 10.]

§ 5360. [4940-11.] Conduct of Elections—Form of Ballot.

The special election to be called as hereinabove provided shall be carried on and conducted in the same manner as general state, county, municipal or other political subdivision elections, as the case may be, are conducted and carried on, and it shall be the duty of all officers of the state, county, municipality or other political subdivisions to provide for the holding of such election and the necessary places and officers, ballot-boxes, ballots, poll-books and returns as are required by law for holding general elections. The ballots at any such election shall contain a full, true and correct copy of the ballot synopsis of the charge hereinabove provided for, and shall be so arranged that any voter can, by making one cross (X) express his desire to have the officer charged recalled or discharged from his office, or retained therein. Substantially the following form shall be a compliance with the provisions of this section:

RECALL BALLOT.

(Here insert the ballot synopsis of the charge.)

FOR the recall of (here insert the name of the officer).....☐

AGAINST the recall of (here insert the name of the officer).....☐

[L. '13, p. 460, § 11.]

Form of ballot for recall of plural officers. *Ann. Cas.* 1916D, 20S.

§ 5361. [4940-12.] Returns—Canvass.

The election officers in the various precincts shall count the ballots and make returns thereon to the officer of the county, municipality, or other political subdivision, as required by law for making returns of general elections: Provided, that in case the officer whose recall is demanded is the officer to whom, under the law, returns of elections are made, such returns shall be made to the officer with whom the charge is filed, and who called the special election; and in case of an election for the recall of a state officer, the county canvassing boards of the various counties shall canvass and return the result of such election to the officer calling such special election. [L. '13, p. 461, § 12.]

§ 5362. [4940-13.] Results Published—Office Declared Vacant.

Upon the completion of the returns of any such election to the proper officer, he shall cause to be published in the manner required by law for the publication of the results of general elections, the result of such election, and a majority of all votes cast at such recall election be for the recall of the officer charged, such officer shall thereupon be recalled and discharged from his office, and the office shall thereupon

become and be vacant; and such vacancy shall be filled in the manner provided by the Constitution and the laws of the state of Washington, or the charter and ordinances of the municipality, as the case may be. [L. '13, p. 461, § 13.]

Cited in 89 Wash. 183.

§ 5363. [4940-14.] Mandamus—Procedure.

The superior court of the county constituting or containing any political subdivision of the state in which the recall is invoked as in this act provided shall have original jurisdiction to compel the performance of any act required of any officer of such political subdivision under the provisions of this act, in case such officer refuse to perform the same, or to prevent the performance by any such officer of any act in relation to the recall not in compliance with the provisions of this act; and the supreme court shall have like original jurisdiction in relation to state officers and revisory jurisdiction over the decisions of the superior courts: Provided, that any proceeding to compel or prevent the performance of any such act shall be begun within ten days from the time the cause of complaint arises, and shall be considered an emergency matter of public concern and take precedence over other cases, and be speedily heard and determined; and any proceeding to review a decision of any superior court shall be begun and perfected within fifteen days after such decision, and shall be by the supreme court considered an emergency matter of public concern, and speedily heard and determined. [L. '13, p. 461, § 14.]

Cited in 99 Wash. 173.

§ 5364. [4940-15.] False Signing.

Every person who shall sign any recall petition provided for in this act with any other than his true name, shall be guilty of a felony; and every person who shall knowingly sign more than one of such petitions for the recall of any officer, or who shall sign any such petition when he is not a legal voter, or who shall make on any such petition any false statement as to his place of residence, and every registration officer who shall make any false report or certificate on any such petition shall be guilty of a gross misdemeanor. [L. '13, p. 462, § 15.]

§ 5365. [4940-16.] Corrupt Practices—Professional Recallers.

Every officer who shall willfully violate any of the provisions of this act, for the violation of which no penalty is herein prescribed, or who shall willfully fail to comply with the provisions of this act; and every person who shall for any consideration, compensation, gratuity, reward or thing of value or promise thereof sign or decline to sign any recall petition, or who shall advertise in any newspaper, magazine or other periodical publication or any book, pamphlet, circular or letter or by means of any sign, signboard, bill, poster, handbill or card or in any manner whatsoever, that he will either for or without compensation or consideration circulate, or solicit, procure or obtain signatures upon, or influence or induce or attempt to influence or induce persons to sign or not to sign any recall petition or vote for or against any

recall; or who shall for pay or any consideration, compensation, gratuity, reward or thing of value or promise thereof circulate, or solicit, procure or obtain or attempt to procure or obtain signatures upon any recall petition; or who shall pay or offer or promise to pay, or give or offer or promise to give any consideration, compensation, gratuity, reward or thing of value to any person to induce him to sign or not to sign, or to circulate or solicit, procure or attempt to procure or obtain signatures upon any recall petition, or to vote for or against any recall; or who shall by any other corrupt means or practice or by threats or intimidation interfere with or attempt to interfere with the right of any legal voter to sign or not to sign any recall petition or to vote for or against any recall; or who shall receive, accept, handle, distribute, pay out or give away either directly or indirectly any money, consideration, compensation, gratuity, reward or thing of value contributed by or received from any person, firm, association or corporation having his, their or its residence or principal office outside of the state of Washington, or corporation the majority of whose stockholders are non-residents of the state of Washington, for any service, work or assistance of any kind done or rendered for the purpose of aiding in procuring signatures upon any recall petition or the adoption or rejection of any recall, shall be guilty of a gross misdemeanor. [L. '13, p. 462, § 16.]

Cited in 79 Wash. 16.

This section merely declares criminal those practices which the common law has

always recognized as contrary to public policy: *Stirtan v. Blethen*, 79 Wash. 10, 139 Pac. 618.

CHAPTER XIII.

CONTESTING ELECTIONS.

§ 5366. [4941.] Causes for Contest.

Any elector of the proper county may contest the right of any person declared duly elected to an office to be exercised in and for such county; and also any elector of a precinct may contest the right of any person declared duly elected to any office in and for such precinct, for any of the following causes:—

1. For malconduct on the part of the board of judges or any member thereof;

2. When the person whose right to office is contested was not, at the time of election, eligible to such office;

3. When the person whose right is contested shall have been, previous to such election, convicted of an infamous crime, by any court of competent jurisdiction, such conviction not having been reversed, nor such person relieved from the legal infamy of such conviction;

4. When the person whose right is contested has given to any elector or inspector, judge or clerk of the election, any bribe or reward, or shall have offered any such bribe or reward for the purpose of procuring his election;

5. On account of illegal votes. [L. '66, p. 42, § 1; Cd. '81, § 3105; 1 H. C., § 427.]

See *infra*, § 10727, evidence for legislative contest.

See *infra*, § 9012, in cities of first class.

See *infra*, § 9173, in cities of fourth class.

Cited in 14 Wash. 605; 56 Wash. 596; 71 Wash. 506; 81 Wash. 189; 86 Wash. 233; 105 Wash. 239—241, 243.

Contests: See Remington's Digest, Elections, §§ 53—58. **Construction of Provisions in General:** Seymour v. Tacoma, 6 Wash. 427, 33 Pac. 1059; State ex rel. Hyland v. Peter, 21 Wash. 243, 57 Pac. 814; Quigley v. Phelps, 74 Wash. 73, 132 Pac. 738, Ann. Cas. 1915A, 679.

A diking district is not a "precinct," within this section authorizing contests of elections for all county and precinct officers, in view of the diking law, Id., §§ 4236 to 4292, making a diking district an organized public entity, distinct from and free from all control of the county; and in the absence of express statutory authority the courts have no jurisdiction of a contest of an election for commissioners of a diking district: Whitten v. Silverman, 105 Wash. 238, 177 Pac. 737.

§ 54. **Grounds:** Seymour v. Tacoma, 6 Wash. 427, 33 Pac. 1059; Williams v. Shoudy, 12 Wash. 362, 41 Pac. 169; Stallcup v. Tacoma, 13 Wash. 141, 42 Pac. 541, 52 Am. St. Rep. 25.

§ 55. **Persons Entitled to Bring Proceedings:** State ex rel. Bailey v. Smith,

4 Wash. 661, 30 Pac. 1064; State ex rel. Hewen v. Elliott, 17 Wash. 18, 48 Pac. 734; State ex rel. Reynolds v. Howell, 70 Wash. 467, 126 Pac. 954, 41 L. R. A. (N. S.) 1119.

§ 56. **Jurisdiction:** State ex rel. Blake v. Morris, 14 Wash. 262, 44 Pac. 266; State ex rel. Fawcett v. Superior Court, 14 Wash. 604, 45 Pac. 23, 33 L. R. A. 674; State ex rel. Navin v. Weir, 26 Wash. 501, 67 Pac. 226; State ex rel. West Seattle v. Superior Court, 36 Wash. 566, 79 Pac. 29.

See, also, Whitten v. Silverman, 105 Wash. 238, 177 Pac. 737.

§ 57. **Evidence—Admissibility:** Hill v. Howell, 70 Wash. 603, 127 Pac. 211.

§ 58. **Pleading—Complaint:** Quigley v. Phelps, 74 Wash. 73, 132 Pac. 738, Ann. Cas. 1915A, 679.

Equity jurisdiction of election contests. Ann. Cas. 1912C, 691.

Right to jury trial in election contest. Ann. Cas. 1913C, 161.

Statutory remedy for contest of election as exclusive. Ann. Cas. 1913E, 982; Ann. Cas. 1914D, 274.

§ 5367. [4942.] Malconduct of Judges, When Sufficient to Annul Election.

No irregularity or improper conduct in the proceedings of the board of judges, or any one of them, shall be construed to amount to such malconduct as to annul or set aside any election, unless the irregularity or improper conduct shall have been such as to procure the person whose right to the office may be contested to be declared duly elected when he had not received the highest number of legal votes. [L. '66, p. 43, § 2; Cd. '81, § 3106; 1 H. C., § 428.]

Cited in 70 Wash. 608.

§ 5368. [4943.] County Election to be Annulled, When.

When any election held for an office exercised in and for a county is contested on account of any malconduct on the part of the board of judges of any precinct election, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts shall change the result as to such office in the remaining vote of the county. [L. '66, p. 43, § 3; Cd. '81, § 3107; 1 H. C., § 429.]

§ 5369. [4944.] Election may be Set Aside on Account of Illegal Votes, When.

Nothing in the fifth ground of contest, specified in section 5366, shall be so construed as to authorize an election to be set aside on account of illegal votes, unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested, which, if taken from him, would reduce the number of his legal votes

below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person. [L. '66, p. 43, § 4; Cd. '81, § 3108; 1 H. C., § 430.]

§ 5370. [4945.] Who may Contest.

No person shall be competent to contest an election unless he is a qualified elector of the district, county, or precinct, as the case may be, in which the office is to be exercised. [L. '66, p. 43, § 5; Cd. '81, § 3109; 1 H. C., § 431.]

Cited in 61 Wash. 390.

This section has no application to an action in equity to enjoin the canvass of

returns of an illegal city election for the annexation of territory: *Wilton v. Pierce County*, 61 Wash. 386, 112 Pac. 386.

§ 5371. [4946.] Statement of Contestant to Contain What.

When any such elector shall choose to contest the right of any person declared duly elected to such office, he shall, within ten days after such person shall have been declared elected to such office, file with the clerk of the superior court of the county a written statement setting forth specifically,—

1. The name of the party contesting such election, and that he is a qualified elector of the district, county, or precinct, as the case may be, in which such election was held;

2. The name of the person whose right to the office is contested;

3. The office;

4. The particular cause or causes of such contest, which statement shall be verified by the affidavit of the contesting party that the matters and things therein contained are true, as he verily believes. [L. '66, p. 43, § 6; Cd. '81, § 3110; 1 H. C., § 432.]

Cited in 39 Wash. 254; 56 Wash. 596.

Limitations: See *Remington's Digest*, Elections, § 59; *Cusker v. Berryman*, 39

Wash. 252, 81 Pac. 686; *State ex rel. Mills v. Howell*, 93 Wash. 257, 160 Pac. 760.

§ 5372. [4947.] Allegations of Illegal Voting, Sufficiency of—Testimony.

When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that illegal votes were cast, which, if given to the person whose election is contested in the specified precinct or precincts, will, if taken from him, reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes unless the party contesting such election shall deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes and by whom given, which he intends to prove on such trial, and no testimony shall be received of any illegal votes, except such as are specified in such list. [L. '66, p. 44, § 7; Cd. '81, § 3111; 1 H. C., § 433.]

§ 5373. [4948.] Statement of Cause not to be Rejected for Want of Form.

No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed by any court before which such contest may

be brought for trial, for want of form, if the particular cause or causes of contest shall be alleged with such certainty as will sufficiently advise the defendant of the particular proceedings or cause for which such election is contested. [L. '66, p. 44, § 8; Cd. '81, § 3112; 1 H. C., § 434.]

Cited in 74 Wash. 75, 76.

§ 5374. [4949.] Trial of Contest.

Upon such statement being filed, it shall be the duty of the clerk to inform the judge of the superior court, who may give notice, and order a session of said court to be held at the usual place of holding said court, on some day to be named by him, not less than ten nor more than twenty days from the date of such notice, to hear and determine such contested election: Provided, if no session be called for the purpose, such contest shall be determined at the first regular session of said court after such statement is filed. [L. '66, p. 44, § 9; Cd. '81, § 3113; 1 H. C., § 435.]

Cited in 56 Wash. 596, 599, 600, 602.

Process or Service of Notice: See Remington's Digest, Elections, § 60; Thomas

v. Van Zandt, 56 Wash. 595, 106 Pac. 141.

§ 5375. [4950.] Citation to Issue.

The clerk of said court shall also at the time issue a citation for the person whose right to the office is contested, to appear at the time and place specified in said notice, which citation shall be delivered to the sheriff or constable, and be served upon the party in person; or if he cannot be found, by leaving a copy thereof at the house where he last resided. [L. '66, p. 45, § 10; Cd. '81, § 3114; 1 H. C., § 436.]

Cited in 56 Wash. 596.

§ 5376. [4951.] Witnesses may be Summoned and Compelled to Attend.

The said clerk shall issue subpoenas for witnesses in such contested election at the request of either party, which shall be served by the sheriff or constable, as other subpoenas, and the superior court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend if they fail to do so. [L. '66, p. 45, § 11; Cd. '81, § 3115; 1 H. C., § 437.]

§ 5377. [4952.] Hearing of Contest—Judgment.

Said court shall meet at the time and place designated to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, according to the law and right of the case. [L. '66, p. 45, § 12; Cd. '81, § 3116; 1 H. C., § 438.]

Cited in 74 Wash. 76.

Ballots as admissible to impeach election returns. *Ann. Cas.* 1912B, 682; *Ann. Cas.* 1916B, 490.

Declaration of voter as to how he voted as admissible in evidence. 15 *Ann. Cas.* 243.

Admissibility of voter's testimony as to his intention in voting. *Ann. Cas.* 1912A, 296.

Right to compel illegal voter to testify as to how he voted at election. *Ann. Cas.* 1912A, 728.

Competency of circumstantial evidence to prove for whom illegal ballots were cast. *Ann. Cas.* 1912C, 522.

§ 5378. [4953.] Other Persons Than One Returned may be Declared Elected.

If in any such case it shall appear that another person than the one returned has the highest number of legal votes, said court shall declare such person duly elected. [L. '66, p. 45, § 13; C. '81, § 3117; 1 H. C., § 439.]

§ 5379. [4954.] Costs, How Awarded Where Election Confirmed.

If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election for costs, in favor of the party whose election was contested. [L. '66, p. 45, § 15; Cd. '81, § 3119; 1 H. C., § 440.]

§ 5380. [4955.] Costs, How Awarded Where Election Annulled.

If such election is annulled and set aside, judgment for costs shall be rendered against the party whose election was contested, in favor of the party contesting the same. [L. '66, p. 45, § 16; Cd. '81, § 3120; 1 H. C., § 441.]

Validity of statute allowing attorney's fees to successful party in election contest. 11 *A. L. R.* 894.

§ 5381. [4956.] Appeal.

Either party, feeling himself aggrieved by the judgment of said court, may appeal therefrom to the supreme court, as in other cases of appeal thereto. [L. '66, p. 46, § 18; Cd. '81, § 3122; 1 H. C., § 442.]

Cited in 62 Wash. 169; 71 Wash. 505, 506; 82 Wash. 136.

Review by Courts: See Remington's Digest, Elections, §§ 61—63.

§ 61. Scope of Inquiry and Powers of Court in General: Hill v. Howell, 70 Wash. 603, 127 Pac. 211.

§ 62. — Re-examination of Ballots and Recount: Quigley v. Phelps, 74 Wash. 73, 132 Pac. 738, *Ann. Cas.* 1915A, 679.

§ 63. Review: State ex rel. Davis v. Superior Court, 62 Wash. 166, 113 Pac. 277.

§ 5382. [4957.] Certificate of Election Becomes Void, When.

Whenever an election shall be annulled and set aside by the judgment of the superior court, when no appeal has been taken therefrom within ten days, such certificate or commission, if any have been issued, shall be thereby rendered void. [L. '66, p. 46, § 19; Cd. '81, § 3123; 1 H. C., § 443.]

Cited in 56 Wash. 596; 62 Wash. 169; 71 Wash. 506; 74 Wash. 75; 82 Wash. 136.

CHAPTER XIV.

OFFENSES AGAINST THE SUFFRAGE.

§ 5383. [4958.] Fraudulent Voting.

If any person shall vote, or attempt to vote more than once at any election, or shall knowingly hand in two or more tickets together, or, having voted in one township, precinct, ward, or county, shall afterward, on the same day, vote, or attempt to vote, in another township, precinct, ward, or county, such person shall be guilty of a gross misdemeanor and shall be incapable of voting at any election or holding any office for two years thereafter. [L. '11, p. 394, § 1. Cf. L. '54, p. 93, § 95; Cd. '81, § 903; 2 H. P. C., § 120.]

See, also, *infra*, index, "Elections—crimes."

Cited in 67 Wash. 620.

"Knowingly" voting or registering

illegally. *Ann. Cas.* 1912A, 436;
37 *L. B. A. (N. S.)* 1177.

§ 5384. [4959.] Disqualified Persons Voting.

If any person, knowing that he does not possess the legal qualifications of a voter, at any election authorized by law to be held in this state for any office whatever, shall vote at such election, such person shall be guilty of a felony. [L. '11, p. 394, § 1.]

§ 5385. [4960.] Collusion of Election Officers.

If any inspector or judge of any such election shall knowingly permit any elector to cast a second vote at any such election, or shall knowingly permit any person not a qualified elector to vote at any such election, such inspector or judge of election shall be guilty of a felony and be incapable of holding any office in this state for five years thereafter. [L. '11, p. 394, § 1.]

§ 5386. [4961.] Officers Attempting to Influence Voter.

If any inspector, judge, or clerk of an election shall attempt to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person, such inspector, judge, or clerk shall be guilty of a gross misdemeanor. [L. '11, p. 394, § 1.]

§ 5387. [4962.] Tampering With Ballot by Officer.

If any judge, inspector, clerk, or any other officer of an election shall open or mark, by folding or otherwise, any ticket presented by such elector at such election, or attempt to find out the names thereon, or suffer the same to be done by any other person, before such ticket is deposited in the ballot-box, such judge, inspector, or clerk shall be guilty of a gross misdemeanor. [L. '11, p. 394, § 1.]

§ 5388. [4963.] Intimidating or Bribing Voter.

If any person shall use menace, force, threat or corrupt means at or previous to any election held pursuant to the laws of the state towards any elector to hinder or deter such elector from voting at said election or shall directly or indirectly offer any bribe or reward of any kind to induce any elector to vote for or against any person, or proposition, or shall authorize

any person so to do, such person shall be guilty of a felony. [L. '11, p. 394, § 1; L. '01, p. 298, § 1. Cf. L. '54, p. 93, § 97; L. '73, p. 205, § 106; Cd. '81, § 909; 2 H. P. C., § 125.]

See *infra*, § 5394, bribery of voter by candidate.

Evidence held sufficient to warrant a conviction under this section: *State v. Milby*, 26 Wash. 661, 67 Pac. 362.

§ 5389. [4964.] Improper Influence or False Assertions, etc.

No person shall in any way, directly or indirectly, by menace or other corrupt means or device [directly or indirectly], attempt to influence any person in giving or refusing to give his vote in any such election, or to deter or dissuade any person from giving his vote therein, or to disturb, hinder, persuade, threaten, or intimidate any person from giving his vote therein, nor shall any person at any such election, knowingly and willfully, make any false assertion or propagate any false report concerning any person who shall be a candidate thereat, which shall have a tendency to prevent his election, or with a view thereto, and if any person shall be guilty of any act forbidden or declared to be unlawful by this section, he shall be deemed and taken to be guilty of a misdemeanor, and on conviction thereof shall be punished by fine or imprisonment, or both, at the discretion of the court before which such conviction shall be had: Provided, that in no case shall such fine exceed the sum of two hundred and fifty dollars, or such imprisonment the term of six months. [Cd. '81, § 3140; 2 H. P. C., § 126.]

Cited in 26 Wash. 663; 100 Wash. 662.

Evidence in Criminal Prosecutions: See *Remington's Digest, Elections*, § 64; *State v. Milby*, 26 Wash. 661, 67 Pac. 362.

A publication is libelous per se as charging the commission of a crime under this section: *McKillip v. Grays Harbor Publishing Co.*, 100 Wash. 657, 171 Pac. 1026.

§ 5390. [4965.] Fraudulent Attempt to Influence Voter.

If any person shall fraudulently cause, or attempt to cause, any elector, at any election [held] pursuant to law in this state, to vote for a person different from the one he intended to vote for, such person so offending shall be fined not more than one hundred nor less than ten dollars. [L. '54, p. 92, § 92; Cd. '81, § 902; 2 H. P. C., § 127.]

§ 5391. [4966.] Inducing Certain Indians to Vote.

If any person shall induce, or attempt to induce, any Indian to vote or offer his vote at any such election, such person so offending, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment in the county jail not to exceed three months: Provided, that this section shall not be so construed as to include Indians who are citizens and entitled to vote under the amendments to the Constitution of the United States and the laws of congress. [Cd. '81, § 910; 2 H. P. C., § 129.]

§ 5392. [4967.] Nonfeasance or Malfeasance of Election Officers.

Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, or to any September primary or any other primary election held pursuant to law or the pro-

visions of any charter or ordinance of any town or city of this state, who willfully neglects or refuses to perform such duty, or who, in the performance of such duty, or in his official capacity, knowingly or fraudulently violates any of the provisions of law relating to such duty, shall be guilty of a felony. [L. '11, p. 394, § 1. Cf. L. '77, p. 205, § 2; Cd. '81, § 912; 2 H. P. C., § 130.]

See notes to § 5350.

See supra, §§ 5266, 5268, violating primary election law.

Cited in 69 Wash. 174, 175.

This section applies to the September primary election for the nomination of

candidates under the act of 1909, subsequently enacted: State v. Robinson, 69 Wash. 172, 124 Pac. 379.

§ 5393. [4968.] Sale of Liquor on Election Day.

Any person who shall barter, sell, give away, or in any manner dispose of any intoxicating liquors, on the day of any general or special election of state, county, or municipal officers within the state, district, county, or corporation in which said election is held, and before the polls have closed, shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days, or both, in the discretion of the court. [Cd. '81, §§ 907, 908; L. '91, p. 124, § 18; 2 H. P. C., § 131.]

§ 5394. [4969.] Bribery of Voter by Candidate.

If any candidate for office, in any election as hereafter mentioned, under the laws of this state, or any other person, shall, directly or indirectly, offer, promise, procure, confer, or give any money, property, thing in action, victuals, drink, preferment, or other consideration or valuable thing, by way of fee, reward, gift, or gratuity, for giving or refusing to give any vote in any election of any public officer, state, county, or municipal, whatever, or any person who shall carry voters to any polling place, by wagon, steamboat, or otherwise, for the purpose of influencing their votes, such person shall be deemed and taken to be guilty of a misdemeanor, and on conviction thereof be punished by fine or imprisonment, or both, at the discretion of the court, said fine not to exceed one thousand dollars, nor such imprisonment to exceed six months; and further, such person shall, on such conviction, and as part of the judgment of the court, be deprived of the right of suffrage, and such candidate for office be disqualified to hold any office to which he was elected at such election; and further, if any person shall directly or indirectly ask for, accept, receive, or take any such bribe, or the promise thereof, by giving or refusing to give his vote in any such election, he shall be deemed guilty of a misdemeanor, and punished with the like penalties as hereinbefore prescribed. [Cd. '81, § 3148; 1 H. C., § 444.]

See supra, § 5388, bribery of voter, penalty.

Cited in 90 Wash. 93.

§ 5395. [4970.] Unlawful Printing or Distribution of Official Ballots.

Any printer, business manager or publisher employed by any officer authorized by the laws of this state to procure the printing of any official

ballot or any person engaged in printing the same who shall appropriate to himself or give or deliver or knowingly permit to be taken any of said ballots by any other person than such officer authorized by law to receive the same, or shall willfully print or cause to be printed any official ballot in any other form than that prescribed by law or as directed by the officer so authorized to procure the said printing, or with any other names thereon or with the names spelled otherwise than as directed by such officer, or the names or printing thereon arranged in any other way than that authorized and directed by law, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars, nor less than five hundred dollars, or imprisonment in the county jail for a term not exceeding one year nor less than six months, or both at the discretion of the court. [L. '93, p. 274, § 1.]

§ 5396. [4971.] Unlawful Possession or Counterfeiting of Official Ballots.

Any person other than the officer charged by law with the care of ballots, or a person intrusted by any such officer with the care of the same for the purposes required by law, who shall have in his possession outside of the voting-room any official ballot or any person who shall make or have in his possession any counterfeit of any official ballot, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars nor less than five hundred dollars, or to undergo imprisonment in the county jail for a term not less than six months or more than one year, or both at the discretion of the court. [L. '93, p. 274, § 2.]

See *supra*, § 5274, ballots, how prepared and printed.

Cited in 77 Wash. 651.

CHAPTER XV.

INITIATIVE AND REFERENDUM.

§ 5397. [4971-1.] Proposals—Name and Address of Submitters.

That whenever any legal voter or committee or organization of legal voters of the state shall desire to propose any measure to be submitted to the legislature, or to the people upon initiative petition, or shall desire to order by petition the referendum of any act, bill or law, or any part thereof, passed by the legislature, he or they shall file in the office of the secretary of state five printed or typewritten copies of the proposed measure or of the act or part thereof on which a referendum is desired, accompanied by the name and postoffice address of the person, committee or organization proposing the same, and the affidavit of such person, or the affidavit of some member of such committee or organization that such person is, or the members of such committee or organization, are legal voters. Measures to be submitted upon initiative petition shall be filed within ten months prior to the election or the session of the legislature at which they are to be submitted. The secretary of state shall give to each such measure a serial number, using a separate series for the initiative and referendum measures, respectively, and forthwith transmit to the attorney general a copy of such measure bearing its serial number, and thereafter, such measure shall be known and designated in all petitions,

ballots and proceedings as "Initiative Measure No. —," or "Referendum Measure No. —," as the case may be. [L. '13, p. 418, § 1.]

Cited in 77 Wash. 653; 81 Wash. 628.

Amendment of Constitution by Initiative and Referendum: See Remington's Digest, Const. Law, § 2; Gottstein v. Lister, 88 Wash. 462, 153 Pac. 595; State ex rel. Griffiths v. Superior Court, 92 Wash. 44, 159 Pac. 101, 162 Pac. 360.

Initiative and Referendum—What Laws Subject to: State ex rel. Brislawn v. Meath, 84 Wash. 302, 147 Pac. 11; State ex rel. Blakeslee v. Claussen, 85 Wash. 260, 148 Pac. 28, Ann. Cas. 1916B, 810; State ex rel. Case v. Howell, 85 Wash. 281, 147 Pac. 1162; State ex rel. Case v. Howell, 85 Wash. 294, 147 Pac. 1159, Ann. Cas. 1916A, 1231; State ex rel. Berry v. Superior Court, 92 Wash. 16, 159 Pac. 92; State ex rel. Griffiths v. Superior Court, 92 Wash. 44, 159 Pac. 101, 162 Pac. 360; State ex rel. Howell v. Superior Court, 97 Wash. 569, 166 Pac. 1126.

Proposing, Filing and Submitting Acts or Referendum: See Remington's Digest, Statutes, § 2-4, and cases cited.

This section does not require filing ten months prior to the election, but limits the time within which they may be filed to "less than ten months" before election: State ex rel. Kiehl v. Howell, 77 Wash. 651, 138 Pac. 286.

The legislature has power to fix a reasonable time preceding the election within which a proposed measure shall be filed with the secretary of state, as an act to "facilitate" the initiative and referendum; and the fixing of ten months before the election, leaving but six months within which to complete and file the petitions is not unreasonable: State ex rel. Kiehl v. Howell, 77 Wash. 651, 138 Pac. 286.

The determination of the number of valid signatures upon an initiative petition to submit a measure to a vote of the people is a political rather than a judicial question, although including an issue of fraud, in the absence of statutory

provisions to the contrary; hence the legislature has power to commit the same to administrative officers, and the courts could not, in the absence of express statute, review the determination of such officers: State ex rel. Case v. Superior Court, 81 Wash. 623, 143 Pac. 461, Ann. Cas. 1916B, 838.

The passage of an initiative measure as a law being the exercise of the same power of sovereignty as that exercised by the legislature in the passage of laws, the people can supersede existing laws by an initiative measure only by a repeal, express or implied: State v. Paul, 87 Wash. 83, 151 Pac. 114.

The proponent of an initiative measure is in no sense a legislator, nor is his filing a legislative step with which the courts have no right to interfere: State ex rel. Berry v. Superior Court, 92 Wash. 16, 159 Pac. 92.

Canvass, Certification, and Determination of Result: See Remington's Digest, Statutes, § 2-5; State ex rel. Case v. Superior Court, 81 Wash. 624, 143 Pac. 461, Ann. Cas. 1916B, 838.

Constitutionality of initiative and referendum provisions either in state constitutions or municipal charters. 11 Ann. Cas. 920; Ann. Cas. 1918D, 604.

Scope and construction of initiative and referendum laws. 50 L. R. A. (N. S.) 196; L. R. A. 1917B, 16.

Construction of provision in constitution, statute or municipal charter for initiative or referendum. Ann. Cas. 1916B, 819, 855, 860, 865; Ann. Cas. 1917E, 739.

Construction of statutory provision respecting emergency clause. Ann. Cas. 1917E, 985.

Effect of declaring emergency in the enactment of a law without declaring it free from the operation of the referendum. 7 A. L. R. 530.

§ 5398. [4971-2.] Form of Ballot Title.

Within ten days after the receipt of any such measure the attorney general shall formulate therefor and transmit to the secretary of state a ballot title of not to exceed one hundred words, bearing the serial number of such measure, which ballot title may be distinct from the legislative title of such measure, and shall express, and give a true and impartial statement of the purpose of such measure, and shall not be intentionally an argument, or likely to create prejudice, either for or against the measure. Such ballot title formulated by the attorney general shall be the ballot

title of such measure unless changed on appeal as hereinafter provided. [L. '13, p. 418, § 2.]

Cited in 77 Wash. 653.

§ 5399. [4971-3.] Appeal—Court to Fix Title.

Upon the filing of such ballot title in his office, the secretary of state shall forthwith notify the persons proposing the measure by telegraph and by mail of the exact language thereof. In case such persons are dissatisfied with said ballot title they may at any time within ten days from the filing thereof in the office of the secretary of state appeal from the decision of the attorney general to the superior court of Thurston county by petition setting forth the measure, the title formulated by the attorney general and their objections thereto, and praying for amendment thereof. A copy of said petition, together with a notice that an appeal has been taken shall be served upon the secretary of state and upon the attorney general. Upon the filing of such petition on appeal the court shall forthwith, or at such time to which the hearing may be adjourned by consent of the appellants, examine the proposed measure, the title prepared by the attorney general and the objections thereto and may hear argument thereon, and shall as soon as possible render its decision and certify to and file with the secretary of state such ballot title as it shall determine will meet the requirements of this act. The decision of the superior court shall be final, and the title so certified shall be the established ballot title. Such appeal shall be heard without costs to either party. [L. '13, p. 419, § 3.]

§ 5400. [4971-4.] Title Mailed to Proposers.

When the ballot title shall have been finally established, the secretary of state shall file the instrument establishing it with the proposed measure and transmit a copy thereof by mail to the persons proposing the measure. Thereafter such ballot title shall be the title of the measure in all petitions, ballots and other proceedings, if any, in relation thereto. Upon the ballot title being established, the persons proposing the measure may prepare and cause to be printed upon single sheets of white paper of good quality twelve inches in width and fourteen inches in length, with a margin of one and three-quarters inches at the top for binding, blank petitions for proposing measures for submission to the legislature or to the people, or for ordering legislative enactments to be referred to the people, as the case may be. [L. '13, p. 419, § 4.]

§ 5401. [4971-5.] Petitions to Legislature—Form.

Petitions for proposing measures for submission to the legislature at its next regular session, to be filed with the secretary of state not less than ten days before such regular session, shall be substantially in the following form:

WARNING.

Every person who shall sign this petition with any other than his true name, or who shall knowingly sign more than one of these petitions, or who shall sign this petition when he is not a legal voter, or who shall make herein any false statement, shall be punished by fine or imprisonment or both.

INITIATIVE PETITION FOR SUBMISSION TO THE LEGISLATURE.

To the Honorable —, Secretary of State of the State of Washington:

We, the undersigned citizens of the state of Washington and legal voters of the respective precincts set opposite our names, respectfully direct that this petition and that certain proposed measure known as Initiative Measure No. —, and entitled (here set forth the established ballot title of the measure), a full, true and correct copy of which is hereto attached, shall be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we hereby respectfully petition the legislature to enact said proposed measure into law; and each of us for himself says: I have personally signed this petition; I am a legal voter of the State of Washington in the precinct, city (or town), and county written after my name, and my residence address is correctly stated.

Petitioner's signature	Residence address, Street and number, if any	Precinct name or number	Ward number	City or town	County
(Here follow 20 numbered lines divided into columns as below.)					
1.
2.
3.
etc.					

I, the undersigned, hereby certify that I am the officer of the city (town or precinct) of — county of —, State of Washington, having the custody of the registration books containing the signatures, addresses and precincts of the registered voters of said city (town or precinct); that I have carefully compared the signatures on the foregoing petitions with said registration books, and the signatures on the petitions opposite which I have written my initials are the signatures of legal voters of the State of Washington.

Dated, this — day of —, 19—.

(Seal)

of the city (town or precinct) of —.

By — —, Deputy.

[L. '13, p. 420, § 5.]

Cited in 81 Wash. 629, 646.

The secretary of state is without authority upon the canvass of initiative petitions, to inquire into or decide whether the names signed are the "signatures of legal voters," and when a local certifying officer has decided that names upon a

petition are the signatures of legal voters, and has evidenced his decision by a proper certificate, his decision is final; in view of this section, and sections 5404 and 5411, infra: State ex rel. Case v. Superior Court, 81 Wash. 623, 143 Pac. 461, Ann. Cas. 1916B, 838.

§ 5402. [4971-6.] Petitions to People—Form.

Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election, to be filed with the secretary of state not less than four months before such general election, shall be substantially in the following form:

WARNING.

(Same form as in section 5401.)

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE.

To the Honorable —, Secretary of State of the State of Washington:

We, the undersigned citizens of the State of Washington and legal voters of the respective precincts set opposite our names, respectfully direct that that certain proposed measure known as Initiative Measure No. —, entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is hereto attached shall be submitted to the legal voters of the state of Washington for their approval or rejection at the general election to be held on the — day of —, A. D. 19—; and each of us for himself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the precinct, city (or town), and county written after my name, and my residence address is correctly stated.

(Followed by the same form of blanks and certificates as in section 5401.) [L. '13, p. 421, § 6.]

§ 5403. [4971-7.] Petitions to Refer—Form.

Petitions ordering that bills or parts of bills passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, to be filed with the secretary of state within ninety days after the final adjournment of the session of the legislature at which such bill was passed, shall be substantially in the following form:

WARNING.

(Same form as in section 5401.)

PETITION FOR REFERENDUM.

To the Honorable —, Secretary of State of the State of Washington:

We, the undersigned citizens of the State of Washington and legal voters of the respective precincts set opposite our names, respectfully order and direct that Referendum Measure No. —, entitled (here insert the established ballot title of the measure) being a (or part or parts of a) bill passed by the —th legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the — day of —, A. D. 19—; and each of us for himself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the precinct, city (or town), and county written after my name, and my residence address is correctly stated.

(Followed by the same form of blanks and certificate as in section 5401.) [L. '13, p. 422, § 7.]

§ 5404. [4971-8.] Signatures—Certificate.

Blank petitions for circulation in precincts where registration of voters is not required shall bear certificates, in lieu of those contained in the foregoing forms, to be signed by a justice of the peace, road supervisor, member of a school board or a postmaster, to the effect that he resides in the pre-

cinet, naming it, and is acquainted with the legal voters thereof and that he believes the signatures opposite which he has written his initials are the signatures of legal voters of such precinct. [L. '13, p. 422, § 8.]

§ 5405. [4971-9.] Size of Petitions.

Each initiative or referendum petition for circulation and signing shall at the time of signing, certifying and filing with the secretary of state, as hereinafter in this act provided, consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title and form of petition on each sheet, but with the prescribed form of certificate only on the last sheet, and a full, true and correct copy of the proposed measure referred to therein printed on sheets of paper of like size and quality as the petition, firmly fastened together. [L. '13, p. 423, § 9.]

Cited in 81 Wash. 650.

This section, in so far as it declares that petitions shall consist of sheets with numbered lines for not more than twenty signatures on each sheet, is di-

rectory, in so far as it may be considered as limiting the number of signatures that may be placed on any petition: State ex rel. Case v. Superior Court, 81 Wash. 623, 143 Pac. 461, Ann. Cas. 1916B, 838.

§ 5406. [4971-10.] Check of Petitions—Certificate.

Every initiative and referendum petition, before it is filed with the secretary of state as hereinafter provided, shall be filed with the officer having custody of the registration books containing the signatures, addresses and precinct of the registered voters of the city, town or precinct, as the case may be, where the persons who have signed such petition claim to be legal voters. Upon the filing of any such petition it shall be the duty of such officer to forthwith compare or cause a deputy to compare the signatures, addresses and precinct number on such petition with said registration books. The officer or deputy making the comparison shall place his initials in ink opposite the signature of those persons who are shown by the registration books to be legal voters, and shall certify upon the last signature sheet of such petition that the signatures so initialed are the signatures of legal voters of the State of Washington, and shall sign such certificate and attach thereto the seal of the registration officer, if such officer have a seal, and return such petition to the person filing the same upon demand. The omission to fill any blank shall not prevent the initialing or certification of any name, if sufficient information is given to enable the officer, by a comparison of the signatures, to identify the voter. Every such petition bearing the signatures of persons residing in precincts where registration of voters is not required, before it is filed with the secretary of state, shall be submitted to and initialed and certified by a justice of the peace, road supervisor, member of a school board or a postmaster residing in such precinct in the form provided in section 5404. It shall be the duty of such justice of the peace, road supervisor or member of a school board to examine and initial and certify the signatures of legal voters on any such petition upon demand. [L. '13, p. 423, § 10.]

Cited in 81 Wash. 629.

This section, requiring a local certifying officer, in comparing and certifying the signatures on an initiative petition, to place his initials "in ink opposite the

signatures of those persons shown by the registration books to be legal voters" is directory to the extent that initialing the signatures with a common lead pencil is a sufficient compliance with the law, in

view of the liberal construction accorded ex. rel. Case v. Superior Court, 81 Wash. election laws, the law not declaring a sig- 623, 143 Pac. 461, Ann. Cas. 1916B, 838. nature invalid for failure to use ink: State

§ 5407. [4971-11.] Number of Signatures—Contributors—Expenditures.

When the person, committee or organization proposing any such initiative measure or demanding any such referendum shall have secured upon any such initiative petition the signatures of fifty thousand legal voters or the signatures of legal voters equal in number to or exceeding ten per centum of the whole number of electors who voted for governor at the regular gubernatorial election last preceding, or shall have secured upon any such referendum petition the signatures of thirty thousand legal voters, or the signatures of legal voters equal in number to or exceeding six per centum of the whole number of electors who voted for governor at the regular gubernatorial election last preceding, he or they may submit said petition to the secretary of state for filing in his office. At the time of submitting such petition the person, committee or organization submitting the same shall file with the secretary of state a full, true and detailed statement giving the names and postoffice addresses of all persons, corporations and organizations who have contributed any moneys to aid in the preparation, publication and advertising of the measure and the preparation, circulation and filing of the petition, with the amount contributed by each, and a full, true and detailed statement of all expenditures, giving the amounts expended, the purpose for which expended, and the names and postoffice addresses of the persons and corporations to whom paid, which statement shall be verified by the affidavit of the person or some member of the committee or organization in charge of the measure, and until such statement is filed with the secretary of state shall refuse to receive such petition. [L. '13, p. 424, § 11.]

Cited in 97 Wash. 572, 573, 578.

Notwithstanding the use of "petition" in the singular number, the filing of a number of sheets or petitions does not pre-

clude the filing of additional petitions relating to the same matter: State ex rel. Howell v. Superior Court, 97 Wash. 569, 166 Pac. 1126.

§ 5408. [4971-12.] Time for Filing Petition.

The secretary of state upon any such petition being submitted to him for filing shall examine the same, and if upon examination said petition appear to be in proper form and to bear the requisite number of signatures of legal voters, and if said petition be an initiative petition proposing a measure to be submitted to the legislature at its next ensuing regular session and is submitted for filing not less than ten days before such regular session, or if said petition be an initiative petition proposing a measure to be submitted to the people for their approval or rejection at the next ensuing general election and is submitted for filing not less than four months before such general election, or if said petition be a referendum petition ordering and directing that the whole or some part or parts of a bill passed by the legislature be referred to the people for their approval or rejection at the next ensuing general election or a special election ordered by the legislature, and such petition is submitted for filing not more than ninety days after the final adjournment of the session of the legislature which passed the bill, the secretary of state shall accept and file said petition in his office; otherwise, he shall refuse to file the same, but shall

stamp on said petitions the word "submitted" and the date of submission, and shall retain said petitions pending appeal. [L. '13, p. 424, § 12.]

Cited in 81 Wash. 640; 97 Wash. 573, 578; 108 Wash. 341.

Sufficiency of Petition: State ex rel. Case v. Superior Court, 81 Wash. 623, 143 Pac. 461; State ex rel. Howell v. Superior Court, 97 Wash. 569, 166 Pac. 1126.

Under this section, "legal voters" include only persons having the constitutional qualifications who are registered upon the poll books and not canceled by failure to vote: State ex rel. Mullen v. Howell, 108 Wash. 340, 184 Pac. 333.

§ 5409. [4971-13.] Appeal from Refusal of Secretary of State to File—Review.

If the secretary of state shall refuse to file any such initiative or referendum petition when submitted to him for filing, the persons submitting the same for filing may, within ten days after such refusal, apply to the superior court of Thurston county for a citation requiring the secretary of state to bring such petitions before the court, and for a writ of mandate to compel him to file the same. Such application shall take precedence over other cases and matters and shall be speedily heard and determined. If the court shall issue citation, and upon final hearing shall determine that the petitions are legal in form and apparently contain the requisite number of signatures and were submitted for filing within the time prescribed in the Constitution, it shall issue its mandate requiring the same to be filed in his office by the secretary of state as of the date of submission for filing. The decision of the superior court granting a writ of mandate shall be final and no appeal shall be allowed from the decision of the superior court refusing to grant a writ of mandate, but such decision may be reviewed by the supreme court in a writ of certiorari sued out within five days after the decision of the superior court, and such review shall be considered an emergency matter of public concern, and shall be heard and determined with all convenient speed, and if the supreme court shall decide that the petitions are legal in form and apparently contain the requisite number of signatures of legal voters, and were filed within the time prescribed in the Constitution, it shall issue its mandate direct to the secretary of state, requiring that said petitions be filed in his office as of the date of submission. In case no appeal is taken from the refusal of the secretary of state to file said petitions within the time prescribed or in case an appeal is taken and the secretary of state is not required to file said petitions by the mandate of either the superior or the supreme court, the secretary of state shall destroy said petitions. [L. '13, p. 425, § 13.]

Cited in 81 Wash. 640; 97 Wash. 573, 579.

§ 5410. [4971-14.] Petitions to be Volumed and Filed.

If the secretary of state accept and file any such initiative or referendum petition upon its being submitted for filing or if he be required to file the same by the court he shall forthwith, in the presence of the governor, or, if the governor be absent, in the presence of some other state officer and in the presence of the persons submitting such petition for filing, if such persons desire to be present, detach the sheets containing the signatures and certificates and cause them all to be firmly attached to one or more printed copies of the proposed initiative or referendum measure in such volumes as will be most convenient for canvassing and filing, and shall number

such volumes and file the same and stamp on each thereof the date of filing. [L. '13, p. 426, § 14.]

§ 5411. [4971-15.] Canvass of Petition.

Upon filing such volumes of an initiative petition proposing a measure for submission to the legislature at its next regular session, the secretary of state shall forthwith in the presence of at least one person representing the advocates and one person representing the opponents of the proposed measure, should either desire to be present, proceed to canvass and count the names of certified legal voters on such petition. If he find the same name signed to more than one petition he shall reject both names from the count. If, at the conclusion of the canvass and count, it shall appear that such petition bears the requisite number of names of certified legal voters, the secretary of state shall transmit a certified copy of such proposed measure to the legislature at the opening of its session together with a certificate of the facts relating to the filing of such petition and the canvass thereof. [L. '13, p. 426, § 15.]

Cited in 97 Wash. 574.

This section, providing that, upon submission to him of initiative petitions, the secretary of state "shall proceed to canvass and count the names of certified legal voters on such petition. If he find the same name signed to more than one petition, he shall reject both names from the count," being a special authority to reject names for one reason only, suggests, almost conclusively, a limitation on his power to reject names for any other cause: State ex rel. Case v. Superior Court, 81 Wash. 623, 143 Pac. 461, Ann. Cas. 1916B, 838.

The word "canvass," though meaning to "scrutinize, examine, and determine," does not authorize the secretary of state to do more than scrutinize and examine the petitions to determine the number of and reject the duplicate names, that being his only express authority; and the words "canvass and count" are given full effect without finding any intent to authorize the secretary of state to decide the genuineness of the signatures, the forgery of officers' initials, the sufficiency of the certifying officer's certificates, and like questions: State ex rel. Case v. Superior Court, 81 Wash. 623, 143 Pac. 461, Ann. Cas. 1916B, 838.

§ 5412. [4971-16.] Fraudulent Names.

The secretary of state shall, while making said canvass, keep a record of all names appearing on said petition which are not certified to be legal voters and of all names appearing more than once on said petition, and shall report the same to the prosecuting attorneys of the respective counties where such names were signed to the end that prosecutions may be had for violations of this act. [L. '13, p. 427, § 16.]

Cited in 97 Wash. 574.

§ 5413. [4971-17.] Appeals—Review.

Any citizen who shall be dissatisfied with the determination of the secretary of state that the petition contains or does not contain the requisite number of signatures of legal voters may, within five days after such determination, apply to the superior court of Thurston county for a citation requiring the secretary of state to submit said petitions to said court for examination, and for a writ of mandate compelling the certification of the measure and petition, or for an injunction to prevent the certification thereof to the legislature, as the case may be, which application and all proceedings had thereunder shall take precedence over other cases and shall be speedily heard and determined. No appeal

shall be allowed from the decision of the superior court granting or refusing to grant the writ of mandate or injunction, but such decision may be reviewed by the supreme court on a writ of certiorari sued out within five days after the decision of the superior court, and if the supreme court shall decide that a writ of mandate or injunction, as the case may be, should issue, it shall issue such writ direct to the secretary of state; otherwise, it shall dismiss the proceedings, and the clerk of the supreme court shall forthwith notify the secretary of state of the decision of the supreme court. [L. '13, p. 427, § 17.]

Cited in 81 Wash. 631; 97 Wash. 574.

This section does not authorize the superior court to review the question as to requisite number of signatures of legal voters; since the appeal was to review only errors of the secretary of state and that question could not be determined by the secretary of state, the certificate of

local certifying officers being conclusive on that subject on the courts as well as on the secretary of state: *State ex rel. Case v. Superior Court*, 81 Wash. 623, 143 Pac. 461, Ann. Cas. 1916B, 838.

Judicial review of initiative and referendum proceedings. *Ann. Cas.* 1916B, 829.

§ 5414. [4971-18.] Canvass of Names Within Thirty Days.

When the petition filed shall be a referendum petition or an initiative petition for submission of a measure to the people the secretary of state shall canvass and count the names on such petition within thirty days after filing and like proceedings shall and may be had thereon as provided in sections 5411, 5412 and 5413. [L. '13, p. 428, § 18.]

Cited in 97 Wash. 574.

§ 5415. [4971-19.] Certificate to County Auditor.

If such referendum or such initiative petition of submission to the people shall be found sufficient, the secretary of state shall at the time and in the manner he certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures to be voted upon at the next ensuing general election or special election ordered by the legislature. [L. '13, p. 428, § 19.]

Cited in 81 Wash. 631.

§ 5416. [4971-20.] Serial Number for Referendum Bills.

Whenever any bill passed by the legislature shall be by the legislature referred to the people for their approval or rejection at the next ensuing general election or at a special election ordered by the legislature, the secretary of state shall give such bill a serial number, using a separate series, such series being designated "Referendum Bills," and if the legislature shall not have prescribed a ballot title shall obtain from the attorney general a ballot title therefor in the manner provided in this act for obtaining ballot titles for initiative measures, and shall certify the serial number and ballot title of such bill to the county auditors for printing on the ballots for such general or special election in like manner as initiative measures for submission to the people are certified. [L. '13, p. 428, § 20.]

§ 5417. [4971-21.] Certified by Serial Number.

Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature or the legislature shall take no action thereon before the end of the regular session at which it is submitted, the secretary of state shall certify the serial number and ballot title thereof to the county auditors for printing on the ballots at the next ensuing general election in like manner as initiative measures for submission to the people are certified. [L. '13, p. 428, § 21.]

§ 5418. [4971-22.] Substitute Measure to Take Same Number.

Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature and the legislature proposes a different measure dealing with the same subject, the secretary of state shall give such different measure the same serial number as that borne by the initiative measure followed by the letter "B," and such measure proposed by the legislature shall be designated as "Alternative Measure No. — B," and the secretary of state shall obtain from the attorney general a ballot title therefor in the manner provided in this act for obtaining ballot titles for initiative measures, and shall certify the alternative serial number and ballot title of such alternative measure to the county auditors for printing on the ballots for the election at which such measures are to be submitted to the people, in like manner as initiative measures for submission to the people are certified. The ballot title for such alternative measure shall be different from the ballot title of the initiative measure in lieu of which it is proposed, and shall indicate as clearly as possible the essential differences in the measure. [L. '13, p. 429, § 22.]

§ 5419. [4971-23.] Printing of Numbers and Titles on Ballots.

It shall be the duty of the several county auditors to cause to be printed on the official ballots for the election at which initiative and referendum measures are to be submitted to the people for their approval or rejection the serial numbers and ballot titles, certified by the secretary of state, under separate headings in the order of the serial numbers. Measures proposed for submission to the people by initiative petition shall be under the heading, "Provided by Initiative Petition"; bills passed by the legislature and ordered referred to the people by referendum petition shall be under the heading, "Passed by the Legislature and Ordered Referred by Petition"; bills passed and referred to the people by the legislature shall be under the heading, "Proposed to the People by the Legislature"; measures proposed to the legislature and rejected or not acted upon shall be under the heading, "Proposed to the Legislature and Referred to the People"; measures proposed to the legislature and alternative measures passed by the legislature in lieu thereof shall be under the heading, "Initiated by Petition and Alternative by Legislature." [L. '13, p. 429, § 23.]

§ 5420. [4971-24.] Provision for Voting—Ballot.

Except as in the next succeeding section provided, each measure submitted to the people for approval or rejection shall be so printed on the ballot, under the proper heading, that a voter can by making one

cross (X) express his approval or rejection of such measure. Substantially the following form shall be a compliance with this section:

PROPOSED BY INITIATIVE PETITION.

Initiative Measure No. 22, entitled (here insert the ballot title of the measure).

FOR Initiative Measure No. 22☐

AGAINST Initiative Measure No. 22☐

[L. '13, p. 430, § 24.]

§ 5421. [4971-25.] Alternative—Ballot.

In all cases where initiative measures proposed to the legislature have been rejected by the legislature and alternative measures passed by the legislature in lieu thereof the serial numbers and ballot titles of both such measures shall be so printed on the official ballots that a voter can express separately by making one cross (X) for each, two preferences: first, as between either measure and neither, and secondly, as between one and the other, as provided in the Constitution. Substantially the following form shall be a compliance with the constitutional provision:

INITIATED BY PETITION AND ALTERNATIVE BY LEGISLATURE.

Initiative Measure No. 25, entitled (here insert the ballot title of the initiative measure).

Alternative Measure No. 25B, entitled (here insert the ballot title of the alternative measure).

VOTE FOR EITHER, OR AGAINST BOTH.

FOR EITHER Initiative No. 25 OR Alternative No. 25B.....☐

AGAINST Initiative No. 25 AND Alternative No. 25B☐

and vote FOR one.

FOR Initiative Measure No. 25☐

FOR Alternative Measure No. 25B☐

[L. '13, p. 430, § 25.]

§ 5422. [4971-26.] Arguments—Number—Selection.

The person, persons, committee or organization filing any initiative or referendum petition proposing a measure, or ordering a referendum for submission to the people, and any other citizen or committee or organization of citizens shall have the right at the time of filing such petition or within ten days after such petition has been accepted and filed, to file with the secretary of state for printing and distribution arguments advocating the proposed measure or referendum, and any citizen or committee or organization of citizens may, within twenty days after such petition has been accepted and filed, file an argument in opposition to such measure or referendum for printing and distribution, provided, that not more than two separate arguments advocating such measure of referendum and not more than three separate arguments in opposition thereto shall be printed by and distributed at the expense of the state. If more than two arguments advocating or more than three arguments in opposition to such measure or referendum are filed, the

secretary of state shall forthwith notify the persons filing the arguments advocating or in opposition to such measure or referendum of that fact, and if the persons filing such arguments do not agree among themselves within thirty days after the acceptance and filing of such petition as to which of said arguments shall be printed by the state, the secretary of state shall select for printing, binding and distribution, in addition to the argument advocating such measure filed by the persons proposing the same, one additional argument, and shall select three arguments in opposition to such measure, to be printed by the state. In making such selections the secretary of state shall select the argument advocating and the three arguments in opposition to the measure which he shall consider the strongest, taking into account the arguments proposed and the form in which they are presented. If in the opinion of the secretary of state any arguments for or against a measure offered for filing contain any obscene, vulgar, profane, scandalous, libelous, defamatory or treasonable matter or any language tending to provoke crime or a breach of the peace, or any language or matter the circulation of which through the mails is prohibited by any act of congress, the secretary of state shall refuse to file such argument: Provided, that the person submitting such argument for filing may appeal to a board of censors consisting of the governor, the attorney general and the superintendent of public instruction, and the decision of a majority of such board shall be final. Each such argument either for or against the measure shall not exceed two pages of the pamphlet hereinafter required to be published by the state and shall contain the serial designation and number of the measure and state the name of the person or organization advancing it. The person or organization filing such argument shall at the time of filing the same deposit with the secretary of state sufficient money, the amount to be estimated by the secretary of state, to cover the increased cost of paper for the printing and binding of such argument. In the case of measures initiated by petition and submitted to the legislature and alternatives passed by the legislature in lieu thereof, the person, committee or organization proposing the measure may likewise within ten days after the filing of the petition, or within ten days after the final passage of the alternative measure, file an argument in support of the initiative measure, and other citizens may file arguments in support thereof within ten days after the final passage of the alternative measure, and the legislature may by resolution file an argument in support of the alternative measure, and other citizens may file arguments in support thereof. But only two arguments in support of each measure, in addition to the argument filed by the proponents of the measure, and by the legislature, shall be printed by and distributed at the expense of the state, and if the persons filing arguments do not agree among themselves as to what arguments shall be printed the secretary of state shall select arguments to be printed. Arguments for and against bills passed and referred to the people by the legislature, including amendments to the Constitution proposed by the legislature, shall be filed, selected and printed in the same manner. [L. '13, p. 431, § 26.]

Cited in 80 Wash. 694.

Deposit of Money, and Validity of Re-

quirement: State ex rel. Chamberlain v. Howell, 80 Wash. 692, 142 Pac. 1.

§ 5423. [4971-27.*] Publication of Pamphlet.

At least sixty days prior to any election at which any initiative or referendum measure is to be submitted to the people, the secretary of state shall cause to be printed in pamphlet form a true copy of the serial designation and number, the ballot title, the legislative title, the full text of and the argument for and arguments against each such measure, including amendments to the Constitution proposed by the legislature, to be submitted to the people in the foregoing order, and shall cause all of such measures to be printed and bound in a single pamphlet in the following order: First, those "Proposed by Initiative Petition"; second, those "Proposed to the People by the Legislature"; third, those "Proposed to the Legislature and Referred to the People"; fourth, those "Initiated by Petition and Alternative by the Legislature"; fifth, "Amendments to the Constitution Proposed by the Legislature"; and sixth "Measures Recommending Constitutional Conventions." The pages of such pamphlet shall be not larger than five and three-fourths by eight and three-fourths inches in size, and the outside measurement of the printed matter of each page shall be not less than four and one-half by seven and one-third inches, including running head, and shall be printed in eight-point roman-faced type, set solid in two columns, each thirteen ems pica to the line, separated by a pica slug, with appropriate headings. Said pamphlet shall be printed on No. 1 print paper weighing thirty-two pounds to the ream of sheets twenty-four by thirty-six inches. The cost of printing and binding such pamphlets shall be paid from the money appropriated for printing for the secretary of state: Provided, the increased cost of printing and binding such arguments shall be paid from the moneys deposited to cover the same and the balance of any such moneys, if any, and the moneys deposited for arguments not printed shall be returned to the persons depositing it respectively. Such number of pamphlets shall be printed as shall fill the requirements as to distribution hereinafter provided. It shall be the duty of the secretary of state to publish in such pamphlets a table of contents and a brief alphabetical index of subjects. [L. '17, p. 99, § 1; L. '13, p. 433, § 27.]

Cited in 80 Wash. 695; 92 Wash. 23.

§ 5424. [4971-28.] List of Voters—Filing.

Not more than four nor less than three months before any election at which initiative or referendum measures are to be submitted to the people, the officer having custody of the registration-books in each city, town or precinct where registration of voters is required shall prepare and transmit to the secretary of state typewritten lists of the names and addresses of the legal voters of such city, town or precinct, as shown by the registration-books, and the county auditors of each county shall prepare and transmit to the secretary of state typewritten lists of the names and postoffice addresses of the legal voters in each precinct in said county where registration of voters is not required, as shown by the poll-books of the last preceding general election. The secretary of state shall notify such officers of the dates of such elections. [L. '13, p. 434, § 28.]

§ 5425. [4971-29.] Distribution of Pamphlets.

Not less than fifty-five days before any election at which initiative or referendum measures are to be submitted to the people, the secretary of state shall transmit, by mail with postage fully prepaid, to every voter in the state whose address he has, or can with reasonable diligence ascertain, one copy of the pamphlet hereinabove provided for, and shall transmit by the least expensive means copies of such pamphlet as follows: To each county auditor three copies for each voting precinct in the county; to the libraries of each educational, charitable, penal and reformatory institution of the state three copies; to each state officer and member of a state board and each county officer two copies; to each judge of the supreme and superior courts two copies; to the state library five copies; to each public library in the state two copies; to each member of the legislature two copies; and shall reserve for distribution on request such number of copies as he shall deem necessary. The cost of mailing or shipping said pamphlets shall be paid from the money appropriated for postage for the secretary of state. It shall be the duty of the county auditors of the several counties to transmit the copies of the pamphlets so furnished them to the election officers of the respective precincts, to be kept at the polling place throughout election day for the information of voters. [L. '13, p. 434, § 29.]

§ 5426. [4971-30.] Election Returns—Canvass of Votes.

The votes on the initiative and referendum measures submitted to the people, as in this act provided, shall be counted, canvassed and returned by the regular precinct election officers, and by the county auditors, in the manner provided by law for canvassing and returning votes for candidates for state offices. It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after any such election to canvass the votes for each measure and certify to the governor the result thereof, and the governor shall forthwith issue his proclamation giving the whole number of votes cast in the state for and against such measure, and declaring such measures as are approved by the majority of those voting thereupon, provided that the vote cast upon such measure shall equal one-third of the total vote cast at such election, to be the law of the state of Washington from the date of such proclamation. [L. '13, p. 435, § 30.]

§ 5427. [4971-31.] Penalty.

Every person who shall sign any initiative or referendum petition provided for in this act with any other than his true name shall be guilty of a felony. Every person who shall knowingly sign more than one of such petitions for the same measure or who shall sign any such petition knowing that he is not a legal voter or who shall make on any such petition any false statement as to his place of residence, and every registration officer who shall make any false report or certificate on any such petition shall be guilty of a gross misdemeanor. [L. '13, p. 435, § 31.]

Cited in 81 Wash. 646.

§ 5428. [4971-32.] Professional Solicitors — Hiring Solicitors — Corruption in General.

Every officer who shall willfully violate any of the provisions of this act, for the violation of which no penalty is herein prescribed, or who shall willfully fail to comply with the provisions of this act; and every person who shall for any consideration, compensation, gratuity, reward or thing of value or promise thereof sign or decline to sign any initiative or referendum petition; or who shall advertise in any newspaper, magazine or other periodical publication or in any book, pamphlet, circular or letter or by means of any sign, signboard, bill, poster, handbill or card or in any manner whatsoever, that he will either for or without compensation or consideration circulate, or solicit, procure or obtain signatures upon, or influence or induce or attempt to influence or induce persons to sign or not to sign any initiative or referendum petition or vote for or against any initiative or referendum measure; or who shall for pay or any consideration, compensation, gratuity, reward or thing of value or promise thereof, circulate, or solicit, procure or obtain or attempt to procure or obtain signatures upon any initiative or referendum petition; or who shall pay or offer or promise to pay, or give or offer or promise to give any consideration, compensation, gratuity, reward or thing of value to any person to induce him to sign or not to sign, or to circulate, or solicit, procure or attempt to procure, or obtain signatures upon any initiative or referendum petition or to vote for or against any initiative or referendum measure; or who shall by any other corrupt means or practice or by threats or intimidation interfere with or attempt to interfere with the right of any legal voter to sign or not to sign any initiative or referendum petition or to vote for or against any initiative or referendum measure; or who shall receive, accept, handle, distribute, pay out or give away either directly or indirectly any money, consideration, compensation, gratuity, reward or thing of value contributed by or received from any person, firm, association or corporation having his, their or its residence or principal office outside of the state of Washington, or corporation the majority of whose stockholders are nonresidents of the state of Washington, for any service, work or assistance of any kind done or rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or the adoption or rejection of any initiative or referendum measure, shall be guilty of a gross misdemeanor. [L. '13, p. 436, § 32.]

Cited in 81 Wash. 646.

TITLE XXX.

ELECTRIC LIGHT AND POWER COMPANIES.

See "Street and Electric Railways."

5430. Grant of franchise by city, town or county—Procedure.

5431. Right to lease or purchase.

5432. Power of eminent domain granted—Must assume duties of public service corporation.

5433. Power must be applied to public use.

5434. Action against company for violation of act—Procedure.

5435. Rules for construction.

5436. Copy of act to be posted.

5437. Time to comply with requirements.

5438. Change of rules—Violations.

5439. Rules of public service commission—Effect.

5440. Penalty.

§ 5430. [4972.] Grant of Franchise by City, Town or County—Procedure.

The legislative authority of the city or town having control of any public street or road, or, where such street or road is not within the limits of any incorporated city or town, then the board of county commissioners of the county wherein such road or street is situated, may grant authority for the construction, maintenance and operation of transmission lines for transmitting electric power, together with poles, wires and other appurtenances, upon, over, along and across any such public street or road, and in granting such authority the legislative authority of such city or town, or the board of county commissioners, as the case may be, may prescribe the terms and conditions on which such transmission line and its appurtenances, shall be constructed, maintained and operated upon, over, along and across such road or street, and the grade or elevation at which the same shall be constructed, maintained and operated: Provided, that hereafter on application being made to the board of county commissioners for such authority, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least fifteen days before the day fixed for such hearing, and by publishing a like notice three times in some daily newspaper published in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time by order of the board. If after such hearing the board shall deem it to be for the public interest to grant such authority in whole or in part, the board may make and enter the proper order granting the authority applied for or such part thereof as the board deems to be for the public interest, and shall require such transmission line and its appurtenances to be placed in such location on or along

the road or street as the board finds will cause the least interference with other uses of the road or street. In case any such transmission line is or shall be located in part on private right of way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects such private right of way, if such crossing is so constructed and maintained as to do no unnecessary damage: Provided, that any person or corporation constructing such crossing or operating such transmission line on or along such county road or county street shall be liable to the county for all necessary expense incurred in restoring such county road or county street to a suitable condition for travel. [L. '03, p. 360, § 1.]

See supra, §§ 2656, 2837, injury to lines.

See infra, § 6431, franchises on county roads.

See infra, §§ 9488, 9505, cities may acquire or dispose of.

See infra, §§ 11132, 11188, taxation of.

Statutory Regulation of Rates in General: See Remington's Digest, Electricity, § 1, and cases cited. See, also, notes to § 5432, infra.

Injuries and Liabilities: See Remington's Digest, Electricity, §§ 4—6, and cases cited.

Franchises: See Remington's Digest, Electricity, § 2; Castle Rock v. Furth, 78 Wash. 47, 138 Pac. 317; Tacoma R. & Power Co. v. Tacoma, 79 Wash. 508, 140 Pac. 565.

Supply of Electricity, Power or Light:

See Remington's Digest, Electricity, § 3; Seattle, Renton & So. R. Co. v. Seattle-Tacoma Power Co., 63 Wash. 639, 116 Pac. 289; Castle Rock v. Furth, 78 Wash. 47, 138 Pac. 317.

Grant of perpetual franchise to electric company. 2 A. L. R. 1105.

Power of municipality, in absence of express legislative authority, to grant street franchises to electrical company. 22 L. R. A. (N. S.) 925.

§ 5431. [4973.] Right to Lease or Purchase.

Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of manufacturing, transmitting or selling electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the Constitution of this state) the whole or any part of the plant for manufacturing or distributing electric power or energy of any other corporation, heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: Provided, that such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation; and all such leases and purchases heretofore made or entered into by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties. [L. '03, p. 362, § 3.]

§ 5432. [4974.] Power of Eminent Domain Granted — Must Assume Duties of Public Service Corporation.

Any corporation authorized to do business in this state, which, under the present laws of the state, is authorized to condemn property for the purpose of generating and transmitting electrical power for the operation of railroads, or railways, or for municipal lighting, and which by its charter or articles of incorporation, assumes the additional right to sell electric power and electric light to private consumers outside the limits of a municipality and to sell electric power to private consumers

within the limits of a municipality, which shall provide in its articles that in respect of the purposes mentioned in this section it will assume and undertake to the state and to the inhabitants thereof the duties and obligations of a public service corporation, shall be deemed to be in respect of such purposes a public service corporation, and shall be held to all the duties, obligations and control, which by law are or may be imposed upon public service corporations. Any such corporation shall have the right to sell electric light outside the limits of a municipality and electric power both inside and outside such limits to private consumers from the electricity generated and transmitted by it for public purposes and not needed by it therefor: Provided, that such corporation shall furnish such excess power at equal rates, quantity and conditions considered, to all consumers alike, and shall supply it to the first applicants therefor until the amount available shall be exhausted: Provided further, that no such corporation shall be obliged to furnish such excess power to any one consumer to an amount exceeding twenty-five per cent of the total amount of such excess power generated or transmitted by it. In exercising the power of eminent domain for public purposes it shall not be an objection thereto that a portion of the electric current generated will be applied to private purposes, provided the principal uses intended are public: Provided, that all public service or quasi-public service corporations shall at no time sell, deliver and dispose of electrical power in bulk to manufacturing concerns at the expense of its public service functions, and any person, firm or corporation that is a patron of such corporation as to such public function, shall have the right to apply to any court of competent jurisdiction to correct any violation of the provisions of this act. [L. '07, p. 349, § 1. Cf. L. '99, p. 147, § 1; L. '03, p. 362, § 2.]

See supra, §§ 891-936, procedure.

Cited in 50 Wash. 13, 15; 52 Wash. 203, 205; 70 Wash. 487, 489.

This section does not authorize a condemnation by a private corporation for the purposes of generating power for commercial purposes: State ex rel. Tolt Power & Transp. Co. v. Superior Court, 50 Wash. 13, 96 Pac. 519.

Compliance with this section does not affect the company's right to condemnation for the public purposes sought, whether this section is constitutional or not: State ex rel. Dominick v. Superior Court, 52 Wash. 196, 100 Pac. 317.

And notwithstanding the company seeks to avail itself of this section granting the right to use for private purposes surplus power generated for public purposes: State ex rel. Lyle L. P. & W. Co. v. Superior Court, 70 Wash. 486, 127 Pac. 104.

Taking of property for generation and diffusion of electricity as a public use. 22 L. R. A. (N. S.) 136; 5 Ann. Cas. 531; 7 Ann. Cas. 750; 14 Ann. Cas. 904; 21 Ann. Cas. 364; Ann. Cas. 1912D, 1004.

§ 5433. [4975.] Power must be Applied to Public Use.

Whenever any corporation has acquired any property by decree of appropriation based on proceedings in court under the provisions of this act, no portion of the electricity generated or transmitted by it by means of the property appropriated under the provisions of this act shall be used or applied by such corporation for or to a business or trade not under the present laws deemed public or quasi-public conducted by itself. [L. '07, p. 350, § 2.]

"Act" in this section refers to §§ 5432-5434.

§ 5434. [4976.] Action Against Company for Violation of Act—Procedure.

In the event of the violation of any of the requirements of this act by any corporation availing itself of its provisions, an appropriate suit may be maintained in the name of state upon the relation of the attorney general, or, if he shall refuse or neglect to act, upon the relation of any individual aggrieved by the violation, or violations, complained of, to compel such corporation to comply with the requirements of this act. A violation of this act shall cause the forfeiture of the corporate franchise if the corporation refuses or neglects to comply with the orders with respect thereto made in the suit herein provided for. [L. '07, p. 350, § 3.]

“Act” refers to the two last previous sections.

§ 5435. [4976-1.] Rules for Construction.

It shall be unlawful from and after the passage of this act for any officer, agent, or employee of the state of Washington, or of any county, city or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this act.

Rule 1. No wire or cable carrying a current of less than seven hundred fifty (750) volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is less than thirteen (13) inches from the center line of any pole. And no such wire shall be run past any pole to which it is not attached at a distance of less than thirteen (13) inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from underground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole-top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with single wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll-lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said aerial cable is placed.

Rule 2. No wire or cable used to carry a current of over seven hundred fifty (750) volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is nearer than twenty-four (24) inches to

the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four (24) inches from the center line thereof: Provided, that this shall not apply to any wire or cable where the same is run from underground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole-top fixture, as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: Provided, further, that where said wire or cable is run vertically, it shall be rigidly supported and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty (750) volts, and less than seventy-five hundred (7,500) volts of electricity, shall be run, placed, erected, maintained or used within three (3) feet of any wire or cable carrying a current of seven hundred fifty (750) volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred (7,500) volts of electricity shall be run, placed, erected, maintained, or used within seven (7) feet of any wire or cable carrying less than seventy-five hundred (7,500) volts.

Provided, that the foregoing provisions of this paragraph shall not apply to any wire or cable within buildings or other structures; nor where the same are run from underground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole.

Provided, that where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms.

Provided, further, that as between any two wires or cables mentioned in Rules 1, 2 and 3 of this section, only the wires or cables last in point of time so run, placed, erected or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call-bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained or used on any pole at a distance of less than three (3) feet from any wire or cable carrying a current of over three hundred (300) volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2 and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: Provided, that telephone, telegraph or

signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three (3) feet from any line carrying a voltage of less than seven hundred and fifty (750) volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten (10) K. W. shall be supported by a double cross-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained or used on any cross-arm or other appliance on a pole upon which is placed a series electric arc lamp or arc light: Provided, this shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test in accordance with the standardized rules of the American Institute of Electrical Engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have attached to it a tag showing the date on which the test was made, and the name of the person making the test.

Rule 6. No wire or cable carrying more than seventy-five hundred (7,500) volts of electricity shall be run, placed, erected, maintained or used on curves or corners of greater than fifteen (15) degrees without maintaining guards sufficient to hold said wire or cable in case of breakage of pins or insulators to which the same are attached, except where said wire or cable terminates or dead-ends on curves or corners.

No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential distributing systems shall be grounded in all cases where the normal maximum difference of potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty (150) volts. When no neutral point or wire is accessible one side of the secondary circuit shall be grounded in the case of single phase transformers, and any one common point in the case of interconnected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty (150) volts, grounding shall be permitted. Such grounding shall be done in the manner provided in Rule 33.

Rule 8. In all cases where a wire or cable larger than No. 14 B. W. G. originates or terminates on insulators attached to any pin or other appliances, said wire or cable shall be attached to at least two insulators.

Provided, however, that this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits of any incorporated city or town.

Rule 9. All poles along which shall be run vertically any wire or cable used to conduct or carry a current of over two hundred fifty

(250) volts shall be provided with steps, and no steps shall be placed on any pole nearer the ground than seven (7) feet.

Rule 10. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and, except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven (7) feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 11. No guy wire or cable shall be placed, run, erected, maintained or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit breakers at all times at a distance of not less than eight feet nor more than ten feet measured along the line of said guy wire or cable from each end thereof: Provided, no circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 12. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at least two circuit breakers, one of which shall at all times be maintained no less than four (4) feet nor more than six (6) feet distance from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other circuit breaker shall be maintained at the building or at the pole: Provided, that in span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: Provided, further that in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 13. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven (7) feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 14. All wires or appliances carrying a current of less than seventy-five hundred (7,500) volts, inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so guarded, located, or arranged as to protect any person from injury. All wires or appliances carrying a current of over seventy-five hundred (7,500) volts, shall be insulated, or so located or arranged, as to protect any person from injury; or shall be protected by a grounded metallic guard screen or other device equally as efficient, so arranged that no person may come within three times the arcing distance of the given voltage of such conductor or appliances as rated by the American Institute of Electrical Engineers for discharges between needle points; or

by a guard-rail or other device so arranged that no person may come within three feet of the same.

Rule 15. The secondary circuit of current transformers, the casings of all potential regulators and arc-light transformers, all metal frames of all switchboards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 33.

Rule 16. All generators and motors having a potential of more than three hundred (300) volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 17. Suitable insulated platforms or mats shall be provided for the use of all men while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred (300) volts.

Rule 18. Every generator, motor, transformer, switch or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 19. In all cases there shall be two switches used at the station or substation in each feeder for the transmission of electrical energy at constant potential of seven hundred fifty (750) volts or over; one shall be an oil switch so situated as to insure the safety of the person operating the same; the other shall be a disconnecting switch: Provided, that oil switches shall not be required in direct current feeders.

Rule 20. When lines of seven hundred fifty (750) volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 21. All switches installed with overload protection devices and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 22. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 23. There shall be provided in all distributing stations a ground detecting device.

Rule 24. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than two and one-fourth by four and one-half inches in size, which shall be

attached to all switches opened for the purpose of linemen or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his own name.

Rule 25. No manhole containing any wire carrying a current of over three hundred (300) volts shall be less than six (6) feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be six feet from wall to wall: Provided, however, that this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work: Provided, further, that the foregoing provisions of this paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 26. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 27. No manhole shall have an opening to the outer air of less than twenty-six (26) inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 28. No manhole shall have an opening which is, at the surface of the ground, within a distance of three (3) feet at any point from any rail of any railway or street-car track: Provided, that this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: Provided, that in complying with the provisions of this rule only the construction last in point of time performed, placed or erected shall be held to be in violation thereof.

Rule 29. Whenever persons are working in any manhole whose opening to the outer air is less than three (3) feet from the rail of any railway or street-car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 30. There shall be provided proper cutout switches on all primary and secondary wires in all manholes where the wires are connected with transformers or other electrical devices therein.

Rule 31. All persons employed in manholes shall be furnished with insulated platforms so as to protect the workmen while at work in the manholes: Provided, that this paragraph shall not apply to manholes containing only telephone, telegraph or signal wires or cables.

Rule 32. No work shall be permitted to be done on any live wire, cable or appliance carrying more than seven hundred fifty (750) volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: Provided, that in districts where only one competent and

experienced person is regularly employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced person and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 33. The grounding provided for in these rules shall be done in the following manner: by connecting a wire or wires not less than No. 6 B. & S. gauge to a water-pipe of a metallic system outside of the meter, if there is one, or to a copper plate one-sixteenth inch thick and not less than three feet by six feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B. & S. gauge elsewhere: Provided, that the maximum cross-section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils and short bends shall be avoided: Provided, that the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters. [L. '13, p. 397, § 1.]

Cited in 93 Wash. 305.

Compliance with this section is not evidence of proper construction except in the particulars covered by the statute; and does not cover the necessity of using lightning arresters over transformers on poles carrying high voltage wires so as to prevent excessive current entering premises on distribution lines in case of a stroke of lightning: Haas v. Washington Water Power Co., 93 Wash. 291, 160 Pac. 954.

Injuries Incident to Production or Use: See Remington's Digest, Electricity, §§ 4, 5; Graves v. Washington Water Power Co., 44 Wash. 675, 87 Pac. 956, 11 L. R. A. (N. S.) 452; Garretson v. Tacoma R. & Power Co., 50 Wash. 24, 96 Pac. 511; Scarpelli v. Washington Water Power Co., 63 Wash. 18, 114 Pac. 870; Metz v. Postal Telegraph Cable Co., 72 Wash. 188, 130 Pac. 343; Mayhew v. Yakima Power Co.,

72 Wash. 431, 130 Pac. 485; White v. Reservation Elec. Co., 75 Wash. 139, 134 Pac. 807; Haas v. Washington Water Power Co., 93 Wash. 291, 160 Pac. 954; Card v. Wenatchee Valley Gas & Electric Co., 77 Wash. 564, 137 Pac. 1047; Kempf v. Spokane & Inland Empire R. Co., 82 Wash. 263, 144 Pac. 77, L. R. A. 1915C, 405; Sweeten v. Pacific Power & Light Co., 88 Wash. 679, 153 Pac. 1054.

— **Contributory Negligence:** See Remington's Digest, Electricity, § 6; White v. Reservation Elec. Co., 75 Wash. 139, 134 Pac. 807; Card v. Wenatchee Valley Gas & Electric Co., 77 Wash. 564, 137 Pac. 1047; Druse v. Pacific Power & Light Co., 86 Wash. 519, 150 Pac. 1182; Talkington v. Washington Water Power Co., 96 Wash. 386, 165 Pac. 87.

Duties and liabilities of electric corporations. 100 **Am. St. Rep.** 515.

§ 5436. [4976-2.] Copy of Act to be Posted.

A copy of this act printed in a legible manner shall be kept posted in a conspicuous place in all electric plants, stations and storerooms. [L. '13, p. 407, § 2.]

§ 5437. [4976-3.*] Time to Comply With Requirements.

All wires, cables, poles, electric fixtures and appliances of every kind being used or operated at the time of the passage of this act, shall be

changed, and made to conform to the provisions of section 5435, on or before the first day of July, 1931.

Provided, however, that the public service commission of Washington shall have power, upon notice and hearing, to order and require the erection of all guards, protective devices, and methods of protection which in the judgment of the commission are necessary and should be constructed previous to the expiration of the time fixed in this section: Provided, however, that it shall be lawful to place additions, wires, cables, electrical fixtures or appliances upon existing poles or cross-arms so long as the new construction shall be made to conform to the provisions of this act.

Provided, further, that nothing in this act shall apply to manholes already constructed, except the provisions for guards, sanitary conditions, drainage and safety appliances specified in rules 20, 24, 26, 29, 30, 31 and 32. [L. '21, p. 86, § 1. Cf. L. '17, p. 194, § 1; L. '13, p. 407, § 3.]

Public service commission abolished. See *infra*, § 10893.

Duties devolve upon Director of Labor and Industries. See *infra*, § 10838.

§ 5438. [4976-4.] Change of Rules—Violations.

It shall be the duty of the public service commission of Washington to enforce all the provisions and rules of this act and it is hereby empowered upon hearing to amend, alter and change any and all rules herein contained, or any part thereof, and to supplement the same by additional rules and requirements, after first giving reasonable public notice and a reasonable opportunity to be heard to all affected thereby: Provided that no rule amending, altering or changing any rule supplementary to the rules herein contained shall provide a less measure of safety than that provided by the rule amended, altered or changed.

A violation of any rule herein contained or of any rule or requirement made by the commission which it is hereby permitted to make shall be deemed a violation of this act. [L. '13, p. 408, § 4.]

See note to § 5437.

§ 5439. [4976-5.] Rules of Public Service Commission—Effect.

Every public service company, county, city, or other political subdivision of the state of Washington, and all officers, agents and employees of any public service company, county, city, or other political subdivision of the state of Washington, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this act, so long as the same shall be and remain in force. Any public service company, county, city, or other political subdivision of the state of Washington, which shall violate or fail to comply with any provision of this act, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, pursuant to this act, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this act shall be a separate and distinct offense, and in case of a continued violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [L. '13, p. 408, § 5.]

See note to § 5437.

§ 5440. [4976-6.] Penalty.

Every officer, agent or employee of any public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company, the state of Washington, or any county, city or other political subdivision of the state of Washington, of any provision of this act, or who shall fail to obey, observe or comply with any order of the commission, pursuant to this act, or any provision of any order of the commission, or who procures, aids or abets any such public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [L. '13, p. 409, § 6.]

Cited in 87 Wash. 283.

Electric Railways. See "Street and Electric Railways."

Embalmers. See "Licenses," § 8313.

Embezzlement. See Criminal Law.

Eminent Domain. See §§ 891—936; "Electric Light and Power Companies," § 5432; "Street and Electric Railways," § 11083; "Logs," §§ 8398—8409; "Mines and Mining," § 8608; "Railroads," §§ 10535—10539; "Water and Water Power Companies," §§ 11570—11576.

By cities, see "Municipal Corporations," § 9214.

See, also, "Dikes and Drains," "Highways," and other specific heads.

Engineers. See "Counties," § 4143.

Employees. Liens of, see §§ 1149—1158.

Preference rights in cases of insolvency, etc., see §§ 1204—1206.

Regulations, see Labor, § 7586.

Workmens' compensation, see § 7672 et seq.

Escheats. See §§ 1356—1363.

Estates. See Executors and Administrators, § 1371.

Estrays. See "Animals," § 3154.

Evidence. See §§ 1201—1207.

Examination. Of parties, see §§ 1225—1230.

Examiner. Of titles, see "Real Property," § 10634.

Exceptions. See §§ 381—397.

Executions. See §§ 510—646.

In justice's court, see §§ 1867—1889.

Executors. Actions by and against, see § 967.

Executors and Administrators. See §§ 1372—1592.

EXEMPTIONS—FEES.

Exemptions. See §§ 528—572.

From taxation, see “Taxation,” § 11097.

In probate proceedings, see § 1473.

Express Companies. See “Railroads.”

Privilege tax on. See “Taxation,” § 11172.

Factory Act. See “Labor Law,” § 7658.

Fairs. See “Agriculture,” § 2736.

Feeble-minded. See “Education,” § 4655.

Feed Stuffs. See “Inspection,” § 7016.

Fees. See “Licenses.”

Of officers, witnesses, etc., see §§ 497—509.

Of jurors, see “Counties,” § 4229.

Of justices of the peace, see §§ 1864—1866; “Justices of the Peace and Constables,” § 7577.

Of salaried officers, see “Counties,” § 4213.

TITLE XXXI.

FENCES.

See "Railroads," §§ 10506—10509.

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§ 5441. [4977.] Lawful Fence Defined.

The following shall be considered lawful fences in this state: Post and rail or plank fences, five feet high, made of sound posts five inches in diameter, set substantially in the ground, not more than ten feet apart, with four planks not less than one inch thick and six inches wide, securely fastened by nails or otherwise, said planks not more than nine inches apart; post and rail fences, with posts not more than ten feet apart and rails not less than four inches wide (five of them), made in all other respects the same as the first described in this section; worm fences made in the usual way, of sound, substantial rails or poles, five feet high, including riders with stakes firmly set in the ground, and spaces no greater than in post and plank or rail fences, except the two lower spaces, which shall not be more than four inches, and the top spaces, between riders, not to be more than sixteen inches. Ditch and pole, or board or rail fence, shall be made of a ditch not less than four feet wide on top and three feet deep, embankment thrown up on the inside of the ditch, with substantial posts set in the embankment not more than ten feet apart, and a plank, pole, or rail securely fastened to said posts at least seven feet high from the bottom of the ditch. [Cf. L. '69, p. 323, § 1; L. '71, p. 63, § 1; L. '73, p. 447, § 1; Cd. '81, § 2488; 1 H. C., § 2544.]

See supra, § 720, injunction against "spite fences."

See infra, §§ 6438—6440, hedge fence along highway lawful.

See § 5456, infra, as to barbed-wire fences. For former laws relating to fences see L. '55, pp. 23, 24; L. '63, p. 480.

Cited in 64 Wash. 38.

This section requires an owner of inclosed lands to fence only against stock lawfully at large, and not against stock in an adjoining inclosed field; and where

the owner of stock in his own inclosure does not avail himself of the statutory provisions for the maintenance of a division fence, the common-law rule applies, and he is liable for trespass by

reason of the failure of the division fence to restrain his stock: *Kobayashi v. Strangeway*, 64 Wash. 36, 116 Pac. 461.

Use of Premises Affecting Adjoining Land: See *Remington's Digest*, Adj. Land Owners, § 2; *Karasek v. Peier*, 22 Wash. 419, 61 Pac. 33, 50 L. R. A. 345; *Winsor v. German Sav. etc. Society*, 31 Wash.

365, 72 Pac. 66; *Jones v. Williams*, 56 Wash. 588, 106 Pac. 166; *Sally v. Whitney Co.*, 89 Wash. 674, 154 Pac. 1089, L. R. A. 1916D, 764; *Williamson Inv. Co. v. Williamson*, 96 Wash. 529, 165 Pac. 385.

Constitutionality of fencing and stock laws. 6 A. L. R. 212.

§ 5442. [4978.] Other Fences Declared Lawful.

All other fences as strong and as well calculated to protect inclosures as either of those described in the preceding section shall be lawful fences. [Cf. L. '69, p. 324, § 2; L. '71, p. 64, § 2; L. '73, p. 447, § 2; Cd. '81, § 2489; 1 H. C., § 2545.]

Cited in 64 Wash. 38.

§ 5443. [4979.] Trespass by Animals—Liability for.

Any person making and maintaining in good repair, around his or her inclosure or inclosures, any fence such as is described in the last two preceding sections may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals so trespassing may be taken and held as security for the payment of such damages and costs: Provided that such person shall have such fences examined and the damages assessed by three reliable disinterested parties and practical farmers, within five days next after the trespass has been committed: And provided further, that if before trial the owner of such trespassing animal or animals shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs, and receive only the damages awarded. [L. '69, p. 324, § 3; L. '71, p. 64, § 3; L. '73, p. 447, § 3; Cd. '81, § 2490; 1 H. C., § 2546.]

See *supra*, § 3079, unnecessary to fence against swine.

Effect of statute prohibiting recovery
for damages done by trespassing

animals on unfenced lands. 9 Ann.
Cas. 1095; 22 L. R. A. 60.

§ 5444. [4980.] Boundary Line Fences—Who shall Support.

When any fence has been, or shall hereafter be, erected by any person on the boundary line of his land and the person owning land adjoining thereto shall make, or cause to be made, an inclosure, so that such fence may also answer the purpose of inclosing his grounds, he shall pay the owner of such fence already erected one-half of the value of so much thereof as serves for a partition fence between them: Provided, that in case such fence has woven wire or other material known as hog fencing, then the adjoining owner shall not be required to pay the extra cost of such hog fencing over and above the cost of erecting a lawful fence, as by law defined, unless such adjoining owner has his land fenced with hog fencing and uses the partition fence to make a

hog inclosure of his land then he shall pay to the one who owns said hog fence one-half of the value thereof. [L. '07, p. 18, § 1. Cf. L. '69, p. 324, § 4; L. '71, p. 65, § 4; L. '73, p. 448, § 4; Cd. '81, § 2491; 1 H. C., § 2547.]

Right to remove or rebuild fence separating one's land from his neighbor's land. 8 A. L. R. 1644.

Scope and import of term "owner" in statutes relating to fences. 2 A. L. R. 800.

§ 5445. [4981.] Partition Fence—Who shall Erect.

When two or more persons own land adjoining which is inclosed by one fence and it becomes necessary, for the protection of the interests of one party, said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable the line of said land. [L. '69, p. 325, § 5; L. '71, p. 65, § 5; L. '73, p. 448, § 5; Cd. '81, § 2492; 1 H. C., § 2548.]

Partition fences. 68 Am. Dec. 626; 11 Ann. Cas. 199; 22 L. R. A. 105.

and maintain partition fence. Ann. Cas. 1912C, 470; 27 L. R. A. (N. S.) 226.

Validity of oral agreement to erect

§ 5446. [4982.] Failure of One Owner to Build—Rights of Other Owner.

If after notice has been given by either party, and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party. [L. '69, p. 35, § 6; L. '71, p. 65, § 6; L. '73, p. 448, § 6; Cd. '81, § 2493; 1 H. C., § 2549.]

Cited in 90 Wash. 518.

Under this section, changing the common-law rule, an owner of unfenced lands cannot recover of an adjoining owner for damages done by trespassing cattle that

strayed across their boundary line, where their presence was not known and they were not willfully turned upon plaintiff's lands: Hanson v. Northern Pac. R. Co., 90 Wash. 516, 156 Pac. 553.

§ 5447. [4983.] Partition Fence—Who shall Repair.

The respective owners of adjoining inclosures shall keep up and maintain in good repair all partition fences between such inclosures in equal shares, so long as they shall continue to occupy or improve the same; and in case either of the parties shall desire to make such fence capable of turning hogs and the other party does not desire to use it for such purpose, then the party desiring to use it shall have the right to attach hog-fencing material to the posts of such fence, which hog fencing shall remain the property of the party who put it up, and he may remove it at any time he desires: Provided, that he leaves the fence in as good condition as it was when the hog fencing was by him attached, the natural decay of the posts excepted. The attaching of such hog fencing shall not relieve the other party from the duty of keeping in repair his part of such fence, as to all materials used in said fence additional to said hog fencing. [L. '69, p. 325, § 7; L. '71, p. 65, § 7; L. '73, p. 449, § 7; Cd. '81, § 2494; 1 H. C., § 2550; L. '07, p. 18, § 2.]

Liability for injuries arising from defects in partition fences. 54 Am. St. Rep. 519.

§ 5448. [4984.] Removal of Fences not on Line.

When any person shall unwittingly or by mistake erect any fence on the land of another, and when, by a line legally determined, that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: Provided, that when the fence to be removed forms any part of a fence inclosing a field of the other party having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run. [L. '69, p. 325, § 8; L. '71, p. 65, § 8; L. '73, p. 449, § 8; Cd. '81, § 2495; 1 H. C., § 2551.]

§ 5449. [4985.] Owner may Remove Half of Line Fence—Notice.

When any party shall wish to lay open his inclosure he shall notify any person owning adjoining inclosures, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such inclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in the last preceding section. [L. '69, p. 325, § 9; L. '71, p. 65, § 9; L. '73, p. 449, § 9; Cd. '81, § 2496; 1 H. C., § 2552.]

§ 5450. [4986.] Partition Fence, Assessment of.

In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in section 5444. [L. '69, p. 326, § 10; L. '71, p. 66, § 10; L. '73, p. 449, § 10; Cd. '81, § 2497; 1 H. C., § 2553.]

§ 5451. [4987.] Impeachment of Assessment, and Recovery of Damages.

Upon the trial of any cause occurring under the provisions of this act the defendant may impeach any such assessment and in that case the court or the jury shall determine the damages. [L. '69, p. 326, § 11; L. '71, p. 66, § 11; L. '73, p. 449, § 11; Cd. '81, § 2498; 1 H. C., § 2554.]

Sections 5441—5453, constitute "this act."

§ 5452. [4988.] Owner of Unruly Animal Liable for Damages.

The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals that may be in company with such animal. [L. '69, p. 326, § 12; L. '71, p. 66, § 12; L. '73, p. 449, § 12; Cd. '81, § 2499; 1 H. C., § 2555.]

§ 5453. [4989.] Sufficiency of Proof in Action for Damages.

In case of action for damages under this act, it shall be sufficient to prove that the fence was lawful when the break was made. [L. '71 p. 66, § 13; L. '73, p. 450, § 13; Cd. '81, § 2500; 1 H. C., § 2556.]

See note to § 5451.

§ 5454. [4990.] Barbed-wire Fence—When Lawful.

All fences constructed and maintained according to the provisions of section 5456 shall be lawful fences. [L. '86, p. 127, § 3; L. '88, p. 96, § 3; 1 H. C., § 2556a.]

Liability of owner for injuries caused by barbed-wire fence. *Ann. Cas.* 1913D, 781; *Ann. Cas.* 1915D, 856.

§ 5455. [4991.] Barbed-wire Fence—When Unlawful.

It shall be unlawful for any person or persons to construct, erect, or maintain any fence or portion of a fence of barbed wire, except as hereinafter provided. [L. '86, p. 126, § 1; L. '88, p. 95, § 1; 1 H. C., § 2557.]

Compare Code of 1881, §§ 1262—1265.

§ 5456. [4992.] Barbed-wire Fences—How to be Constructed.

Any person desiring to construct, erect [erect], or maintain any fence of barbed wire shall construct the same in the following manner, and not otherwise: The posts shall be set not more than thirty feet apart, the first wire shall not be more than twenty-two inches from the ground, the second wire thirty-four inches, and the third wire forty-eight inches; each and every one of the wires shall be tightly stretched and securely fastened to said posts, and four light poles or strips shall be fastened between each two posts to said wires, vertically, leaving no greater space than about six feet between said posts and poles or strips, or the said posts may be set not more than twelve feet apart, and two barbed wires and one pole, rail, or plank securely fastened to said posts, or one barbed wire and two rails, poles or planks securely fastened to said posts. [Cf. L. '79, p. 146, § 1; L. '83, p. 57, § 1; L. 86, p. 127, § 2; L. '88, p. 95, § 2; 1 H. C., § 2558.]

§ 5457. [4993.] Must be Kept in Repair—Penalty for Failure.

It shall be the duty of every person building, erecting, or maintaining, in whole or in part, any of the hereinbefore mentioned wire fences, to keep the same in good repair, and if upon five days' notice to any such person or persons, his or her agent, that his or her fence is not in good repair, and he or she shall neglect to repair the said fence for a period of five days after receiving such notice, such person shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not less than twenty-five nor more than fifty dollars. [Cf. L. '83, p. 58, § 2; L. '86, p. 127, § 4; L. '88, p. 96, § 4; 1 H. C., § 2559.]

§ 5458. [4994.] Violation of Provisions of Act—Penalty.

Any person violating any of the provisions of the four last preceding sections shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five nor more than two hundred dollars: Provided, that nothing in this act shall prevent any person from using more wires, posts, or strips in the erection of any fence. [Cf. L. '79, p. 146, § 2; L. '86, p. 127, § 5; L. '88, p. 96, § 5; 1 H. C., § 2560.]

Sections 5454—5458, constitute "this act."

§ 5459. [4995.] Highway may be Temporarily Fenced, When.

Whenever any inhabitant of this state shall have his fences removed by floods or destroyed by fire, the county commissioners of the county in which he resides shall have power to grant a license or permit for him or her to put a convenient gate or gates across any highway for a limited period of time, to be named in their order, in order to secure him from the depredations upon his crops until he can repair his fences, and they shall grant such license or permit for no longer period than they may think absolutely necessary. [L. '71, p. 103, § 1; 1 H. C., § 2561.]

§ 5460. [4996.] Auditor may Issue Permit, When.

It shall be lawful for the auditor of any county to grant such permit in vacation, but his license shall not extend past the next meeting of the commissioner's court. [L. '71, p. 104, § 2; 1 H. C., § 2562.]

§ 5461. [4997.] Continuance After Expiration of License—Penalty.

Any person retaining a gate across the highway after his license shall expire shall be subject to a fine of one dollar for the first day and fifty cents for each subsequent day he shall retain the same, and it may be removed by the road supervisor as an obstruction, at the cost of the person placing or keeping it upon the highway. [L. '71, p. 104, § 3; 1 H. C., § 2563.]

TITLE XXXII.

FERRIES.

- 5462. Board may grant license for ferry.
- 5463. License fee.
- 5464. To whom license granted—Notice of application.
- 5465. Notice of proposed application.
- 5466. Bond of licensee—Conditions of.
- 5467. Duties of licensee.
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§ 5462. [4998.] Board may Grant License for Ferry.

The board of county commissioners of any county in this state may grant a license to any person entitled and applying therefor to keep a ferry across any lake or stream within its respective county, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioners not exceeding five years. [L. '54, p. 354, § 1; L. '63, p. 521, § 1; L. '69, p. 280, § 40; L. '79, p. 61, § 38; Cd. '81, § 3002; 1 H. C., § 2104.]

See *infra*, § 9034, second class city may license.

See *infra*, § 6589, road company to maintain, when.

Cited in 111 Wash. 295, 298, 299.

This is a special and not a general law, covering the whole subject matter, and was not impliedly repealed by § 10339 et seq., *infra*, for the regulation of public utilities: *State ex rel. Allen v. Public Service Commission*, 111 Wash. 294, 190 Pac. 1012.

Grant of perpetual franchise for ferry. 2 A. L. R. 1105.

Necessity of franchise for ferry. 37 L. R. A. 712.

Establishment, regulation and protection of ferries. 59 L. R. A. 513; L. R. A. 1916D, 832.

§ 5463. [4999.] License Fee.

The board of county commissioners shall charge such sum as may appear reasonable—not less than one dollar nor more than one hundred dollars per annum—for such license, and the person to whom such license shall be granted shall pay to the county treasurer the tax for one year in advance, taking his receipt therefor; and upon the production of such receipt the county auditor shall issue such license under the seal of his office. [L. '54, p. 354, § 2; L. '63, p. 522, § 2; L. '69, p. 280, § 41; L. '79, p. 61, § 39; Cd. '81, § 3003; 1 H. C., § 2105.]

License fees from ferry. 59 L. R. A. 533.

Power of state or municipality to im-

pose license tax on international or interstate ferries. 52 L. R. A. (N. S.) 574.

§ 5464. [5000.] To Whom License Granted—Notice of Application.

No such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where the ferry is proposed to be kept, unless such owner shall neglect to apply for such license; and whenever application shall be made for a license by any person other than such owner, the board of county commissioners shall not grant the same, unless proof shall be made that the applicant caused notice, in writing, of his intention to make such application to be given to such owner, if residing in the county, at least ten days before the session of the board of county commissioners at which application is made. [L. '54, p. 354, § 3; L. '63, p. 522, § 3; L. '69, p. 280, § 42; L. '79, p. 61, § 40; Cd. '81, § 3004; 1 H. C., § 2106.]

§ 5465. [5001.] Notice of Proposed Application.

Every person intending to apply for a license to keep a ferry at any place shall give notice of such intention by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, twenty days prior to any regular session of the board of county commissioners at which the application shall be made. [L. '54, p. 354, § 4; L. '63, p. 522, § 4; L. '69, p. 281, § 43; L. '79, p. 61, § 41; Cd. '81, § 3005; 1 H. C., § 2107.]

§ 5466. [5002.] Bond of Licensee—Conditions of.

Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond with one or more sureties, to be approved by the county auditor, in a sum not less than one hundred nor more than five hundred dollars, conditioned that such person will keep said ferry according to law; and if default shall at any time be made in the condition of such bond, damages, not exceeding the penalty, may be recovered by any person aggrieved, before any court having competent jurisdiction. [L. '54, p. 354, § 5; L. '63, p. 522, § 5; L. '69, p. 281, § 44; L. '79, p. 62, § 42; Cd. '81, § 3006; 1 H. C., § 2108.]

§ 5467. [5003.] Duties of Licensee.

Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skillful men to attend and manage the same; and he shall also at all times keep the place of embarking and landing in good order and repair, by cutting away the bank of the stream so that persons and property may be embarked and landed without danger or unnecessary delay. [L. '54, p. 354, § 6; L. '63, p. 522, § 6; L. '69, p. 281, § 45; L. '79, p. 62, § 43; Cd. '81, § 3007; 1 H. C., § 2109.]

Duties and liabilities of keepers of ferries. 87 Am. Dec. 720.

§ 5468. [5004.] Duties of Licensee, Penalty for Failure to Perform.

Every person obtaining a license as aforesaid shall give constant and diligent attention to such ferry from daylight in the morning until

dark in the evening of each day, and shall, moreover, at any hour in the night, if required, except in cases of imminent danger, give passage to all persons requiring the same on the payment of double rate of ferriage allowed to be taken in the daytime; and if he shall at any time neglect or refuse to give passage to any person or his property, he shall forfeit and pay to the party aggrieved for every such offense the sum of five dollars, to be recovered before any justice of the peace having jurisdiction; and he shall, moreover, be liable in an action at law for any special damage which such person may have sustained in consequence of such neglect or refusal; but no forfeiture or damages shall be recovered for a failure or refusal to convey any person or property across such stream when it is manifestly hazardous to do so, by reason of any storm, flood, or ice, nor shall any keeper of a ferry be compelled to give passage to any person or property until the fare or toll chargeable by law shall have been fully paid or tendered to such keeper. [L. '54, p. 355, § 7; L. '63, p. 523, § 7; L. '69, p. 281, § 46; L. '79, p. 62, § 44; Cd. '81, § 3008; 1 H. C., § 2110.]

§ 5469. [5005.] Rates of Ferriage, How Established—Unlawful Rates.

Whenever the county commissioners of any county shall grant a license to keep a ferry across any lake or stream, such commissioners shall establish the rates of ferriage which may be lawfully demanded for the transportation of persons and property across the same, having due regard for the breadth and situation of the stream, and the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established, and every keeper of a ferry who shall at any time demand and receive more than the amount so designated for ferrying shall forfeit and pay to the party aggrieved, for every such offense, the sum of five dollars, over and above the amount which shall have been illegally received, to be recovered before any justice of the peace having jurisdiction. [L. '54, p. 355, § 8; L. '63, p. 523, § 8; L. '69, p. 282, § 47; L. '79, p. 63, § 45; Cd. '81, § 3009; 1 H. C., § 2111.]

See *supra*, § 2715, extortion by ferryman.

§ 5470. [5006.] Commissioners may Fix, Alter, and Establish Rates.

The county commissioners of the several counties are hereby authorized to fix, alter, and establish, from time to time, the rates of ferriage to be levied and collected at all ferries now established, or hereafter to be established by law, within or bordering upon the county lines of any of the counties in this state. [L. '69, p. 282, § 48; L. '79, p. 63, § 46; Cd. '81, § 3010; 1 H. C., § 2112.]

§ 5471. [5007.] Posting List of Rates.

Every person licensed to keep a ferry shall post up, in some conspicuous place near his ferry landing, a written or printed list of the rates of ferriage which are chargeable by law at such ferry, which list of rates shall at all times be written or printed in a plain, legible manner, and posted up so near the place where persons shall pass across such ferry that the same may be easily read; and if at any time such

keeper shall neglect or refuse to post and keep up such list, it shall not be lawful to charge or take any ferriage or compensation at such ferry, during the time of such delinquency. [L. '54, p. 355, § 9; L. '63, p. 523, § 9; L. '69, p. 283, § 49; L. '79, p. 63, § 47; Cd. '81, § 3011; 1 H. C., § 2113.]

§ 5472. [5008.] Order of Carriage—Penalty.

All persons shall be received into the ferry-boats and conveyed across the stream over which such ferry shall be established according to their arrival at the same, and if any keeper of a ferry shall act contrary to this regulation, he shall forfeit and pay the sum of ten dollars for every such offense to the party aggrieved, to be recovered before any justice of the peace, having jurisdiction: Provided, that public officers on urgent business, post-riders, couriers, physicians, surgeons, and midwives shall in all cases be first carried over, when all cannot go at the same time. [L. '54, p. 356, § 10; L. '63, p. 524, § 10; L. '69, p. 283, § 50; L. '79, p. 63, § 48; Cd. '81, § 3012; 1 H. C., § 2114.]

See supra, § 3124, bill of health of stock required, when.

§ 5473. [5009.] Privilege is Exclusive.

Every person licensed to keep a ferry, according to the provisions of this title, shall have the exclusive privilege of transporting all persons and property over and across the stream where such ferry is established, and shall be entitled to all the fare arising by law therefrom: Provided, that nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat, or to take in and carry over his neighbor, when the same is done without fee or charge, and not with the intent to injure any person licensed to keep a ferry. [L. '54, p. 356, § 11; L. '63, p. 524, § 11; L. '69, p. 283, § 51; L. '79, p. 63, § 49; Cd. '81, § 3013; 1 H. C., § 2115.]

Cited in 112 Wash. 32.

After issuance of a license at one location, the county commissioners cannot

issue another in close proximity thereto: *Anderson v. Glenn*, 112 Wash. 31, 191 Pac. 792.

§ 5474. [5010.] Revocation of License.

If any person licensed to keep a ferry shall fail to pay the tax assessed thereon when due, or shall not provide and keep in good and complete repair the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skilled and discreet ferrymen, as provided in section 5467, within three months from the time license shall be granted, or if such ferry shall not at any time be kept in good condition and repair, agreeably to the provisions of this title, or if the same shall be abandoned, disused, or unfrequented for the space of six months at any one time, if [it] shall be lawful for the board of county commissioners of the proper county, on complaint being made in writing, to summon the person licensed to keep such ferry, to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced and the laws of this state, which decision, when made, shall be valid to all intents and purposes, subject to be reviewed

by the superior court: Provided, that if any ferry shall be disused by reason of the stream over which the same is established being fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture within the meaning of this section. [L. '54, p. 356, § 12; L. '63, p. 524, § 12; L. '69, p. 283, § 52; L. '79, p. 64, § 50; Cd. '81, § 3014; 1 H. C., § 2116.]

§ 5475. [5011.] Maintaining Ferry Without License.

Any person who shall maintain any ferry and receive ferriage without first obtaining a license for the same shall pay a fine of ten dollars for each offense, to be collected for the use of the county, by suit before any justice of the peace having jurisdiction, and any person is hereby authorized to bring such suit: Provided, that it shall not be considered unlawful for any person to transport any other person or his property over any stream for hire, when it shall be made evident that there is no ferry, or that the ferry established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or his property a safe and speedy passage. [L. '54, p. 356, § 13; L. '63, p. 525, § 13; L. '69, p. 284, § 53; L. '79, p. 64, § 51; Cd. '81, § 3015; 1 H. C., § 2117.]

Cited in 111 Wash. 295.

§ 5476. [5012.] City may Construct Ferry, etc.

Any incorporated city or town within this state be and is hereby authorized to construct, or condemn and purchase, or purchase and to maintain, a ferry across any unfordable stream adjoining and within one mile of the limits of such city or town, together with all necessary grounds, roads, approaches and landings necessary or appertaining thereto located within one mile of the limits of such city or town, with full jurisdiction and authority to manage, regulate and control the same beyond the limits of the corporation, and to operate the same free or for toll. [L. '95, p. 341, § 1.]

See *infra*, § 9034, second class city may license.

Cited in 75 Wash. 211.

§ 5477. [5013.*] County may Construct, Condemn or Purchase.

Any county within the state be and is hereby authorized to construct, condemn, or purchase, operate and maintain ferries or boats across, or wharf at, any unfordable stream, lake, estuary or bay within or bordering on said county, or across any body of water separating portions of such county or separating such county from other counties, together with all the necessary boats, grounds, roads, approaches and landings necessary or appertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll, by and under the direction and control of the board of county commissioners of such county and as said board shall by resolution determine. [L. '19, p. 282, § 1; L. '95, p. 341, § 2; L. '99, p. 39, § 1.]

Cited in 84 Wash. 377; 95 Wash. 500; ex rel. Jackson v. King County, 29 Wash. 104 Wash. 490, 492; 111 Wash. 299. 359, 69 Pac. 1106.

Maintenance and Control of Ferry: See This section is an exclusive grant to Remington's Digest, Counties, § 37; State use shore lands, belonging to the state,

for the purpose to a wharf and approaches to the ferry connecting with a public highway laid out along the shore: *Anderson Steamboat Co. v. King County*, 84 Wash. 375, 146 Pac. 855.

Liability of County for Personal Injuries: *Bergen v. Lewis County*, 95 Wash.

499, 164 Pac. 73; *Hart v. King County*, 104 Wash. 485, 177 Pac. 344.

The operation of a ferry for commercial purposes is not the exercise of a governmental function: *Town of Woolley, In re*, 75 Wash. 206, 134 Pac. 825.

§ 5478. [5013-1.*] Interstate Ferries—Construction by County.

That whenever the board of county commissioners of any county shall determine that the construction or maintenance of a ferry in a state adjoining such county or connecting such county with such adjoining state is of necessity or convenience to the citizens of such county, the board shall have power to enter into a contract for the construction or maintenance of such ferry, or to make such contribution as may be deemed advisable toward the construction or maintenance thereof, and to lease, or grant exclusive permits to use any wharf or landing owned or leased by such board to any person, firm or corporation furnishing, or agreeing to furnish ferry service between such county and such adjoining state. [L. '21, p. 656, § 1; L. '15, p. 59, § 1.]

Cited in 111 Wash. 295, 297.

This act was a special law on this subject alone and not a general law, and is not impliedly repealed by the public service common law, § 10339, *infra*: State

ex rel. Allen v. Public Service Commission, 111 Wash. 294, 190 Pac. 1012.

State grant of franchises for ferries over interstate streams. 27 *Am. St. Rep.* 555.

§ 5479. Joint County Ferries—Maintenance.

Whenever a river, lake or other body of water is on the boundary line between two counties in this state, the boards of county commissioners of the counties adjoining such stream or body of water may construct, purchase, equip, maintain and operate a ferry across such river, lake or other body of water, when such ferry shall connect the county roads or other public highways of their respective counties. All costs and expenses of constructing, purchasing, maintaining and operating such ferry shall be paid by the two counties, each paying such proportion thereof as shall be agreed upon by the boards of county commissioners. [L. '17, p. 710, § 1.]

§ 5480. Joint Board of Commissioners—Officers—Records.

In order to carry out the provisions of section 5479, the boards of county commissioners of the two counties shall meet in joint session at the county seat of one of the counties interested, and shall elect one of their members as chairman of the joint board of commissioners, who shall act as such chairman during the remainder of his term of office, and, at the expiration of his term of office, the two boards of county commissioners shall meet and elect a new chairman, who shall act as such chairman during his term of office as county commissioner, and they shall continue to elect a chairman in like manner thereafter. The county auditors of each of said counties shall be clerks of such joint commission, and the county auditor of the county where each meeting is held shall act as clerk of the commission at all meetings held in his county. It shall be the duty of each county auditor, as soon as such joint commission is organized, to procure a record book and enter therein a complete record

of the proceedings of such joint commission, and the county auditor of the county in which the meeting is held shall, immediately after adjournment of such commission, forward a complete copy of the minutes of the proceedings of the commission to the auditor of the other county to be entered by him in his record, and each county shall keep a complete record of the proceedings of such commission. [L. '17, p. 710, § 2.]

§ 5481. Expenses a Joint Liability—Payment.

Said joint commission shall be authorized to transact all business necessary in carrying out the purposes of this act, and their said acts shall be binding upon the two counties, and one-half of all bills and obligations created by such joint commission shall be binding and a legal charge against the road and bridge fund of each county and the claims for same shall be allowed and paid out of the road and bridge fund the same as other claims against said fund by the respective boards of county commissioners: Provided, that if the estimated cost of constructing or purchasing a ferry shall exceed the sum of three hundred dollars (\$300), the same shall be done by contract in the same manner as the letting of contracts for bridges, except in case of emergency. [L. '17, p. 711, § 3.]

§ 5482. Audit and Allowance of Claims.

That all claims and accounts for the construction, operation and maintenance of such ferry or ferries shall be presented to and audited by the joint commission: Provided, that items of expense connected with the operation of such ferry which do not exceed the sum of thirty dollars (\$30) in amount may be presented to the chairman of the joint commission and allowed by him and when allowed shall be a joint charge against the road and bridge fund of each of the counties operating such ferry, as provided in section 5481. [L. '17, p. 711, § 4.]

§ 5483. Impeachment of Commissioner Refusing to Act.

The members of the board of county commissioners of each of said counties shall be members of said joint commission and their refusal to act shall be grounds for impeachment; and it shall be their duty to provide for the maintenance and operation of such ferry until it is discontinued by a majority vote of said joint commission. [L. '17, p. 712, § 5.]

Fertilizers. See "Agriculture," § 2898.

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FINANCE.

TITLE XXXIII.
FINANCE.

See "Counties"; "Municipal Corporations."

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CHAPTER I.

STATE FISCAL AGENT.

§ 5484. [5015.] State Treasurer is Fiscal Agent of State.

The state treasurer shall be ex officio the fiscal agent of the state. [L. '91, p. 278, § 1; 1 H. C., § 2564.]

§ 5485. [5016.] Duty of Fiscal Agent of State.

It shall be the duty of the fiscal agent of the state to receive all moneys due the state from any other state or from the general government, to take all necessary steps for the collection of such sums, and to apply the same to the funds to which they may by law belong. [L. '91, p. 278, § 2; 1 H. C., § 2565.]

§ 5486. [5017.] Particular Duties as to Issuing Receipts.

It shall be the duty of the fiscal agent to issue the necessary receipts for all moneys collected under the provisions of this chapter and such receipts shall show the date when paid, the amount, from whom received, and on what account the same was collected; one or more copies of such receipt shall be given to the person or persons from whom the money was received, and one copy shall be given to the state auditor. [L. '91, p. 278, § 3; 1 H. C., § 2566.]

§ 5487. [5018.] Must Collect Money Due the State by Virtue of Enabling Act.

The fiscal agent of the state shall proceed at once to collect from the general government the money now due the state by virtue of section 13 of the act of congress enabling this state into the Union, and which reads as follows: "Five per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the Union, after deducting all of the expenses incident to the same, shall be paid to said states, to be used as a permanent fund, the interest of which only shall be expended, for the support of common schools within said states respectively"; and said agent shall continue to collect from time to time all moneys that may accrue to the state by virtue of the act above quoted, or from any other source not otherwise provided for by law. [L. '91, p. 278, § 4; 1 H. C., § 2567.]

CHAPTER II.

STATE FISCAL AGENCY IN NEW YORK.

§ 5488. [5019.] Fiscal Agency.

There is hereby established in the city of New York a fiscal agency of the state of Washington, and of the counties, townships, school districts, cities and towns, therein, for the payment through such agency of all bonds and coupons hereafter to be issued by this state, or by any county, township, school district, city or town therein, as shall be by their terms made payable in the city of New York. Such agency shall be known as the fiscal agency of the state of Washington in the city of New York. [L. '95, p. 353, § 1.]

§ 5489. [5020.] Governor to Appoint.

The governor of this state is hereby authorized and directed, within thirty days after this act shall take effect, to designate some well-known and responsible bank or trust company in the city of New York having a paid-up capital amounting, with its surplus, to not less than one million dollars, to act as the fiscal agency established by the last section, and to make duplicate certificates of such designation and cause the same to be attested under the seal of the state, and to file one of such duplicate certificates in the office of the secretary of the state and to transmit the other to such bank or trust company designated; and such bank or trust company shall become and is hereby declared to be a fiscal agency established by this chapter, and shall continue to be such fiscal agency for the term of four years from and after the filing of the certificate of its designation as such, and thereafter until the designation of another bank or trust company as such fiscal agency. No bank or trust company that buys or sells municipal bonds as dealers shall be eligible to the appointment of fiscal agents. [L. '95, p. 354, § 2.]

§ 5490. [5021.] Fiscal Agency, Duty of.

It shall be the duty of the fiscal agency established by this chapter on the receipt of any moneys transmitted to such agency by or for this state, or for any county, township, school district, city or town therein, for the purpose of paying therewith any of its bonds or coupons hereafter to be issued and by their terms made payable in the city of New York, to transmit forthwith to the sender of such moneys a proper receipt therefor; to pay such bonds or coupons upon presentation thereof for payment at the office of such agency in the city of New York at or after the maturity thereof, in the order of their presentation, so far as the moneys received for that purpose suffice for such payment; and to cancel all such bonds and coupons upon payment thereof, and thereupon forthwith to return the same to the proper officers of this state, or any county, township, school district, city or town therein which shall have issued such bonds or coupons. [L. '95, p. 354, § 3.]

§ 5491. [5022.] Compensation.

The fiscal agency established by this chapter shall receive no compensation for the performance of the duties prescribed by this chapter. [L. '95, p. 354, § 4.]

§ 5492. [5023.] Bonds, Where Payable.

No bonds which shall be hereafter issued by this state, or by any county, township, school district, city or town therein, after this act shall take effect, shall be by their terms made payable in the city of New York at the specific place other than at the office of the fiscal agency hereby established. [L. '95, p. 355, § 5.]

§ 5493. [5024.] Treasurers, Duty of.

It shall be the duty of the state treasurer, and the duty of the treasurer or other proper officer of every county, township, school district, city or town in this state, to transmit to the fiscal agency hereby established, not less than twelve days before the maturity of any bonds or coupons that shall hereafter be issued by the state, or by any county, township, school district, city or town therein, and that shall be by their terms made payable in the city of New York, sufficient moneys out of any funds in the hands of any such treasurer or other officer applicable to such purpose for the payment of such bonds and coupons. [L. '95, p. 355, § 6.]

CHAPTER II-A.**REGISTRATION OF MUNICIPAL BONDS.****§ 5494. [5024-1.] Registration—Payment—Assignments.**

Upon the presentation at the office of the officer or agent hereinafter provided for any bond that has heretofore been or may hereafter be issued by any county, city, town, port or school district in this state, the same may be registered as to principal in the name of the owner upon the books of such municipality to be kept in said office, such registration to be noted on the reverse of the bond by such officer or agent. The principal of any bond so registered shall be payable only to the payee, his legal representative, successors or assigns, and such bond shall be transferable to another registered holder or back to bearer only upon presentation to such officer or agent, with a written assignment duly acknowledged or proved. The name of the assignee shall be written upon any bond so transferred and in the books so kept in the office of such officer or agent. [L. '15, p. 270, § 1.]

Negotiability of municipal bonds as affected by registration. 5 Ann. Cas. 197.

§ 5495. [5024-2.] Payment of Interest Coupons.

If, upon the registration of any such bond, or at any time thereafter, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be canceled by such officer or agent, who shall sign a statement indorsed upon such bond of the cancellation of all unmatured coupons and the registration of such bond. Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein to the registered holder of such bond in New York exchange mailed to his address. [L. '15, p. 270, § 2.]

§ 5496. [5024-3.] Registration Officers—Fiscal Agency in New York.

The duties herein prescribed as to the registration of bonds of any city or town shall be performed by the treasurer thereof, and as to those

of any county, port or school district by the county treasurer of the county in which such port or school district lies; but any county, city, town, port or school district may designate by resolution any other officer for the performance of such duties, and any county, city, town, port or school district may designate by resolution the fiscal agency of the state of Washington in New York for the performance of such duties, after making arrangements with such fiscal agency therefor, which arrangements may include provision for the payment by the bondholder of a fee not exceeding twenty-five cents for each registration. [L. '15, p. 270, § 3.]

CHAPTER III.

DEFICIENCIES IN PUBLIC INSTITUTIONS.

§ 5497. [5025.] Deficiencies Unlawful.

It shall be unlawful for any of the state officers or trustees, managers, directors, superintendents or boards of commissioners of any of the public institutions of the state of Washington, or for the officers of any of the departments of the state of Washington, to create a deficiency, incur liability, or to expend a greater sum of money than is appropriated by the legislature for the use of said public institution or department. [L. '95, p. 58, § 1.]

Cited in 17 Wash. 485; 42 Wash. 654; 98 Wash. 255, 256, 260.

fending suits: *Ritchie v. State*, 42 Wash. 653, 85 Pac. 417.

Under this act, the attorney general has no power to employ an architect as an expert necessary to the defense of an action creating a liability in excess of the limit fixed by law for expenses in de-

Duty to draw salary warrant when "fixed and ascertained by law"; notwithstanding this section: *State ex rel. Helander v. Clausen*, 98 Wash. 253, 167 Pac. 947.

§ 5498. [5026.] Individual Liability—Penalty.

Any officer, trustee, manager, director, superintendent or commissioner, enumerated in the last preceding section, who shall violate the provisions of this chapter by creating a deficiency, incurring a liability, or expending a greater sum than is appropriated by the legislature for any public institution or department of this state in any one year, shall be individually liable for the same, and shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars. [L. '95, p. 58, § 2.]

Cited in 17 Wash. 485.

§ 5499. [5027.] Liability on Bond.

Any person, copartnership or corporation with whom a liability is attempted to be incurred or debt contracted by such officers, trustees, managers, directors, superintendents or commissioners in violation of the provisions of this chapter, shall have a cause of action against such officers, trustees, managers, directors, superintendents or commissioners so violating the provisions of this chapter, and against the sureties on their official bonds for the full amount of such liability incurred or debt contracted. [L. '95, p. 58, § 3.]

§ 5500. [5028.] Exceptions.

In case of an emergency requiring an expenditure of a greater sum than the amount appropriated by the legislature for the insane asylum, reform school, soldiers' home, school for defective youth, and penitentiary in any one year, the trustees, managers, directors, superintendents or commissioners of said institutions may, on written advice and consent of the governor, state auditor, secretary of state, treasurer and attorney general, incur such liability for maintenance only, as circumstances may require. [L. '95, p. 58, § 4.]

This section appears to be in conflict with § 4 of Art. VIII of the Constitution.

See infra, § 10899, state board of audit and control, which supplants part of the boards of trustees mentioned in this section.

Cited in 42 Wash. 654.

CHAPTER IV.**STATE FUNDS.****§ 5501. [5029.] Payment of Public Moneys into State Treasury.**

It shall be the duty of each state officer or other person (other than county treasurers) who is authorized by law to collect or receive moneys belonging to the state or to any department or institution thereof, to transmit to the treasurer of the state each day, all moneys collected by him on the preceding day, together with a statement of the source from which each item of said money was derived, and to transmit to the state auditor a duplicate of said statement: Provided, that the provisions of this section shall apply to the office of commissioner of public lands in so far only as to require said officer to transmit all moneys received in payment in principal and interest under outstanding contracts and leases where no question is raised as to the right of the state to receive payment; and as to all cases where the right of the state to receive such moneys is in doubt the commissioner shall transmit the same to the treasurer within five days after the determination of the commissioner of the board of state land commissioners that the money is due to the state: Provided, further, that money shall not be deemed to have been paid to the state of Washington upon any sale or lease of land until the money shall have been paid to the state treasurer: And provided further, that this act shall not apply to the educational institutions of the state, but each of such educational institutions shall, at the end of every three months, file with the state auditor an itemized statement showing all moneys received by it from sources other than state legislative appropriations, the particular source from which the same was received, the purpose for which the same or any part thereof, has been expended, and the balance on hand. [L. '07, p. 179, § 1; L. '09, p. 433, § 1.]

"Act" refers to the first three sections of this chapter.

See infra, § 5527, as to moneys of State College.

See infra, § 11032, moneys received by attorney general to be paid into.

Cited in 108 Wash. 563; 111 Wash. 128, 129, 131.

This section has no application to moneys received by the Veterans' Welfare Commission: State ex rel. Thompson v. Powell, 108 Wash. 561, 185 Pac. 573.

Moneys received by the treasurer of the board of regents of the State College from students' fees and rents and sources other than the general and state government are not a part of the "state finances" to be paid over by him to the

state treasurer, within the meaning of the act of 1907, page 179: State ex rel. Johnson v. Clausen, 51 Wash. 548, 99 Pac. 743.

This section did not repeal section 2742, supra, a special act authorizing the

state fair commissioners to remit moneys remaining in their hands, after applying receipts to the revolving fund provided for: State ex rel. Sherman v. Benson, 111 Wash. 124, 189 Pac. 1000.

§ 5502. [5030.] Treasurer to Notify Governor.

It shall be the duty of the state treasurer to inform the governor of any failure on the part of any officer to comply with the provisions of this act. [L. '07, p. 180, § 2.]

"Act" refers to the first three sections of this chapter.

§ 5503. [5031.] Liability of Officers.

If any officer shall fail to comply with the provisions of this act he shall be liable to the state of Washington upon his official bond in a sum equal to ten per centum annual interest for such time as such officer shall have retained such funds. [L. '07, p. 180, § 3.]

"Act" refers to the first three sections of this chapter.

See supra, § 2569, failure to pay over moneys received.

§ 5504. [5032.] Duplicate Receipts for Moneys Paid.

All persons who are required by law to pay any moneys into the state treasury, or to transmit any public funds to the state treasurer on state accounts, shall, at the time of making such payments or transmissions, notify the state auditor thereof, specifying the amount and date of such payment, and for what particular fund or account. For all sums of money so paid into the treasury, the state treasurer shall forthwith give duplicate receipts under his seal of office, one of which he shall deposit with the state auditor, who shall credit such person or county accordingly, and charge the treasurer with the amount; the other receipt the treasurer shall transmit to the person or party paying the money. [L. '54, p. 414, § 5; L. '64, p. 53, § 5; L. '71, p. 78, § 4; L. '86, p. 134, § 4; L. '90, p. 643, § 4; 1 H. C., § 108.]

This section may be superseded, in part at least, by § 5501, supra.

§ 5505. [5032a.] Shore Land Improvement Fund.

There is hereby created a state shore land improvement fund, and all warrants drawn upon said fund pursuant to this act, including interest thereon, shall be paid in the same manner as the state's general fund warrants are paid. [L. '09, p. 746, § 1.]

This act refers to appropriations for the Lake Washington Canal, King County, Washington.

Cited in 60 Wash. 454.

§ 5506. [5032b.] General Fund not Liable.

Indebtedness incurred or warrants issued hereunder shall be payable only from the state shore land improvement fund, and shall never be nor become general indebtedness against the state. [L. '09, p. 748, § 4.]

Other provisions of this act are omitted as relating to an appropriation of a local nature. See note to last section.

§ 5507. [5032c.] Loans from One Fund to Another.

Whenever there shall be in any fund or funds in the state treasury insufficient moneys to meet the current expenditures properly payable from such funds, and there shall be in any other fund or funds, moneys in excess of the amount required to meet the current expenditures therefrom, the state treasurer may, with the consent of the state board of finance, make temporary loans from the funds having excess moneys to those having insufficient moneys, of such sum or sums as may be necessary to meet the demands upon such funds: Provided, that this act shall not authorize the loan of any moneys from the permanent school fund, nor from any of the funds of the permanent irreducible educational, charitable, penal or reformatory institutions of the state, nor to exceed seventy-five per cent of the taxes levied and uncollected. [L. '15, p. 32, § 1.]

§ 5508. [5032d.] Interest on Inter-fund Loans—Notice of Transfer.

In the event any such loan is made, the state treasurer shall charge the fund receiving such temporary loan with the loan and with interest thereon at the depositary interest rate as fixed by the state board of finance, and shall repay such loan to the funds from which the same is borrowed, at such times and in such amounts as there shall be moneys in the borrowing funds not required to meet the current expenditures payable therefrom, sufficient to repay the same or a part thereof, and shall credit the loaning fund with their deposit interest, as required by law, the same as if no such loans had been made. And the state treasurer is hereby specifically directed and authorized to transfer from the borrowing funds to the credit of the deposit interest fund for the credit of the loaning funds such amounts of unearned deposit interest, at the then prevailing depositary interest rate, occasioned by the withdrawal of the state funds from deposit because of the loans herein provided for. And it shall be the duty of the state treasurer to forthwith notify the state auditor in writing of any such transfer or transfers of deposit interest. [L. '15, p. 32, § 2.]

CHAPTER V.**GENERAL FUND AND DISBURSEMENTS THEREFROM.****§ 5509. [5033.] Moneys Payable into General Fund.**

All moneys now in or that may be paid into the state treasury from any and all sources, except moneys received from taxes levied for specific purposes and excepting the several permanent and irreducible funds of the state, and the moneys derived therefrom, shall be paid into and become a part of the general fund of the state. [L. '07, p. 13, § 1.]

This section supersedes a number of former laws creating special funds.

§ 5510. [5034.] Salaries Paid from General Fund.

All salaries and other expenses heretofore required to be paid from any of the funds affected by the last section shall hereafter be paid from the state general fund. [L. '07, p. 13, § 2.]

§ 5511. License Fees Credited to General Fund.

All moneys received by the state treasurer as fees for the issuance of licenses upon examination, and the renewal thereof, and paid into the state

treasury, shall be credited to the general fund; and all expenses incurred in connection with the examination of applicants for licenses, and the issuance and renewal of licenses upon examination shall be paid by warrants drawn against the general fund. The "Drugless Practitioners' Fund" in the state treasury is abolished and all funds therein are hereby transferred to the general fund. [L. '21, p. 223, § 1.]

§ 5512. [5035.] Itemized Vouchers must be Taken, etc.

All precinct, county, district, and state officers and all commissions or the state of Washington charged with the disbursement of public moneys or certifying indebtedness to the state auditor, or other disbursing officer, shall take fully itemized vouchers for such disbursements; said vouchers shall be taken in duplicate, one to be filed with the auditor of state, the other to be retained by the officer making the disbursement or certifying the indebtedness. Said vouchers shall contain a certificate by the disbursing officer, certifying on honor that the materials furnished, labor performed, or services rendered, for which such disbursement is made, have been actually delivered, rendered or performed: Provided, that all county, district, or precinct officers shall file such vouchers with the county auditor. [L. '91, p. 235, § 1; 1 H. C., § 3131.]

§ 5513. [5036.] Certificate must be Attached to Voucher, When.

All persons furnishing materials, rendering service, or performing labor, or receiving certificates of indebtedness from any disbursing or other officer of the state, or any county, district, or precinct officer or commission shall furnish a certificate, certifying on honor that he has furnished materials, rendered services, or performed labor, as described in said voucher, which said certificate shall be a part of such voucher or attached to the same. [L. '91, p. 236, § 2; 1 H. C., § 3132.]

§ 5514. [5037.] Unlawful to Issue Warrants Except on Voucher.

It shall be unlawful for the state auditor to issue any warrant or warrants except upon vouchers for services rendered or material furnished duly certified and authenticated: Provided, however, that if any officer or department of the state shall file with the auditor a surety company bond satisfactory to said auditor, and conditioned upon the proper accounting for and legal expenditure of any moneys to be advanced, the auditor may from time to time advance to such officer or department, out of the appropriation for the expenses of such officer or department, such amounts as he may deem advisable, not exceeding the principal of said bond and in no event exceeding two thousand dollars (\$2,000). [L. '15, p. 247, § 1. Cf. L. '95, p. 191, § 1.]

§ 5515. [5038.] Punishment for Violation of Provisions of This Chapter.

Any officer or person violating any of the provisions of sections 5512 and 5513 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars, or more than five hundred dollars, and may be imprisoned in the county jail not less than ten days or more than six months. [L. '91, p. 236, § 3; 1 H. C., § 3133.]

§ 5516. [5039.] Indorsement of Warrants not Paid for Want of Funds.

Upon the presentation of any state warrant or warrants to the state treasurer, it shall be his duty, if there be no funds in the state treasury, to indorse on said warrant or warrants, "Not paid for want of funds," with the day and date of such presentation, and said warrant or warrants shall from said date draw legal interest till paid. [L. '69, p. 408, § 2.]

See *infra*, § 11026, payment in order of issuance.

Mandamus will issue at the suit of a private person to compel performance of the state treasurer's duty under this section: *State ex rel. Hellar v. Young*, 21 Wash. 391, 58 Pac. 220.

§ 5517. [5040.] Call for Warrants.

The state treasurer shall, when he has sufficient money on hand to pay warrants exceeding three thousand dollars, and said warrants are not presented for payment, advertise in some weekly newspaper at the seat of government having the largest circulation in the state, for two weeks, stating the amount of money on hand, and the number of warrants he is prepared to pay; and if such warrants are not presented for payment within ten days after the publication of such notice, such warrants shall not draw interest after such date. [L. '71, p. 79, § 9; L. '86, p. 135, § 9; L. '90, p. 644, § 8; 1 H. C., § 112.]

See *infra*, § 8151, payment of warrants for legislative expenses.

See *infra*, § 11008, limitation for presentation for payment.

Liability for interest on state warrants. *Ann. Cas.* 1914A, 364.

CHAPTER VI.**STATE EDUCATIONAL FUNDS.****§ 5518. [5041.] State University Permanent Fund.**

There is hereby created in the state treasury a permanent and irreducible fund to be known as the "State University Permanent Fund," into which fund shall be paid all moneys now in the state treasury in either the "University of Washington Fund," the "University Fund," or the "State University Fund," and into which shall also be paid all moneys derived from the sales of lands granted, held or devoted to State University purposes. [L. '07, p. 394, § 1. Cf. L. '90, p. 398, § 16; 1 H. C., § 954; L. '93, p. 299, § 1.]

§ 5519. [5042.] State University Current Fund.

There is hereby created in the state treasury a fund to be known as the "State University Current Fund," into which shall be paid all the interest and earnings of the State University permanent fund, and the rentals of all lands granted, held or devoted to State University purposes, and which shall be subjected to appropriation for State University purposes. [L. '07, p. 394, § 2.]

§ 5520. [5043.] Agricultural College Current Fund.

There is hereby created in the state treasury a fund to be known as "The Current Fund of the Agricultural College and School of Science." [L. '05, p. 73, § 1.]

§ 5521. [5044.] Same, Payment of Money into.

There shall be paid into said fund for the use and support of the Agricultural College and School of Science: First—All moneys heretofore collected or hereafter to be collected from the lease or rental of lands set apart by the enabling act or otherwise for the Agricultural College and School of Science; Second—All interest or income arising from the proceeds of the sale of any of said lands; Third—All moneys received or collected as interest on deferred payments on contracts for the sale of such lands. [L. '05, p. 73, § 2.]

§ 5522. [5045.] Normal School.

There is hereby created in the state treasury a fund to be known as "The Normal School Current Fund." [L. '05, p. 73, § 3.]

§ 5523. [5046.] What Moneys Payable into Fund.

There shall be paid into said "The Normal School Current Fund" for the use and support of the normal schools of the state: First—All moneys heretofore collected or hereafter to be collected from the lease or rental of lands set apart by the enabling act or otherwise for the state normal schools; Second—All interest or income arising from the proceeds of the sale of said lands; Third—All moneys received or collected as interest on deferred payments on contracts for the sale of such lands. [L. '05, p. 73, § 4.]

§ 5524. [5047.] Disposition of Lands for Scientific School—Vested in Regents.

The board of regents of the Agricultural College, Experiment Station and School of Science of the state of Washington is hereby authorized and directed to select and set aside for the purposes hereinafter described four full sections of land in lots of not less than forty acres each from the lands granted to the state of Washington for the establishment and maintenance of a scientific school and belonging to the Agricultural College and School of Science. The entire management, control and power of disposition of said four sections of land be and hereby are vested in the board of Regents of the Agricultural College, Experiment Station and School of Science and subject to the provisions of this act. [L. '01, p. 170, § 1.]

This act refers to this and section 5526.

§ 5525. Same—Assigned to State College.

The one hundred thousand acres of land granted by the United States government to the state of Washington for a scientific school in the enabling act of the state of Washington, is hereby assigned to the support of the State College of Washington. [L. '17, p. 38, § 1.]

§ 5526. [5048.] Scientific School Fund.

There shall be kept by the state treasurer a separate fund to be known as the scientific school fund, into which shall be paid all moneys received from the sale of the lands, or valuable material thereon, belonging to the Agricultural College and School of Science, which fund shall

be paid out by the state treasurer only upon warrants drawn by the state auditor, which warrants shall be based upon proper vouchers of the board of regents of the Agricultural College and School of Science. [L. '01, p. 172, § 4.]

§ 5527. [5049.] Funds of State College—Duties of State Treasurer and State Auditor.

The state treasurer shall hereafter constitute and be the treasurer of all funds belonging to the State College, Experiment Station and School of Science of the state of Washington, known as the State College of Washington. All moneys or funds received from the United States or from any other source whatsoever for the benefit of said State College or from the products or property of said college, or for the use of or belonging to said college shall be paid to and deposited with the state treasurer; when so deposited the same shall be held as special funds for said college, and are hereby appropriated to the uses and purposes for which the same are received. Upon receipt of any funds belonging to said college by the state treasurer, he shall issue duplicate receipts therefor and deposit one of such receipts with the state auditor, who shall keep the accounts of said college as other accounts are kept, and shall draw warrants against said accounts upon the presentation of properly executed vouchers therefor, but no warrant shall be drawn on any such fund for an amount in excess of the amount remaining in such fund. [L. '09, Ex. Sess., p. 36, § 1.]

§ 5528. [5049-1.] Higher Educational Institutions Defined.

The terms "State Institutions of Higher Education" as used in this act shall include the University of Washington, the Washington State College, the State Normal School at Cheney, the State Normal School at Ellensburg, and the State Normal School at Bellingham. [L. '11, p. 340, § 1.]

§ 5529. [5049-2.] Funds Created.

There is hereby created a fund to be known as the "University Fund"; a fund to be known as the "Washington State College Fund"; a fund to be known as the "Cheney Normal School Fund"; a fund to be known as the "Ellensburg Normal School Fund"; and a fund to be known as the "Bellingham Normal School Fund." [L. '11, p. 340, § 2.]

Centralia Normal School fund, see *infra*, § 5533.

§ 5530. [5049-3.] Payments.

All moneys arising from the tax herein directed to be levied for the said several institutions of higher education shall be paid into the respective funds hereby created. [L. '11, p. 340, § 3.]

§ 5531. [5049-4.*] Tax Levy.

The state board of equalization shall, beginning the fiscal year, 1921, and annually thereafter, at the time of levying taxes for state purposes, levy upon all property subject to taxation, a tax of one and ten one hundredths of one mill (1.10) for the state university fund; sixty-seven one

hundredths of one mill (.67) for the state college fund; twenty one hundredths of one mill (.20) for the Bellingham Normal School fund; fifteen and nine-tenths hundredths of one mill (.159) for the Cheney Normal School fund; and twelve one hundredths of one mill (.12) for the Ellensburg Normal School fund.

It shall be the duty of the joint board of higher curricula in the report to be made next preceding the convening of the legislature in 1925 to recommend any changes in levy herein provided for which the said board may deem necessary or proper and to give their specific grounds and reasons therefor, for the purpose of having the levy herein provided for readjusted by the legislature of 1925. [L. '21, p. 528, § 1; L. '17, p. 338, § 1; L. '11, p. 340, § 4.]

§ 5532. [5049-5.] Use of Funds.

All sums of money produced by said tax shall be placed in said several funds and hereby set apart for the use of the several institutions herein provided for, for the purpose of maintenance, repairs and construction of buildings, and equipment thereof. [L. '11, p. 341, § 5.]

§ 5533. Centralia Normal School Fund.

There is hereby created a fund to be known as the "Centralia Normal School Fund," all sums of money produced by the tax provided for in this act and all bequests, gifts or gratuities made to said school shall be placed in said fund, and are hereby set apart for the use of said school for the purpose of maintenance, repairs, and construction of buildings and equipment therefor. [L. '19, p. 411, § 5.]

§ 5534. Tax Levy for Fund.

The state board of equalization shall at its regular meeting in the year 1921, and annually thereafter, at the time of levying taxes for state purposes, levy upon all property subject to taxation a tax of ten one hundredths (10/100) of a mill for the Centralia Normal School Fund. [L. '19, p. 411, § 6.]

§ 5535. [5049-6.] University of Washington Building Fund.

There is hereby created in the state treasury a fund which shall be known and designated as the "University of Washington Building Fund." [L. '15, p. 239, § 1.]

§ 5536. [5049-12.] Rentals Credited to Building Fund.

On and after March 1, 1916, all rentals received on account of that certain lease of the former university site in the city of Seattle, known as the "Old University Grounds," made and entered into on the first day of February, 1907, by and between the state of Washington, lessor, and James A. Moore, lessee, and thereafter assigned by said lessee to the Metropolitan Building Company, a corporation, shall be paid into and credited to said "University of Washington Building Fund," to be used exclusively for the purposes mentioned in section 4547. [L. '15, p. 241, § 7.]

CHAPTER VII.

INVESTMENT OF STATE EDUCATIONAL FUNDS.

§ 5537. [5054.] Records—Office.

[The State Board of Finance] shall keep a full and complete record of all their proceedings in appropriate books of record, and a clerk in the office of the state auditor shall act as the secretary of the said board. Their office shall be in the office of the state auditor, and all records and correspondence relating to the said board shall be kept in the office of the state auditor, and shall be subject to public inspection. [L. '07, p. 17, § 2.]

See *supra*, § 4932, sources of school revenues.

See *infra*, § 10764, duties devolve upon state finance committee.

See *infra*, § 10893, state board of finance abolished.

§ 5538. [5055.] Rules—Treasurer Chairman of Board.

Said state board of finance shall make appropriate rules and regulations for the carrying out of the provisions of this act, not inconsistent with law, and the state treasurer shall act as chairman of said state board of finance. [L. '07, p. 17, § 3.]

"This act" refers to the first three sections of this chapter.

See notes to § 5537.

§ 5539. [5056.] Investment, in What Bonds Lawful—School District Bonds Preferred.

Whenever there shall be in the permanent school funds of the state, or in the permanent funds of the normal school, State University, Scientific School, Agricultural College, or the charitable, educational, penal and reformatory institutions, one thousand dollars or more available for investment, said state board of finance shall invest the same in national, state, county, municipal or school district bonds, bearing not less than three and three-fourths per cent interest per annum, paying therefor not more than the par value thereof: Provided, the word bonds in this section shall not be interpreted to mean or include any special, or assessment district bonds or bonds other than those found to be within the limit of indebtedness prescribed by law, or regularly created and issued as general indebtedness bonds: Provided, further, that school district bonds, regularly created and issued, shall be given preference in said investments. Upon such investment being made, the state auditor shall draw his warrant on said fund for the amount so invested, and the bonds so purchased shall be deposited with the state treasurer, whose duty it shall be to collect all interest payments falling due thereon, and the principal at maturity. [L. '07, p. 17, § 4. Cf. L. '90, p. 399, § 17; L. '93, p. 407, § 25; L. '95, p. 547, § 44; L. '97, p. 262, § 69; L. '03, p. 143, § 1.]

This section seems to supersede L. '03, c. 95, p. 143, authorizing the state board of land commissioners to invest the school funds.

See notes to § 5537.

Cited in 74 Wash. 17.

School Funds—Investment and Administration: See Remington's Digest, Schools,

§ 3; State ex rel. Hellar v. Young, 21 Wash. 391, 58 Pac. 220; State ex rel. School District v. Grimes, 7 Wash. 270,

34 Pac. 836; State ex rel. Port Townsend v. Clausen, 40 Wash. 95, 82 Pac. 187; State Capitol Commission v. State Board of Finance, 74 Wash. 15, 132 Pac. 861.

§ 5540. [5057.] Investment of the Permanent School Fund in State Bonds.

Whenever there shall be in the hands of the state treasurer, belonging to the state permanent school fund, money to the amount of five thousand dollars or more, of which no investment can be made in the securities now or hereafter authorized by law, and the state shall have an outstanding general fund warrant indebtedness in amount equal to or greater than the amount of five thousand dollars (\$5,000), the governor of the state and the state auditor are hereby authorized, and it shall be their duty, to issue the bonds of the state of Washington in amount equal to that amount, and sell and deliver such bond to the state treasurer for the account of the state permanent school fund at the face or par value thereof. [L. '99, p. 67, § 1.]

It is expressly provided that this section is not affected by the act of 1903, superseded by the preceding section: See L. '03, p. 144, § 2.

§ 5541. [5058.] Bonds—Description of, Interest, Maturity, etc.

Such bonds shall bear date of issue and be issued in denominations of five thousand dollars (\$5,000), and shall bear interest at the rate of three and one-half per cent per annum, payable semi-annually on the first day of May and November of each year until paid, payable out of the state general fund, and the state treasurer is hereby authorized and directed to transfer from the said state general fund to the said current school fund sufficient money to pay said interest as the same falls due, and certify the same to the state auditor, which certificate shall be authority to said auditor to make the necessary and proper entries in the books and records of his office to show such transfer. The principal of said bonds shall be payable, any or all of them, on or before twenty years from the date of issue, to the state treasurer for the account of the state permanent school fund, out of the state general fund, to which the proceeds thereof shall have been credited, and when paid the principal thereof shall be credited to the state permanent school fund. [L. '99, p. 68, § 2; L. '01, p. 388, § 1.]

§ 5542. [5059.] Bonds—Printing, Signing, etc.

Said bonds shall be printed on good bond paper and shall each be signed by the governor and personally attested by the state auditor, and sealed with the seal of the state auditor, but no coupon need be attached thereto. [L. '99, p. 68, § 3.]

§ 5543. [5060.] Proceeds of Bonds Used to Call General Fund Warrants.

It shall be the duty of the state treasurer, whenever any such bonds are executed and presented to him to invest the state permanent school fund in such bonds to the amount of the face or par value thereof at par, and receipt to the state auditor therefor, and at once transfer from the state permanent school fund to the state general fund money to the amount of the face or par value of such bonds so delivered to him, and

the money so transferred to the general fund shall be at once used in the redemption of outstanding general fund warrants. [L. '99, p. 68, § 4.]

§ 5544. [5061.] Interest, to Current School Fund.

All interest paid on such bonds shall be credited to the current common school fund of the state on the day it falls due. [L. '99, p. 69, § 5.]

§ 5545. [5062.] Redemption.

It shall be the duty of the state treasurer to redeem any of said bonds on any interest pay day whenever, and to the extent that he shall have in his hands money belonging to the state general fund equal to one or more of such bonds in excess of all outstanding general fund warrants. [L. '99, p. 69, § 6.]

CHAPTER VIII.

BONDING UNIVERSITY LANDS.

§ 5546. [5063.] Appropriation from University Fund.

For the purpose of refunding to the state of Washington the moneys appropriated for the erection and support of the said university there is hereby appropriated from this said "University of Washington Fund," to be paid into the general fund of the state, the following sums, to wit: One hundred and fifty thousand dollars, appropriated by the legislative session of eighteen hundred and ninety-three for the erection of buildings and the preparation of the new grounds; fifty thousand dollars, appropriated by the legislative session of eighteen hundred and ninety-five for the same or similar purposes; twenty-five thousand dollars, being a portion of the sum appropriated by the legislative session of eighteen hundred and ninety-five for the support or maintenance of the said university; making a total appropriation herein of two hundred and twenty-five thousand dollars. [L. '95, p. 108, § 2.]

The "University of Washington fund" was transferred to the "State University permanent fund" by § 5518, supra.

§ 5547. [5064.] Bonds Authorized.

For the purpose of anticipating the fund out of which the foregoing appropriation is provided to be paid, the governor, state auditor, and state treasurer are hereby authorized to make a loan of two hundred and twenty-five thousand dollars upon the bonds of the state, to be signed by the governor and attested by the secretary of state, under the seal of the state, and countersigned and registered by the state auditor. Said bonds shall be of denomination of not less than one thousand dollars each, and shall, on their face, be made payable at any time after five years and within fifteen years from their date, at the option of the state, at the office of the state treasurer; shall bear interest at the rate of four per cent per annum, which interest shall be payable semi-annually out of the fund provided for in section 5518, and no primary or secondary application for the payment of said bonds, except out of the aforesaid fund, is intended to be created by this chapter. Said bonds shall not be sold for less than par. If at any time there is not

sufficient money in the aforesaid fund to defray the interest charges when due, the state shall pay said interest out of the general fund, which general fund shall be repaid such interest payments out of the first moneys paid into the said "University of Washington Fund." [L. '95, p. 108, § 3.]

"Section 5518" substituted for Bal. Code, § 2500.

CHAPTER IX.

STATE DEPOSITARIES.

§ 5548. [5065.] State Funds in State Depositaries Only.

Any national or state banking corporation which shall be approved by the state board of finance, may, upon filing a bond, or depositing the security as hereinafter provided, and upon the compliance with all other requirements of law, become a state depositary; and no state funds shall be deposited in any institution other than a state depositary. The record of the proceedings of said board shall be kept by the state auditor, and a duly certified copy thereof, or any part thereof, shall be admissible in evidence in any action or proceeding in any court of this state. [L. '07, p. 50, § 1.]

Duties of state board of finance devolve upon state finance committee, § 10764.
See *infra*, § 10893, state board of finance abolished.

Cited in 109 Wash. 201.

Designation, rights, duties and liabilities of depositaries. *Ann. Cas.* 1916B, 1239, 1250, 1255, 1261.

Power of public officers to make contract as to depositary for a term of years, or so as to bind their successors. 16 *L. R. A.* 257.

Liability of public officers for loss of

funds by failure of bank designated as depositary. 36 *L. R. A.* (N. S.) 289.

Liability of sureties on bond of bank as depositary of public funds as affected by acquiescence or connivance of public officials in misuse of the funds. 26 *L. R. A.* (N. S.) 865.

§ 5549. [5066.] Surety or Securities Required—Investigation of Depositary.

Every state depositary, before it shall be entitled to receive any state moneys, shall file with the state treasurer a good and sufficient bond of a surety company authorized to do business in this state, to be approved by said board as security and pledge for the payment on demand to him or his order, free of exchange, at any place in this state designated by him, of all such moneys deposited with it, and of interest thereon at the rate fixed by said board, which bond shall be at least equal to the amount of the moneys to be received by said depositary of said state, and shall, before deposit, be approved by said board. The state board of finance may require the state auditor or the state bank examiner to thoroughly investigate and report to it concerning the condition of any bank which makes application to become a state depositary, and may also as often as it deems necessary require such investigation and report concerning the condition of any bank which may have been designated as such depositary, the expense of such investigation to be borne by the depositary examined: Provided, that said depositary may deposit with the state treasurer good and sufficient municipal, school district, county or state bonds or warrants or United States bonds, first

mortgage railroad bonds listed on the New York Stock Exchange, local improvement bonds or warrants whose legality have been passed upon favorably by the supreme court, or public utility bonds or warrants issued by or under the authority of any municipality of the state for water, power or light plants or the maintenance thereof upon which principal or interest is not in default at the time of such deposit, the aggregate market value of which shall not be less than the amount required in said deposit, in lieu of the surety bond herein provided for. [L. '07, p. 50, § 2; L. '09, p. 588, § 1.]

This act was in mind, in the passage of rel. Port of Seattle v. Gaines, 109 Wash. the Port District Act, § 9693. State ex 196, 186 Pac. 257.

§ 5550. [5067.] Rate of Interest.

The state board of finance shall from time to time fix the rate of interest to be paid by said depositaries upon said moneys deposited with them, and cause notice thereof to be published in such newspapers as the board may direct. The rate of interest, until changed by said board, shall be not less than two per cent per annum. [L. '07, p. 51, § 3.]

See notes to § 5548, supra.

§ 5551. [5068.] Deposits—Deemed to be in Treasury—Limit of.

The state treasurer may deposit with any depositary which has fully complied with all requirements of law any state moneys in his hands or under his official control not exceeding the limit herein prescribed, and any sum so on deposit shall be deemed to be in the state treasury, and such treasurer shall not be liable for any loss thereof resulting from the failure or default of any such depositary without fault or neglect on his part or on the part of his assistants or clerks. The amount at any time on deposit with any depositary shall not exceed the actual paid-up capital and surplus, nor the penalty of the bond filed by it, nor three-fourths of the value of the bonds deposited by it, nor the amount prescribed by the state board of finance, if any be prescribed. [L. '07, p. 51, § 4.]

See notes to § 5548, supra.

§ 5552. [5069.] Approval of State Board of Finance—Revocation.

The state board of finance shall not approve the bonds and warrants above mentioned, or in lieu thereof the bond of a surety company of any such depositary until fully satisfied that said bond or bonds are good and sufficient, and that the depositary is prosperous and financially sound and has unimpaired the paid-up capital and surplus claimed by it. Said board may at any time require any state depositary to furnish a new or additional bond or bonds, and upon failure so to do may after fifteen (15) days' notice to said depositary revoke their designation and approval thereof, and immediately upon such revocation such corporation shall cease to be a state depositary. [L. '07, p. 51, § 5; L. '09, p. 589, § 2.]

See notes to § 5548, supra.

§ 5553. [5070.] Monthly and Quarterly Statements—Affidavit by President and Cashier.

Every state depositary shall, on the first day of each calendar month, and oftener when required, file with the state auditor a sworn statement of the amount of state moneys on deposit with it, and shall, within ten days after the first day of January, April, July and October in each year make a full statement of all deposits and payments of state moneys during the preceding quarter, together with a computation and statement of the interest earned thereon, computed upon the daily balance on deposit, to the state board of finance, which interest shall thereupon be remitted to the state treasurer and placed to the credit of the general fund and deposit interest funds; such statement shall be upon such forms as may be prescribed by the state board of finance and be accompanied by an affidavit of the president and cashier of such depositary to the effect that it is in all respects true and correct, and that, except for the interest therein credited, neither said depositary nor any officer, agent or employee thereof, nor any person in its behalf has in any way whatsoever given, paid, or rendered, or promised to give, pay or render to any member of the state board of finance, or to any other person or corporation whatever any money, credit, service or benefit whatsoever by reason or in consideration of a deposit with it of any portion of the state moneys. Any person who shall make any false statement in any affidavit required by this section shall be guilty of perjury. The total interest paid by all depositaries shall be by the state treasurer placed to the credit of the deposit interest fund, and upon the fifteenth (15) day of January of each year, the state treasurer shall divide the deposit interest fund among the various funds from which such deposits are made, in proportion to the respective amounts thereof. [L. '07, p. 52, § 6.]

§ 5554. [5071.] "Bank" Includes Trust Companies.

The word "bank" as used in this chapter shall be construed to include any trust company organized under the laws of the state of Washington engaged in the banking business. [L. '07, p. 53, § 7.]

§ 5555. [5071-1.] Daily Deposits by Commissioner of Public Lands.

It shall be the duty of the commissioner of public lands of this state, and he is hereby required to deposit daily all moneys and fees collected or received by him as such commissioner under the existing land laws of the state, including all moneys and fees received by him which remain in his custody and control for a greater or less time awaiting disposition under the provisions of the land laws of the state or the action of the board of land commissioners, as provided by law; and all moneys and fees from all sources received by him in the discharge of his official duties or acting for or in behalf of the state board of land commissioners: Provided, however, that all moneys collected or received by the commissioner of public lands, belonging to the state at the time, or to any department or institution thereof, in payment of principal and interest under outstanding contracts and leases where no question is raised as to the right of the state to receive payment, shall be paid to

the state treasurer daily in the manner provided by existing laws. [L. '11, p. 299, § 1.]

§ 5556. [5071-2.] Board of Finance Designate Depositaries.

The deposit of all moneys other than the moneys paid to the state treasurer as by law required, provided for in section 5555, shall be made in state depositaries only and in no other institution. The depositary or depositaries shall be designated and selected by the state board of finance in the manner provided by existing laws for the designation of state depositaries, and after such selection and designation by the state board of finance notice thereof shall be given to the commissioner of public lands, and the commissioners shall thereupon make daily deposits of the moneys in his official custody and control as provided in section 5555, and such deposit shall be made in the depositary designated by the state board of finance and in no other institution. [L. '11, p. 300, § 2.]

See notes to § 5548, *supra*.

§ 5557. [5071-3.] Bond—Approval.

Every state depositary selected by the state board of finance as provided in this act for the purposes herein, and for the receipt and deposit of all moneys in the custody, possession and control of the commissioner of public lands, other than the moneys transmitted daily to the state treasurer, shall file with the state treasurer a good and sufficient bond or collateral securities, or bonds of the United States, or bonds or warrants of the state of Washington, or of any county or school district in this state, to be approved by the state board of finance, as a security and pledge for the payment on demand of the commissioner of public lands, or his order or his successors, free of exchange, at any place in this state designated by the commissioner, of all such moneys so deposited by him with said depositary, and the interest thereon at the rate fixed by the state board of finance. Such bond or securities shall be at least equal to the amount of the moneys to be received by said depositary, conditioned as hereinbefore provided, and shall, before any deposit by the commissioner of public lands, be approved by the state board of finance. Such depositary may be examined from time to time as by existing laws provided in relation to state depositaries. [L. '11, p. 300, § 3.]

See notes to § 5548, *supra*.

§ 5558. [5071-4.] Rate of Interest.

The state board of finance shall from time to time fix the rate of interest to be paid by said depositary or depositaries upon said moneys deposited with it or them by the commissioner of public lands, as provided in section 5555. The rate of interest shall be not less than two (2) per cent per annum on all such deposits made by the commissioner of public lands. [L. '11, p. 301, § 4.]

See notes to § 5548, *supra*.

§ 5559. [5071-5.] Quarterly Statement.

Every state depositary selected as hereinbefore provided for the receipt and deposit of moneys by the commissioner of public lands, shall

quarterly on the first of January, April, July and October file with the state auditor a sworn statement of the amount of moneys on deposit with it to the credit of the commissioner of public lands, together with a computation of the interest earned thereon at the rate fixed by the state board of finance, said computation and statement of interest to be computed upon the daily balance on deposit by the commissioner, and said statement or computation shall also be made to the state board of finance. The interest shall thereupon be forthwith remitted by the depository to the state treasurer and by him placed in and credited to the general fund. [L. '11, p. 301, § 5.]

See notes to § 5548, *supra*.

§ 5560. [5071-6.] Report.

The statements required of the depositaries shall be upon such forms as may be prescribed by the state board of finance, and shall be accompanied by the affidavit of the president and cashier of such depository, to the effect that it is in all respects true and correct, and that except for the interest therein credited, neither said depository nor any officer, agent or employees thereof, nor any person in its behalf, has in any way whatsoever given, paid or rendered, or promised to give, pay or render to any member of the state board of finance, or to any person or corporation whatever, any money, credit, service or benefit whatsoever by reason or in consideration of a deposit with it of any portion of the moneys in the custody, possession or control of the commissioner of public lands. Any person who shall make any false statement in any affidavit required by this section shall be guilty of perjury. [L. '11, p. 301, § 6.]

See notes to § 5548, *supra*.

§ 5561. [5071-7.] Designation and Deposit of Moneys.

Upon the taking effect of this act the state board of finance shall forthwith designate a state depository, or depositaries for the purposes herein mentioned, and upon notice of such selection to the commissioner of public lands the commissioner shall at once deposit in such depository or depositaries, all moneys in his possession and under his official custody and control; and all moneys deposited in banks or other institutions at the time of the taking effect of this act, which have been deposited by the commissioner of public lands awaiting final action of the state board of land commissioners, or awaiting the further operation of the land laws, or for any other purpose, shall at once be transferred to the state depository or depositaries selected by the state board of finance, and be subject to all the provisions, requirements and conditions of this act. [L. '11, p. 302, § 7.]

See notes to § 5548, *supra*.

CHAPTER X.

COUNTY DEPOSITARIES.

§ 5562. [5072.] Designation of Depositary by County Treasurer.

Each county treasurer in this state shall on the first day of July, 1907, and annually on the second Monday in January thereafter, and at such other times as he may deem necessary, designate one or more banks in the state as depositary or depositaries of all public funds held and required to be kept by him as such treasurer, and such designation or designations shall be in writing, and the same shall be filed with the board of county commissioners of his county, and no county treasurer shall deposit any public money in banks, except as herein provided. [L. '07, p. 74, § 1.]

Cited in 108 Wash. 598; 109 Wash. 197.

The designation of a bank as county depositary was intended to continue indefinitely and is not limited to one year, by this section; since the word "shall" relates to the first designation, while the word "annually" must be read in connection with the words immediately following: *National Surety Co. v. Campbell*, 108 Wash. 596, 185 Pac. 602.

This section, providing that county treasurers "shall" annually designate a

depositary, is not mandatory as to requiring annual appointments; the time for the performance of an act generally being directory, and depending on the spirit as well as the letter of the law: *National Surety Co. v. Campbell*, 108 Wash. 596, 185 Pac. 602.

A proviso attached to a statute is a restraint upon or exception to it and does not extend the scope of the class of persons that come within it: *Tatum v. Marsh Mines Consolidated*, 108 Wash. 367, 185 Pac. 602.

§ 5563. [5073.] Bond—Approval of—Securities in Lieu of.

Before any such designation or designations shall become effectual and entitle the said treasurer to make deposits in such bank or banks, the bank or banks so designated shall within ten days after such designation or designations have been filed, file with the county clerk of such county a surety bond to such county treasurer, properly executed by some reliable surety company qualified under the laws of this state to do business therein, in the maximum amount of deposits designated by said treasurer to be carried in such bank or banks, conditioned for the prompt and faithful payment thereof on checks drawn by such treasurer, which bond must be approved by the chairman of the board of county commissioners, the prosecuting attorney and the county treasurer, or any two of such officers of said county, before being filed with the county clerk, and unless so approved the same shall not be received or filed by the county clerk: Provided, that said depositary or depositaries may deposit with the county treasurer good and sufficient municipal, school district, county or state bonds or warrants, United States bonds, first mortgage railroad bonds listed on the New York stock exchange, or local improvement bonds or warrants whose legality have been passed upon favorably by the supreme court, or public utility bonds or warrants issued by or under the authority of any municipality of the state for water, power or light plants or maintenance thereof upon which principal or interest is not in default at the time of such deposit, the aggregate market value of which shall not be less than the amount required in said deposit, in lieu of the surety bond herein provided for. [L. '07, p. 75, § 2; L. '09, p. 17, § 1.]

Cited in 108 Wash. 597; 109 Wash. 198.

§ 5564. [5074.] Contract as to Interest.

Before any such designation or designations shall become effectual and entitle said treasurer to make deposits as hereinabove provided, the bank or banks so deposited shall also enter into a written contract with the county whose treasurer is to make such deposits, to pay to said county, to be credited to the county expense fund thereof two per centum per annum on the average daily balances of all moneys so deposited by such county treasurer in said bank while acting as such depositary; such payments to be made monthly to said county while such deposits continue in such depositary; said contract shall be in such form as shall be approved by the board of county commissioner and the prosecuting attorney of said county. [L. '07, p. 75, § 3.]

Cited in 109 Wash. 198.

State ex rel. Port of Seattle v. Gaines,

Under this section, interest on funds
of a port district belongs to the county:

109 Wash. 196, 186 Pac. 257.

§ 5565. [5075.] Funds on Deposit Deemed to be in Treasury.

The county treasurer shall deposit with any depositary or depositaries which have fully complied with all requirements as herein provided, any county moneys in his hands or under his official control, and for the purpose of making the quarterly settlement and counting funds in the hands of the treasurer any such sums so on deposit shall be deemed to be in the county treasury. [L. '07, p. 75, § 4.]

Cited in 109 Wash. 198.

deposit strictly county funds: State ex

This section was not intended to re-
strict the right of county treasurers to

rel. Port of Seattle v. Gaines, 109 Wash.
196, 186 Pac. 257.

§ 5566. [5076.] Liability of Treasurer.

The provisions of this chapter shall in no way relieve or release the county treasurer from any liability upon his official bond as such treasurer, or any surety upon such bond, and shall in no way affect the duty of the several county treasurers of this state to give the bond as such treasurer now required by law. [L. '07, p. 76, § 5.]

§ 5567. [5077.] Bank Defined.

The word bank whenever it occurs in this chapter shall be construed to include all national, foreign, state and private banks and trust companies doing business in the state. [L. '07, p. 76, § 6.]

CHAPTER XI.**CITY DEPOSITARIES.****§ 5568. [5078.] Cities of Over Seventy-five Thousand Inhabitants.**

It shall be the duty of the city treasurer, in all cities of the state of Washington having a population of seventy-five thousand (75,000) inhabitants and over to, immediately upon this bill becoming a law and annually thereafter at the end of each fiscal year, designate one or more banks in such city as depositary or depositaries of the moneys required to be kept by said treasurer, and such designation shall be sub-

ject to the approval of the mayor, and filed with the comptroller. [L. '05, p. 207, § 1.]

Cited in 109 Wash. 201.

§ 5569. [5079.] Surety Bond of Bank—Contract as to Interest.

Before any such designation shall become effectual and entitle the treasurer to make deposits in such bank or banks, the bank or banks so designated shall, within ten (10) days after the same is filed with the comptroller, file with the comptroller of such city a contract with said city wherein said bank shall agree to pay not less than one and one-half per centum on the cash daily balances of all municipal funds kept by such treasurer in said bank, while acting as such depositary; such payments to be made monthly to said city while said deposit continues in said depositary; said contract shall run to said city and be in such form as shall be approved by the mayor and corporation counsel; and such bank shall also file with the comptroller of such city a surety bond or bonds to such city to the amount of the deposits of such city that may be carried in such bank, conditioned for the prompt payment thereof on checks duly drawn by the said treasurer; or in lieu thereof shall deposit with the said comptroller good and sufficient municipal, school district, county or state bonds or warrants, United States bonds, first mortgage railroad bonds listed on the New York Stock Exchange, or local improvement bonds or warrants, or public utility bonds or warrants, issued by or under the authority of any municipality of the state for water, power or light plants or maintenance thereof upon which principal or interest is not in default at the time of such deposits. Such surety bonds or securities shall be in such form as shall be approved by the corporation counsel of such city and the sufficiency of such surety bonds or such securities shall be approved by the mayor and comptroller of such city. When such bonds have been duly approved and filed with the comptroller of said city, he shall immediately certify to the city treasurer the amount of bonds or securities filed by such bank or banks, whereupon the city treasurer shall be authorized to make deposits in such bank up to the amount of surety bonds or securities, so filed. [L. '13, p. 353, § 1. Cf. L. '05, p. 207, § 2; L. '09, Ex. Sess., p. 37, § 1.]

§ 5570. [5080.] Bond of City Treasurer not Affected.

The provisions of this act shall in no way affect the duty of the city treasurer to give bond to such city for the faithful performance of his duties in such amount as may be fixed by the city council by ordinance. [L. '05, p. 207, § 3.]

"This act," refers to the first three sections of this chapter.

§ 5571. [5081.] Cities of Less Than Seventy-five Thousand Inhabitants.

Any city or town in the state of Washington having a population of less than seventy-five thousand (75,000) inhabitants, shall upon a majority vote of its city council instruct its city or town treasurer upon this bill becoming a law and annually thereafter at the end of each fiscal year or at such other times as may be deemed necessary by the

treasurer, to designate one or more banks in the county wherein such city or town is located as depositary or depositaries of the moneys required to be kept by said treasurer. [L. '07, p. 27, § 1.]

§ 5572. [5082.] Surety Bond—Securities in Lieu of Bond—Interest.

Before any such designation shall entitle the treasurer to make deposits in such bank or banks, the bank or banks so designated shall within ten (10) days after the same is filed with the comptroller or town clerk, file with the comptroller or town clerk of such city or town a surety bond to such city or town in the maximum amount of deposits designated by said treasurer to be carried in such bank, or in lieu thereof shall deposit with the treasurer good and sufficient municipal, school district, county or state bonds, or warrants, or United States bonds, or local improvement bonds, or warrants, or public utility bonds, or warrants issued by or under authority of any municipality of this state upon which interest or principal is not in default at the time of such deposit, or first mortgage railroad bonds listed on New York stock exchange, conditioned for the prompt payment thereof on checks duly drawn by the treasurer, which surety bonds or security shall be approved by the mayor and comptroller or town clerk of said city or town, and such banks shall also at the same time file with said comptroller or town clerk a contract with said city or town wherein said bank shall agree to pay not less than two per centum on the average daily balances where such balances exceed one thousand (\$1,000) dollars of all municipal funds kept by such treasurer in said bank, while acting as such depositary; such payments to be made monthly to said city or town while said deposits continue in said depositary; said contracts shall run to said city or town and be in such form as shall be approved by the treasurer, mayor and corporation counsel. [L. '07, p. 27, § 2; L. '09, p. 65, § 1.]

§ 5573. [5083.] Duty of Treasurer to Give Bond not Affected.

The provisions of this act shall in no way affect the duty of the city or town treasurer to give bond to such city or town for the faithful performance of his duties in such amount as may be fixed by the city or town council by ordinance. [L. '07, p. 28, § 3.]

“This act” refers to the last four sections of this chapter.

§ 5574. [5084.] Trust Company Included.

The word bank as used in this act shall be construed to include any trust company organized under the laws of the state of Washington and engaged in the banking business. [L. '07, p. 28, § 4.]

“This act” refers to the last four sections of this chapter.

CHAPTER XII.

BONDS FOR COUNTY PURPOSES.

§ 5575. [5085.] Limitation of County Indebtedness.

Each and every organized county of this state, and each and every county that may hereafter be organized in this state, is hereby authorized and empowered by and through its board of county commissioners to con-

tract indebtedness for general county purposes in any manner when they deem it advisable, not exceeding an amount, together with the existing indebtedness of such county, of one and one-half per centum of the taxable property in such county, to be ascertained by the last assessment for the state and county purposes previous to the incurring of such indebtedness. [Cf. L. '88, pp. 10—12; L. '90, p. 37, § 1; 1 H. C., § 2674.]

See Const., Art. VIII, § 6, limitation on county indebtedness.

Cited in 2 Wash. 354, 355, 356, 678; 8 Wash. 398, 401, 402, 405; 12 Wash. 523; 23 Wash. 463; 25 Wash. 645; 68 Wash. 233; 82 Wash. 140; 111 Wash. 171, 174, 175.

Power to Incur Indebtedness in General: See Remington's Digest, Counties, § 61; Lancey v. King County, 15 Wash. 9, 45 Pac. 645, 34 L. R. A. 817.

Limitation of Indebtedness: See Remington's Digest, Counties, §§ 62, 63; Rehmke v. Goodwin, 2 Wash. 676, 27 Pac. 473; Cochrane v. King County, 12 Wash. 518, 41 Pac. 922; Booth v. Snohomish County, 75 Wash. 122, 134 Pac. 686; Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318; State ex rel. Barton v. Hopkins, 14 Wash. 59, 44 Pac. 134, 550; Rauch v. Chapman, 16 Wash. 568, 48 Pac. 253, 58 Am. St. Rep. 52, 36 L. R. A. 407; Duryee v. Friars, 18 Wash. 55, 50 Pac. 583; State Savings Bank v. Davis, 22 Wash. 406, 61 Pac. 43; Farquharson v. Yeargin, 24 Wash. 549, 64 Pac. 717; State ex rel. Clallam County v. Clausen, 82 Wash. 137, 143 Pac. 876.

Computing or Ascertaining Limit: See Remington's Digest, Counties, § 64; State ex rel. Barton v. Hopkins, 14 Wash. 59, 44 Pac. 134, 550; Mullen v. Sackett, 14

Wash. 100, 44 Pac. 136; Rands v. Clarke County, 15 Wash. 697, 46 Pac. 1119; Kelley v. Pierce County, 15 Wash. 697, 46 Pac. 253; Graham v. Spokane, 19 Wash. 447, 53 Pac. 714; Duryee v. Friars, 18 Wash. 55, 50 Pac. 583; State ex rel. Atkinson v. Ross, 43 Wash. 290, 86 Pac. 575.

Adjustment of Accounts With School Districts: See Remington's Digest, Counties, § 69; School District v. Cole, 4 Wash. 395, 30 Pac. 448.

General County Funds: See Remington's Digest, Counties, § 70; State ex rel. Barton v. Hopkins, 12 Wash. 602, 41 Pac. 906; Spokane & Eastern Trust Co. v. Lavigne, 14 Wash. 681, 45 Pac. 664.

Creation of indebtedness within meaning of debt limit provision. 37 L. R. A. (N. S.) 1058; L. R. A. 1917E, 437.

Constitutional limit of county indebtedness as affected by existence of two or more separate political bodies wholly or partly coincident in territory. Ann Cas. 1912C, 449; L. R. A. 1917E, 468.

Time as of which assessed valuation is to be taken in determining debt limit. 28 L. R. A. (N. S.) 149.

§ 5576. [5086.] County may Contract Further Indebtedness, When— Election.

Each and every organized or hereafter to be organized county of this state may contract indebtedness for strictly county purposes in excess of the amount named in the last preceding section, but not exceeding in amount, together with the existing indebtedness, five per centum of the taxable property, to be ascertained as provided in the preceding section, whenever three-fifths of the voters of such county assent thereto, at an election to be held for that purpose, consistent with the general election laws, which election may be either a special or general election. [L. '90, p. 37, § 2; 1 H. C., § 2675.]

Cited in 2 Wash. 355; 8 Wash. 398, 401, 402, 405; 25 Wash. 582; 45 Wash. 523—525; 68 Wash. 234; 82 Wash. 140; 111 Wash. 175.

Contracts Involving Indebtedness or Expenditures: See Remington's Digest, Counties, § 67; Richards v. Klickitat County, 13 Wash. 509, 43 Pac. 647.

The construction of a county road is for a strictly county purpose, within Const., Art. VIII, § 6; Rust v. Kitsap County, 111 Wash. 170, 189 Pac. 994.

County bonds for the repair of roads are not authorized by this section, in view of § 5584, infra: Shea v. Skagit County, 68 Wash. 233, 122 Pac. 1061.

Limitation on Use of Funds or Credit: See Remington's Digest, Counties, § 68; Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318; Mason v. Purdy, 11 Wash. 591, 40 Pac. 130; State ex rel. Potter v. King County, 45 Wash. 519, 88 Pac. 935; Rands v. Clarke County, 79 Wash. 152, 139 Pac. 1090.

Submission of Question of Expenditure to Popular Vote: See Remington's Digest, Counties, § 65; Rehmke v. Goodwin, 2 Wash. 676, 27 Pac. 473; Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318; Cochrane v. King County, 12 Wash. 518, 41 Pac. 922; Strain v. Young, 25 Wash. 578, 66 Pac. 64.

See, also, Rust v. Kitsap County, 111 Wash. 170, 189 Pac. 994.

— **Notice and Resolution:** See Remington's Digest, Counties, § 66; Hunt v. Fawcett, 8 Wash. 396, 30 Pac. 318; Williams v. Shoudy, 12 Wash. 362, 41 Pac. 169; Richards v. Klickitat County, 13 Wash. 509, 43 Pac. 647; Packwood v. Kittitas County, 15 Wash. 88, 45 Pac. 640, 55 Am. St. Rep. 875, 33 L. R. A. 673.

§ 5577. [5087.] Commissioners may Issue Bonds, When, and to What Amount.

Whenever any debt is incurred under the provisions of the first or second sections of this chapter, or whenever the board of commissioners of any county shall submit to the voters of this county, at an election to be held under the provisions of the last preceding section, the question of issuing bonds to procure money for strictly county purposes, and three-fifths of the voters of such county having assented thereto, and the amount of said bonds, together with the already existing county indebtedness, not exceeding five per centum of the taxable property of said county, to be ascertained as provided in the last preceding section of this chapter, then the board of commissioners of such county is authorized and empowered to issue its negotiable bonds in the name of the county for the purposes for which such election was held. [L. '90, p. 38, § 3; 1 H. C., § 2676.]

Cited in 2 Wash. 356, 678; 8 Wash. 398, 401, 402, 405; 68 Wash. 234, 235; 111 Wash. 174, 175.

Bonds—Notice: See Remington's Digest, Counties, § 79; Richards v. Klickitat County, 13 Wash. 509, 43 Pac. 647; Duryee v. Friars, 18 Wash. 55, 50 Pac. 583; Rands v. Clarke County, 79 Wash. 152, 139 Pac. 1090.

See, also, State ex rel. Spokane County v. Clausen, 110 Wash. 112, 188 Pac. 23; Thompson v. Pierce County, 113 Wash. 237, 193 Pac. 706.

Proceedings Preliminary to Issue of Bonds—Petition or Assent of Taxpayers

or Voters: See Remington's Digest, Counties, § 81; Murry v. Fay, 2 Wash. 352, 26 Pac. 533; Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318; Rehmke v. Goodwin, 2 Wash. 676, 27 Pac. 473; Blaine v. Hamilton, 64 Wash. 353, 116 Pac. 1076, 35 L. R. A. (N. S.) 577; Aylmore v. Hamilton, 74 Wash. 433, 133 Pac. 1027; Kelly v. Hamilton, 76 Wash. 576, 136 Pac. 1148.

Necessity of compliance with statutory requirements as to notice of election to vote on issue of bonds. 18 Ann. Cas. 1137.

§ 5578. [5088.] Requisites of Bonds, and Where Payable.

Said bonds shall be in denominations of not less than one hundred nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than twenty years from date of issue, and bear interest at a rate not exceeding seven per cent per annum, payable annually, with coupons attached, for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of county commissioners, and shall be attested by the clerk of said board, and the seal of such board shall be affixed to each bond, but not to the coupon. Said bond shall be printed, engraved, or lithographed on good bond paper, and the bond shall state on its face that it is issued in accordance and in strict compliance with an act of the legislature of the state of Washington, entitled "An act authorizing and empowering the organized counties of the state of Washington to contract indebtedness, and to issue bonds for funding the same, and declaring an emergency," approved on the — day of —, 18— (inserting the date of approval of

this act), and a copy of this chapter shall be printed on the back of each bond. Said bonds shall be payable in any city containing a bank of the United States. [L. '90, p. 38, § 4; 1 H. C., § 2677.]

See supra, § 5492, bonds payable at "Fiscal Agency."

Issuance, Requisites and Validity of Bonds: See Remington's Digest, Counties, § 84; Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318; Packwood v. Kittitas County, 15 Wash. 88, 45 Pac. 640, 55 Am. St. Rep. 875, 33 L. R. A. 673; Rands v. Clarke County, 79 Wash. 152, 139 Pac. 1090; Shea v. Skagit County, 68 Wash. 233, 122 Pac. 1061.

§ 5579. [5089.] Bonds may be Sold or Exchanged for Warrants.

Said bonds may be exchanged at not less than their par value for an equal amount of the county warrants of the county issuing such bonds. The said bonds may be sold by the county commissioners at not less than their par value, and the proceeds shall be applied only for the purpose for which said bonds were issued. [L. '90, p. 39, § 5; 1 H. C., § 2678.]

Cited in 8 Wash. 404.

§ 5580. [5090.] Commissioners shall Levy Bond Tax, When—Use of Fund.

Ten years before said bonds shall become due, the county commissioners of the county issuing them are hereby authorized and required annually to levy a tax sufficient to liquidate the said bonds at maturity. Such tax shall be collected and kept as a separate fund for the sole purpose of liquidating the said bonds, in accordance with the following section. [L. '90, p. 39, § 6; 1 H. C., § 2679.]

§ 5581. [5091.] County Treasurer shall Advertise What—Interest.

It shall be the duty of the treasurer of any county issuing bonds under the provisions of this chapter, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds to advertise in the newspaper doing the county printing, for the presentation to him for the payment of as many of the bonds issued under the provisions of this chapter as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning with bond number one, until all of said bonds are paid: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said bonds by their number, said bonds shall cease to bear interest, which shall be stated in the notice. [L. '90, p. 39, § 7; 1 H. C., § 2680.]

§ 5582. [5092.] Coupons shall be Deemed Warrants—Presentation of.

The coupons hereinbefore mentioned for the payment of interest on said bonds shall be considered for all purposes as warrants drawn upon the general fund of the county issuing bonds under the provisions of this chapter, and when presented to the treasurer of the county issuing such bonds, and no funds are in the treasury to pay the said coupons, it shall be the duty of the treasurer to indorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as county warrants so presented and unpaid. [L. '90, p. 39, § 8; 1 H. C., § 2681.]

See supra, § 4114, presentation of county warrants.

Cited in 15 Wash. 322; 17 Wash. 141.

Under this section, the holder of county warrants issued subsequent thereto and subsequent to the act of 1893, providing that "all warrants drawn on the funds of the county shall be redeemed by the treasurer in the order of their issuance," is not entitled to have his warrants paid as long as there are insufficient funds to meet any interest coupons that may be due: *Munson v. Mudgett*, 15 Wash. 321, 46 Pac. 256.

Where interest coupons upon county bonds are by their terms payable at a designated time and require no presentation for the purpose of fixing the time and order of payment, their payment cannot be postponed and the rights of the holders subordinated to those of the holders of county warrants subsequently issued: *Id.* (Distinguished in *Sheldon v. Purdy*, 17 Wash. 135, 49 Pac. 228.)

§ 5583. [5093.] Registry of Bonds—Compensation of County Treasurer.

Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the "Bond register," in which register he shall enter the number of each bond, its date of issue and maturity, amount, rate of interest, to whom and when payable: Provided, the county treasurer shall be allowed a commission of one per cent upon the par value of said bonds for receiving and disbursing all funds arising from the sale or exchange of said bonds, and the commission therein provided for shall be in lieu of all other commissions allowed him by law: Provided further, that when the county treasurer receives a salary he shall receive no commissions for receiving or disbursing funds arising from the sale or exchange of said bonds. [L. '90, p. 40, § 9; 1 H. C., § 2682.]

CHAPTER XIII.

COUNTY ROAD AND BRIDGE BONDS.

§ 5584. [5094.] Election to Authorize Issuance of Bonds for Bridges, etc.

The board of county commissioners for any county may, whenever a majority thereof shall so decide (provided, the county commissioners of any county may, when deemed for the best interest of their county, order a special election during the year eighteen hundred and ninety), submit to the bona fide voters of their county the question whether the said board shall be authorized to issue coupon bonds to the amount not to exceed five per centum of the taxable property in said county, bearing a rate of interest not exceeding six per cent per annum, and payable and redeemable at a time fixed by the said board of county commissioners, for the purpose of making a new road or roads, or bridge or bridges, or improving established roads within said county. [L. '90, p. 40, § 1; 7 H. C., § 2683.]

Cited in 68 Wash. 234, 235; 79 Wash. 154; 111 Wash. 171, 173.

This section excludes the idea that it may issue bonds for general repair of roads; and the law on the particular subject not authorizing the same, such

bonds could not be issued under section 5576, supra, previously passed at the same session of the legislature, authorizing a county to issue bonds for strictly county purposes: *Shea v. Skagit County*, 68 Wash. 233, 122 Pac. 1061.

§ 5585. [5095.] How to be Held—Ballots—Bonds, When to Issue, and Requisites of.

Such election may be held at the times and in the manner provided for holding general elections in this state, and it may be held as a special election at such time as the board of county commissioners may designate. The ballots used must contain the words "Bonds, Yes," and "Bonds, No." If three-fifths of the legal ballots cast on the question of

issuing bonds for the improvement contemplated in the last section shall be in favor of bonds, the said commissioners must issue said bonds in due and legal form, and negotiate or float the same to the best advantage for the county, at not less than par value. Such bonds must bear the signature of the chairman of such board of commissioners, and be countersigned by the county auditor of the county in whose name they are issued, with the seal of the county thereunto attached; and the coupons must be signed by said chairman and said county auditor, and each bond so issued must be registered in the office of the county treasurer, in a book provided for that purpose, which must show the date, number and amount of the bond, and the name, and address of the person to whom the same is issued. [L. '13, p. 475, § 1. Cf. L. '90, p. 41, § 2; L. '91, p. 174, § 1; 1 H. C., § 2684.]

§ 5586. [5096.] Notice of Election to State What.

The commissioners must give notice in some newspaper, having a general circulation in said county for a period of at least four weeks next preceding the date of election, setting forth the proposition as to amount, duration, and terms of the bonds to be issued, and state in such notice the roads or bridges to be built or improved. [L. '90, p. 41, § 3; 1 H. C., § 2685.]

Cited in 68 Wash. 234.

§ 5587. [5097.] Proceeds of Bonds—How Disbursed.

When such bonds are sold, the money arising therefrom shall be immediately paid into the treasury of the county, and shall be drawn only for the improvement for which they were issued. [L. '90, p. 41, § 4; 1 H. C., § 2686.]

§ 5588. [5098.] Interest and Redemption of Bonds—Lien.

The commissioners must ascertain and levy annually the tax necessary to pay the interest on said bonds whenever the same becomes due, and a sinking fund to redeem the bonds at their maturity, and the said tax is a lien upon all property within the county, and must be collected in the same manner as other taxes are collected. [L. '90, p. 42, § 5; 1 H. C., § 2687.]

§ 5589. [5099.] Redemption of Bonds—Notice to be Mailed, When.

When the amount in the sinking fund equals or exceeds the interest and amount of any bond then due, the county treasurer shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the numbers thereof; and preference must be given to the oldest issue: Provided, if the county treasurer is advised of the postoffice address of the holder of any such bonds, then he shall mail a written notice to such holder, and if, after expiration of the said thirty days, the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon must cease, but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds are so purchased or redeemed, the county treasurer must cancel the same by writing across the face of each bond, in red ink, the word "Redeemed," and date of such redemption. [L. '90, p. 42, § 6; 1 H. C., § 2688.]

Cited in 8 Wash. 457; 11 Wash. 430.

§ 5590. [5100.] Payment of Interest Coupons.

The county treasurer must pay out of any moneys belonging to the road fund so created the interest upon any bonds issued under this chapter, by such commissioners when the same becomes due, upon the presentation at his office of the proper coupon, which must show the amount due and the number of the bond to which it belongs; and all coupons so paid must be reported to the commissioners at their first meeting thereafter. [L. '90, p. 42, § 7; 1 H. C., § 2689.]

Payment of Bonds and Coupons: See A. 673; Munson v. Mudgett, 15 Wash. Remington's Digest, Counties, § 85; Pack- 321, 46 Pac. 256; Seymour v. Frost, 25 wood v. Kittitas County, 15 Wash. 88, 45 Wash. 644, 66 Pac. 90. Pac. 640, 55 Am. St. Rep. 875, 33 L. R.

§ 5591. [5101.] Copy of Act to be Printed on Bonds.

A copy of this act, together with all amendments hereafter made, shall be printed upon the reverse side of all bonds issued under the provisions thereof. [L. '90, p. 42, § 9; 1 H. C., § 2690.]

"This act": The preceding sections in this chapter constitute "this act."

Cited in 79 Wash. 154.

§ 5592. [5101-1.] Coupon County Road Bonds—Limitation—Manner of Voting.

The board of county supervisors of any county may, whenever a majority thereof shall so decide, submit to the voters of their county at an election the question whether the said board shall be authorized to issue negotiable coupon road bonds of the county to the amount not to exceed five per centum of the taxable property in said county for the purpose of constructing a new road or roads, or improving established roads within said county, or for aiding in so doing, as prescribed in this act. The word "improvement" wherever employed in this act shall be deemed to embrace any undertaking for any or all of said purposes. The word "road" wherever employed in this act shall be deemed to embrace all highways, roads, streets, avenues, bridges, and other public ways. The provisions of this act shall apply not only to roads which are or shall be under the general control of the county, but also to all parts of state roads in such county and to all roads which are situated or are to be constructed wholly or partly within the limits of any incorporated city or town therein, provided the board of county commissioners finds that the same form or will become a part of the public highway system of such county, and will connect with existing roads in such county. Such finding may be made by the board of county commissioners at any stage of the proceedings before the actual delivery of the bonds. The constructing or improving of any and all such roads, or the aiding therein, is hereby declared to be a county purpose. The question of the issuance of bonds for any undertaking which relates to a number of different roads or parts thereof, whether intended to supply the whole expenditure or to aid therein, may be submitted to the voters as a single proposition in all cases where such course is consistent with the provisions of the state Constitution. If the county commissioners in submitting any such proposition relating to different roads or parts thereof find that such proposition has for its object the furtherance and accomplishment

of the construction of a system of public and county highways in such county, and constitutes and has for its object a single purpose, such finding shall be presumed to be correct, and upon the issuance of the bonds such presumption shall become conclusive. No proposition for bonds shall be submitted which proposes that more than forty per cent of the proceeds thereof shall be expended within any city or town or within any number of cities and towns. [L. '13, p. 62, § 1.]

Cited in 74 Wash. 437; 110 Wash. 118; 111 Wash. 172; 113 Wash. 240.

Specification of a certain highway must be construed to refer to the existing route: State ex rel. Thompson v. Pierce County, 113 Wash. 237, 193 Pac. 706.

§ 5593. [5101-2.] Time of Election—Form of Ballots—Bond—Form.

Such election may be held at the times and in the manner provided for holding general elections in this state, or it may be held as a special election at such time as the board of county commissioners may designate. The ballots used must contain the words, "Bonds, Yes," and "Bonds, No." If three-fifths of the legal ballots cast on the question of issuing bonds for the improvement contemplated in the last section shall be in favor of bonds, the said commissioners must issue such negotiable bonds in due and legal form, and negotiate or float the same in such manner as they may deem to the best advantage for the county, at not less than par value. The bonds authorized by this act shall be issued in the name of the county, in denominations of not less than one hundred nor more than one thousand dollars; they shall be payable either (1) to some person or corporation (named therein) or the bearer, or (2) simply to the bearer, at such time as shall be stated therein, not more than twenty years after the date of issue, and bear interest at a rate not exceeding six per cent per annum, payable semi-annually; they may be made payable in any city in the United States containing a national bank; they shall bear the signature of the chairman of the board of county commissioners, and be countersigned by the county auditor of the county with the seal of county thereunto attached; and the interest coupons shall be signed by said chairman and said county auditor, and each bond so issued must be registered in the office of the county treasurer in a book provided for that purpose, which must show the date, number and amount of the bond, date of maturity, rate of interest, and the name and address of the person to whom the same is issued: Provided, that it shall be lawful, in case the county commissioners shall so order, for the coupons to bear lithographed or engraved facsimiles of the signatures of the chairman and county auditor instead of their original signatures. The county seal need not be affixed to the coupons. Each coupon must show the number of the bond to which it belongs. Such bonds and coupons shall be printed, engraved or lithographed on good bond paper. [L. '13, p. 63, § 2.]

Cited in 110 Wash. 118.

After a notice of election specifying the exact route of the highway, the county commissioners cannot make a

material departure under the authority of this section: Thompson v. Pierce County, 113 Wash. 237, 193 Pac. 706.

§ 5594. [5101-3.] Tax Levy for Interest—Sinking Fund—Investment.

The county commissioners must ascertain and levy annually a tax sufficient to pay the interest on all such bonds whenever the same becomes

due. At least five years prior to the maturity of such bonds and thenceforward in each year until their maturity, the county commissioners must ascertain and levy a tax sufficient to accumulate during such series of years a fund equal to the principal sum of all such bonds then remaining outstanding and unpaid, and the amount of such tax as collected shall be by the county treasurer credited to a special fund for the payment of the principal of such bonds, which shall be designated "Road Bonds of — Sinking Fund," (the blank to be filled by inserting the year in which the bonds are issued), and no part of said fund shall be diverted to any other purpose than the payment of such principal. But such fund or any accumulated part thereof may be invested at any time or times in such manner and under such safeguards as may hereafter be provided by the statutes of this state, in which case all interest or premiums that may be realized on any such investment, as well as the principal thereof, shall be credited to such fund. All such taxes levied either for interest or for the sinking fund shall be a lien upon all property within the county and must be collected in the same manner as other taxes are collected. The county treasurer must pay out of any money belonging to the fund accumulated from the taxes levied to pay the interest as aforesaid, the interest upon all such bonds when the same becomes due upon presentation at the place of payment of the proper coupon; all coupons so paid must be reported to the county commissioners at their first meeting thereafter. Whenever the coupons are payable at any place other than the city in which the county treasurer keeps his office, it shall be the duty of the county treasurer seasonably to remit to a suitable fiscal agent (which shall be either a fiscal agent appointed by the state of Washington or some responsible fiscal agent approved by the county commissioners) at the place of payment the amount of money required for the payment of any coupons which are about to fall due. When any such bonds or coupons are paid, the county treasurer shall suitably and indelibly cancel the same. [L. '13, p. 64, § 3.]

Tax levy and funds for general county road and bridge funds: See *infra*, §§ 6413-6422.

§ 5595. [5101-4.] Notice of Election.

The commissioners must give notice in some newspaper having a general circulation in said county for a period of at least four (4) weeks next preceding the date of the election, setting forth the proposition as to amount and duration of the bonds to be issued, and the rate of interest thereon which is not to be exceeded, and stating in such notice the road or roads to be built or improved. Such notice need not describe the road or roads with particularity, but it shall be sufficient either to describe the same by termini and with a general statement as to the course of the same, or to use any other appropriate language sufficient to show the purpose intended to be accomplished. The commissioners may, at their option, give such other or further notice as they may deem advisable. When the bonds are issued they may be made to bear the rate of interest stated in the notice or any less rate. [L. '13, p. 65, § 4.]

Cited in 110 Wash. 115.

Spokane County v. Clausen, 110 Wash. 112, 188 Pac. 23.

Sufficient description of "duration" of bonds, within this section: State ex rel.

§ 5596. [5101-5.] Proceeds of Bonds—City Assistance—Limitation of Expenses.

When such bonds are sold, the money arising therefrom shall be immediately paid into the treasury of the county, and shall be drawn only for the improvement for which they were issued, under the general direction of the county commissioners: Provided, that if such improvement includes in whole or in part the constructing or improving of one or more roads, or any part or parts thereof, within the limits of any incorporated city or town and if the county commissioners shall find that the amount of the proceeds of such bonds intended to be expended for any such improvements within such corporate limits will probably not be sufficient to defray the entire expense of such improvement therein, and if they further find it to be equitable that such city or town should bear the remainder of such expense, they shall have power to postpone any expenditure therefor from the proceeds of such bonds until such city or town shall have made provision by ordinance for proceeding with such improvement within its corporate limits at its own expense so far as concerns the cost thereof over and above the amount of such bond proceeds available therefor. In such case it shall be lawful for the county commissioners to consent, under such general directions as they shall impose, that the proper authorities of such city or town shall have actual charge of making the proposed improvement within such corporate limits, such city or town acquiring any needed property or rights in doing the work by contract or otherwise in accordance with the charter or laws governing such city or town, but the same shall be subject to the approval of the county commissioners so far as concerns any payment therefor from the proceeds of such bonds. In such case, as the work progresses and money is needed to pay therefor, the county commissioners shall, from time to time, by proper order or orders, specifying the amount and purpose, direct the county treasurer to turn over to the city or town treasurer such part or parts of the proceeds of the bonds as may be justly applicable to such improvement or part thereof within such city or town, and any money so received by such city or town treasurer shall be inviolably applied to the purpose so specified. When that portion of the entire improvement which lies within any such city or town can readily be separated into parts, the procedure authorized by this section may be pursued separately as to any one or more of such parts of the general improvement. Nothing contained in this act shall be construed to render the county liable for any greater part of the expense of any improvement or part thereof within any city or town than the proper amount of the proceeds of such bonds, or to prevent such city or town from raising any part of the cost of any such improvement or part of improvement, over and above the amount arising from the proceeds of such bonds, by assessment upon property benefited, or by contribution from any of its general or special funds in accordance with the provisions of the charter or laws governing such city or town. The provisions of this section, other than the direction for the payment into the county treasury of the money arising from the sale of the bonds, need not be complied with until after the issuance of the bonds and the validity of the bonds shall not be dependent upon such compliance. [L. '13, p. 66, § 5.]

§ 5597. [5101-6.] Validating Provisions.

In case at any election in any county the question of incurring any such indebtedness or issuing any such bonds has been submitted to the voters of such county by the county commissioners at any time within one year next prior to the day when this act shall take effect, and substantially in conformity herewith, and the vote at such election was such as would have authorized, by sufficient majority of votes, the incurring of such indebtedness and the issuance of such bonds had this act been in force, and had such vote been taken pursuant to the provisions of this act, then in that case such election and vote and all the proceedings in connection therewith had or taken in manner and form aforesaid, and the bond issue intended to be authorized by such proceedings and vote, be and the same are hereby validated and confirmed, with the same effect as if this act had been in force during all such time, and the county commissioners of such county are authorized and empowered to proceed with the matter of incurring such indebtedness and issuing such bonds by sale thereof and completing all proceedings in the manner provided by this act, and to expend the money arising from such bonds and to proceed with the improvement, whether within or without the limits of any city or town, in the manner provided by this act. [L. '13, p. 67, § 6.]

The submission of a bond issue for the construction of various county roads and bridges as a single proposition is validated by this section, where the county commissioners shall find that the proposition has for its object the construction of a system of county highways, and validat-

ing any such bonds where the submission would have been authorized under the act, if submitted at any time within one year prior to the taking effect of the act: *Aylmore v. Hamilton*, 74 Wash. 433, 133 Pac. 1027.

§ 5598. [5101-7.] Act Concurrent.

This act shall not be construed as repealing or affecting any other act relating to the issuance of bonds for road or other purposes, but shall be construed as conferring additional power and authority: Provided, that any proceedings which may have been begun under any other act but which are in substantial conformity with the provisions of this act, may be completed under the provisions of this act, with the same effect as if this act had been in force when such other proceedings were begun. [L. '13, p. 68, § 7.]

Cited in 111 Wash. 171—173.

CHAPTER XIV.

BONDS TO REFUND COUNTY OR CITY INDEBTEDNESS.

§ 5599. [5102.] Bonds may be Refunded, When.

All bonds heretofore issued by any county or city may be refunded in the discretion of the county commissioners of the county or common council of the city, in the manner hereinafter provided, whenever there is not sufficient money in the treasury of such county or city to pay such bonds and legally applicable thereto. [L. '88, p. 12, § 1; 1 H. C., § 2691.]

Funding and Refunding: See *Remington's Digest*, Counties, § 80; *Richards v. Klickitat County*, 13 Wash. 509, 43 Pac. 647.

Refunding bonds as indebtedness within meaning of debt limit provisions. *L. R. A.* 1917E, 451.

§ 5600. [5103.] Requisites of Bonds—When Payable, Interest, etc.

Said bonds shall be in denominations of not less than one hundred nor more than one thousand dollars, shall be numbered from one up consecutively, shall bear the date of their issue, shall be made payable not more than twenty years from date, and shall bear interest at a rate not exceeding seven per cent per annum, payable semi-annually, with interest coupons attached, and the principal and interest shall be made payable at such place as may be designated. The bonds and each coupon shall be signed by the chairman of the board of county commissioners, and attested by the clerk under the seal of the commissioners, or in case of cities, by the mayor, and attested by the city clerk under the seal of the city. [L. '88, p. 13, § 2; 1 H. C., § 2692.]

See supra, § 5492, bonds payable at "Fiscal Agency."

§ 5601. [5104.] Tax to Pay Interest and Principal.

There shall be levied each year a tax upon the taxable property of such county or city, as the case may be, sufficient to pay the interest on said bonds as the same accrues, and before five years prior to the maturity thereof an annual sinking fund tax sufficient for the payment of said bonds at maturity, which taxes shall become due and collectible as other taxes. [L. '88, p. 13, § 3; 1 H. C., § 2693.]

§ 5602. [5105.] How Bonds shall be Printed and Indorsed.

Said bonds shall be printed or engraved or lithographed on good bond paper, and a duly authenticated copy of this chapter, together with the resolution of the board of county commissioners or common council of the city, authorizing and directing the issuance of the same, shall be printed on the back of each bond. [L. '88, p. 13, § 4; 1 H. C., § 2694.]

§ 5603. [5106.] Sale of Bonds and Application of Proceeds.

The bonds issued under and by virtue of this chapter shall not be sold or exchanged at less than their par value, and all moneys derived from the sale of such bonds shall be immediately applied to the redemption of outstanding bonds so far as such moneys can be applied, and after such outstanding bonds shall have been so refunded, they shall be indorsed in red ink, with the words "Refunded bond," and filed and preserved for one year, and shall then be destroyed in the presence of witnesses; and the clerk of the commissioners or city shall keep a record of such bonds so refunded, and shall note therein the date of the refunding and destruction of the same, and in whose presence they were destroyed. [L. '88, p. 13, § 5; 1 H. C., § 2695.]

§ 5604. [5107.] Bond Register to be Kept, and to Show What.

A register shall be kept of all bonds, which register shall show the number, date, amount, interest, name of payee, and when and where payable, of each and every bond executed, issued, or sold under the provisions of this chapter. [L. '88, p. 13, § 6; 1 H. C., § 2696.]

CHAPTER XV.

LIMITATIONS ON INDEBTEDNESS OF TAXING DISTRICTS.

§ 5605. Limitation on Indebtedness.

No taxing district shall for any purpose become indebted in any manner to an amount exceeding one and one-half per centum of the last assessed valuation of the taxable property in such taxing district, without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed five per centum of the last assessed valuation of the taxable property in such taxing district: Provided, that no part of the indebtedness allowed in this act shall be incurred for any purpose other than strictly county, city, town, school district, township, port district, metropolitan park district or other municipal purposes: Provided further, that any city or town, with such assent, may be allowed to become indebted to a larger amount, but not exceeding five per centum additional, determined as herein provided, for supplying such city or town with water, artificial light and sewers, when the works for supplying such water, light and sewers shall be owned and controlled by the city or town: Provided, further, that nothing herein contained shall be held to extend the debt limitations now imposed by law or any city charter on the powers of any taxing district. [L. '17, p. 587, § 1.]

Computation of amount of municipal debt by aggregating deferred payments on executory contract. *Ann. Cas.* 1918A, 514.

What is indebtedness within meaning of prohibitions against municipal indebtedness. 44 *Am. St. Rep.* 229; 23 *L. R. A.* 404; 37 *L. R. A. (N. S.)* 1058.

Interest on municipal bonds as factor

in determining whether municipality has exceeded constitutional debt limit. 17 *Ann. Cas.* 1243; *Ann. Cas.* 1918B, 598.

What are "public utilities" within statute allowing municipality to exceed debt limit for purchase or repair of public utilities. 31 *L. R. A. (N. S.)* 556.

§ 5606. Computation.

Whenever it shall be necessary to compute the indebtedness of a taxing district for bonding or any other indebtedness purposes, taxes levied for the current year and cash on hand received for the purpose of carrying on the business of such taxing district for such current year shall be considered as an asset only as against indebtedness incurred during such current year which is payable from such taxes or cash on hand: Provided, however, that all taxes levied for the payment of bonds, warrants or other public debts of such taxing district, shall be deemed a competent and sufficient asset of the taxing district to be considered in calculating the constitutional debt limit or the debt limit prescribed by this act for any taxing district: Provided, that the provisions of this section shall not apply in computing the debt limit of a taxing district in connection with bonds authorized pursuant to a vote of the electors at an election called prior to March 1, 1917. [L. '21, p. 400, § 1. Cf. L. '17, p. 588, § 2.]

§ 5607. Liabilities in Violation of Act Void.

All orders, authorizations, allowances, contracts, payments or liabilities to pay, made or attempted to be made in violation of this act,

shall be absolutely void and shall never be the foundation of a claim against a taxing district: Provided, that the limitations imposed by this act shall not apply to debts contracted by any taxing district prior to March 1, 1917. [L. '17, p. 589, § 3.]

§ 5608. Definitions—"Taxing District"—"Assessed Valuation," etc.

The term "taxing district" as herein used shall be held to mean and embrace all counties, cities, towns, townships, port districts, school districts, metropolitan park districts or other municipal corporations which now, or may hereafter exist.

The term "the last assessed valuation of the taxable property in such taxing district" as used herein shall be held to mean and embrace the aggregate assessed valuation for such taxing district as placed on the last completed and balanced tax-rolls of the county next preceding the date of contracting the debt or incurring the liability. [L. '17, p. 589, § 4.]

CHAPTER XVI.

VALIDATING INDEBTEDNESS IN COUNTIES, CITIES AND TOWNS.

§ 5609. [5108a.] Manner of Ratifying Indebtedness.

Any county, city or town in this state other than any county or city of the first class may ratify in the manner prescribed by this act, the attempted incurring of any indebtedness of such county, city or town, by the issuing of warrants, making of contracts, or creations of other evidences of indebtedness on the part of such county, city or town, by the corporate authorities thereof at any time prior to the passage of this act, when the only ground of the invalidity of such indebtedness so to be ratified is that, at the time of such attempted incurring thereof, the same, together with all other then existing indebtedness of such county, city or town, exceeding one and one-half per centum of the taxable property in such county, city or town, ascertained by the last assessment for state and county purposes previous to the attempted incurring of such indebtedness, except that in incorporated cities the assessments shall be taken from the last assessment for city purposes, and that such indebtedness was so attempted to be incurred without the assent of three-fifths of the voters therein voting at an election held for that purpose. [L. '15, p. 354, § 1. Cf. L. '11, p. 614, § 1; L. '13, p. 480, § 1; L. '09, p. 103, § 1; L. '88, pp. 74, 75; L. '91, pp. 267—270; 1 H. C., §§ 719—723; L. '93, pp. 181—183; L. '95, p. 44, § 1; L. '01, p. 61, § 1; L. '05, p. 213, § 1; L. '07, p. 512, § 1.]

This act is the same as the act of 1911, except that the latter covered "any" county, city, or town.

See *infra*, § 9532 et seq.

See *infra*, § 9552, validation in consolidated cities.

Cited in 2 Wash. 578, 579, 588, 590—592; 4 Wash. 133; 7 Wash. 71, 73; 8 Wash. 397, 299, 400; 12 Wash. 366, 371; 13 Wash. 510; 14 Wash. 8; 15 Wash. 89; 95 Wash. 133.

Constitutional Limitations, see notes to Const., Art. VIII, § 6.

Unauthorized Debts—Curative Statutes:

See Remington's Digest, Mun. Corp., § 494; Baker v. Seattle, 2 Wash. 576, 27 Pac. 462; McBryde v. Montesano, 7 Wash. 69, 34 Pac. 559; West v. Chehalis, 12 Wash. 369, 41 Pac. 171, 50 Am. St. Rep. 896; State ex rel. Traders' Nat. Bank v. Winter, 15 Wash. 407, 46 Pac. 644; Pilling v. Everett, 67 Wash. 109, 120 Pac. 873.

§ 5610. [5109a.] Notice of Election.

Whenever the corporate authorities of any such county, city or town shall deem it advisable that the ratification authorized by this act shall be obtained, they shall provide therefor by ordinance or resolution, which shall specify separately the amount of each distinct class of such indebtedness so to be ratified, the date or period of the attempted incurring by the corporate authorities of each separate class thereof, and the general nature of the indebtedness composed in each distinct class and shall provide for the holding of an election for that purpose, at which the attempted incurring of such indebtedness shall be submitted to the voters in such county, city or town for ratification or approval, of which election notice, to be provided for in such ordinance or resolution, shall be given by publishing the same in a newspaper published in such county, city or town once a week for at least four successive weeks, and if no newspaper is published in such city or town, then by publishing such notice for the same period in a newspaper published in the county wherein such city or town is situate and of general circulation therein. Each distinct class of such indebtedness so specified shall be the subject of a distinct vote in favor of or against the ratification thereof, and such vote shall designate the class of indebtedness referred to by the description thereof used and the amount specified in the ordinance or resolution. [L. '15, p. 354, § 2. Cf. L. '11, p. 615, § 2; L. '13, p. 480, § 2, and notes to § 5609.]

Submission of Question of Expenditure to Popular Vote: See Remington's Digest, Mun. Corp., § 490; Metcalfe v. Seattle, 1 Wash. 297, 29 Pac. 1010; State ex rel. Baker v. Snodgrass, 1 Wash. 306, 25 Pac. 1014; Yesler v. Seattle, 1 Wash. 308, 25 Pac. 1014; De Mattos v. New Whateom, 4 Wash. 127, 129 Pac. 933; Seymour v. Tacoma, 6 Wash. 138, 32 Pac. 1077; State ex rel. Fawcett v. Superior

Court, 14 Wash. 604, 45 Pac. 23, 33 L. R. A. 674; McBryde v. Montesano, 7 Wash. 69, 34 Pac. 559; Williams v. Shoudy, 12 Wash. 362, 41 Pac. 169; Petros v. Vancouver, 13 Wash. 423, 43 Pac. 361; State ex rel. Barton v. Hopkins, 14 Wash. 59, 44 Pac. 134, 550; Paine v. Port of Seattle, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580.

§ 5611. [5110a.] Vote Necessary to Ratify.

If at an election held as provided for in section 5610, three-fifths of the voters of such county, city or town, voting at such election, shall vote in favor of the ratification of any distinct class of such indebtedness, specified in the ordinance or resolution providing for such election, then such indebtedness shall thereby become and is hereby declared to be validated and a binding obligation upon such county, city or town, when the only ground of the previous invalidity of such indebtedness is that at the time of the incurring thereof so ratified, the same, together with all other then existing indebtedness of such county, city or town, exceeding one and one-half per centum of the taxable property in such county, city or town ascertained by the last previous assessment for state and county purposes (except that in incorporated cities the assessment shall be taken from the last assessment for city purposes); Provided, that neither anything in this act contained nor the vote cast at any such election shall be deemed to validate or authorize any indebtedness, which, together with all other indebtedness of such county, city or town existing at the time of the attempted incurring of the same exceeded any constitutional limitation of indebtedness which might be

incurred with the assent of three-fifths of the voters in such county, city or town voting at an election to be held for that purpose: And provided further, that this act shall apply only to indebtedness attempted to be incurred prior to the passage hereof. [L. '15, p. 355, § 3. Cf. L. '11, p. 615, § 3; L. '13, p. 481, § 3, and notes to § 5609.]

§ 5612. [5111a.] Construction.

The words "corporate authorities," used in this act, shall be held to mean the legislative or managing body of any county, city or town. [L. '15, p. 356, § 4. Cf. L. '11, p. 616, § 4; L. '13, p. 482, § 4, and notes to § 5609.]

"Act" refers to the foregoing sections of this chapter.

§ 5613. Sixth Class Counties—Ratification of Indebtedness.

Any county of the sixth class may, in the manner prescribed by this act, ratify the attempted incurring of any indebtedness by such county, by the issuing of warrants, making of contracts, or creating of other evidences of indebtedness on the part of such county, when the only ground of invalidity of such indebtedness to be so ratified is that, at the time of the attempted incurring thereof, the same, together with other existing indebtedness of such county within the one and one-half per cent limitation on county indebtedness exceeded such limitation as ascertained by the last assessment for state and county purposes previous to the attempted incurring of such indebtedness, and that the incurring of such indebtedness was so attempted without the assent of three-fifths of the voters of the county voting at an election held for that purpose. [L. '21, p. 167, § 1.]

§ 5614. Resolution for Ratification.

Whenever the board of county commissioners of any such county, shall deem it advisable that the ratification authorized by this act shall be obtained, they shall provide therefor by resolution, which shall specify separately the amount of each distinct class of such indebtedness to be so ratified, the date or period of the attempted incurring by the corporate authorities of each separate class thereof, and the general nature of the indebtedness composed in each distinct class and shall provide for the holding of a special election for that purpose, at which the attempted incurring of such indebtedness shall be submitted to the voters of such county, for ratification or rejection. Notice of such election shall be provided for in such resolution, and shall be given by publishing the same in a newspaper published in such county, once a week for at least four successive weeks. Each distinct class of such indebtedness so specified shall be the subject of a distinct vote in favor of or against ratification thereof, and such vote shall designate the class of indebtedness referred to by the description thereof used and the amount specified in the resolution. [L. '21, p. 167, § 2.]

§ 5615. Scope of Act.

If at any election held as provided for in section 5614, three-fifths of the voters of such county, voting at such election, shall vote in favor

of the ratification of any distinct class of such indebtedness, then such indebtedness shall thereby become and is hereby declared to be validated and a binding obligation upon such county. Nothing in this act contained nor the vote cast at any such election shall be deemed to validate or authorize any indebtedness, which, together with all other indebtedness of such county, existing at the time of the attempted incurring of the same exceed any constitutional limitation of indebtedness which might be incurred with the assent of three-fifths of the voters in such county. Provided, that this act shall apply only to indebtedness attempted to be incurred prior to the passage thereof. [L. '21, p. 168, § 3.]

"Act" refers to the last four sections of this chapter.

§ 5616. Bonds Authorized.

Whenever the board of county commissioners of any such county shall submit to the voters the question of ratifying any indebtedness as provided in this act, they may at the same time submit the question whether the corporate authorities shall be authorized to fund such indebtedness by the issuance and sale of the general negotiable bonds of such county. The question of ratifying the indebtedness and the question of authorizing the funding thereof may, in the discretion of the county commissioners, be submitted as one question, or the question of ratifying and the question of authorizing the funding of the indebtedness may be separately submitted. In either event an affirmative vote of three-fifths of the voters voting upon said proposition at such election shall be necessary to carry such proposals whether separately or jointly submitted. It shall be lawful to fund the principal and accrued interest of the indebtedness so ratified. If the proposal to authorize the funding of the indebtedness shall carry, the corporate authorities in their discretion may issue and sell the bonds of the county, to the amount so authorized, in the manner and upon the terms and conditions now provided by law for the issuance, sale and redemption of like bonds of such county. [L. '21, p. 168, § 4.]

"Act" refers to the last four sections of this chapter.

CHAPTER XVII.

See, also, "Municipal Corporations," § 9538, etc.

FUNDING INDEBTEDNESS IN COUNTIES, CITIES AND TOWNS.

§ 5617. [5112.*] Funding Bonds, When and How Issued.

Any county, city or town in the state of Washington which now has or may hereafter have an outstanding indebtedness evidenced by warrants or bonds, including warrants or bonds of any city or town which are special fund obligations of and constitute a lien upon the waterworks or other public utilities of such city or town, and are payable only from the income or funds derived or to be derived therefrom, whether issued originally within the limitations of the Constitution of this state, or of any law thereof, or whether such outstanding indebtedness has been or may hereafter be validated or legalized in the manner prescribed by law, may, by its corporate authorities, provide by ordinance or resolution for the issuance of funding bonds with which to take up and cancel such outstanding indebtedness in the manner hereinafter described, said bonds to constitute general obligations of such county, city or town:

Provided, that special fund obligations payable only from the income funds of the public utility, shall not be refunded by the issuance of general municipal bonds, however, unless such general municipal bonds shall have been previously authorized at an election held in the manner prescribed by section 9489, for the issuance of general municipal utility bonds. The notice of said election, in describing said bonds or warrants, need only refer to the bonds or warrants sought to be so funded by naming the utility or utilities in aid of which the bonds or warrants were issued and shall state the total amount sought to be so funded: Provided, however, that nothing in this chapter shall be so construed as to prevent any such county, city or town from funding its indebtedness as now provided by law. [L. '17, p. 591, § 1. Cf. L. '95, p. 465, § 1.]

Cited in 13 Wash. 424, 511; 15 Wash. 89; 23 Wash. 463.

Nature and Power to Issue Securities: See Remington's Digest, Mun. Corp., § 517; Seymour v. Tacoma, 6 Wash. 138, 32 Pac. 1077; State ex rel. Port Townsend v. Clausen, 40 Wash. 95, 82 Pac. 187; Aylmore v. Seattle, 48 Wash. 42, 92 Pac. 932.

Constitutional and Statutory Provisions: See Remington's Digest, Mun. Corp., § 518; Yesler v. Seattle, 1 Wash. 308, 25 Pac. 1014; Paine v. Port of Seattle, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580; Tennent v. Seattle, 83 Wash. 108, 145 Pac. 83; Shorts v. Seattle, 95 Wash. 538, 164 Pac. 241.

Limitation of Amount of Bonds—In General: See Remington's Digest, Mun. Corp., § 519; Baker v. Seattle, 2 Wash. 576, 27 Pac. 462; Fisher v. Seattle, 55 Wash. 396, 104 Pac. 655; State ex rel. Olympia v. Holmes, 81 Wash. 403, 142 Pac. 1148; Uhler v. Olympia, 87 Wash. 1, 151 Pac. 117, 152 Pac. 998; Chandler v. Seattle, 80 Wash. 154, 141 Pac. 331.

— **Computation of Limit of Amount:** See Remington's Digest, Mun. Corp., § 521; Seymour v. Tacoma, 6 Wash. 427, 33 Pac. 1059; Dean v. Walla Walla, 48 Wash. 75, 92 Pac. 895; Uhler v. Olympia, 87 Wash. 1, 151 Pac. 117, 152 Pac. 998.

Validity of Bonds, in General: See Remington's Digest, Mun. Corp., § 529, and cases cited.

Sale or Other Disposition of Bonds: See Remington's Digest, Mun. Corp., § 528, and cases cited.

County Bonds—Notice: See Remington's Digest, Counties, §§ 79, 80; Richards v. Klickitat County, 13 Wash. 509, 43 Pac. 647; Duryee v. Friars, 18 Wash. 55, 50 Pac. 583; Rands v. Clarke County, 79 Wash. 152, 139 Pac. 1090.

See, also, State ex rel. Spokane County v. Clausen, 110 Wash. 112, 188 Pac. 23; Thompson v. Pierce County, 113 Wash. 237, 193 Pac. 706.

Sale or Other Disposition of Bonds by County: See Remington's Digest, Counties, §§ 82, 83; Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318.

Issuance, Requisites and Validity of Bonds: See Remington's Digest, Counties, § 84; Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318; Packwood v. Kittitas County, 15 Wash. 88, 45 Pac. 640, 55 Am. St. Rep. 875, 33 L. R. A. 673.

See, also, Rust v. Kitsap County, 111 Wash. 170, 189 Pac. 994.

Funding existing debts as increase of indebtedness. 21 Ann. Cas. 1334.

§ 5618. Validation of Prior Bond Issues.

That all bonds heretofore voted or issued, and which may have been or may hereafter be issued by any county, city or town, for any of the purposes authorized by the preceding section as hereby amended, including general fund bonds issued for the purpose of refunding special utility fund bonds or warrants, shall be validated and have the same force and effect as though said section had been in full force and effect at the time said bonds were either authorized or issued. [L. '17, p. 592, § 2.]

§ 5619. [5113.] Bonds, Denomination of, and How Issued.

Funding bonds authorized to be issued by this chapter shall be in denominations of not less than one hundred dollars, nor more than one

thousand dollars, and shall be signed by the following corporate authorities: When issued by a county, the chairman of the board of county commissioners, countersigned by the county treasurer and attested by the county auditor, who shall affix his official seal; when issued by a city or town, by its mayor, countersigned by its treasurer and attested by its clerk, who shall affix his official seal. They shall bear interest at a rate not to exceed seven per centum per annum, payable semi-annually, which interest shall be evidenced by proper coupons attached to each bond. Such corporate authorities shall, by ordinance or resolution, provide for the manner of issuing and the form of said bonds, and the time or times when the same shall be made payable; but no bonds issued under this chapter shall be issued for a longer period than twenty years, and when they shall be made payable at different periods within said twenty years, they shall be divided into series not to exceed twenty in number, but there shall be as many series as there are different times of payment, and all bonds included in each series shall be made payable at the same time. The principal and interest may be made payable at any place in the United States designated by the corporate authorities of such county, city or town. Such bonds shall not be issued to an aggregate amount in excess of the warrants or other outstanding indebtedness proposed to be funded thereby. They may be exchanged at not less than their par value for such warrants or other outstanding indebtedness, or may be sold at not less than their par value, and the proceeds used exclusively for the purpose of retiring and canceling such warrants and interest thereon or other indebtedness: Provided, that nothing in this chapter contained shall be deemed to authorize the issuing of any funding bonds which, other than that proposed to be funded under the provisions of this chapter, shall exceed any constitutional limitation of indebtedness, or any indebtedness, which might be incurred with the assent of three-fifths of the voters of such county, city or town voting at an election to be held for that purpose. [L. '95, p. 466, § 2.]

See *supra*, § 5492, place of payment.

Cited in 18 Wash. 62.

Submission of Question of Issue of Bonds to Popular Vote: See Remington's Digest, Mun. Corp., § 523; *Yesler v. Seattle*, 1 Wash. 308, 25 Pac. 1014; *Baker v. Seattle*, 2 Wash. 576, 27 Pac. 462; *De Mattos v. New Whatcom*, 4 Wash. 127, 29 Pac. 933; *Seymour v. Tacoma*, 6 Wash. 138, 32 Pac. 1077; *Stalleup v. Tacoma*, 13 Wash. 141, 42 Pac. 541, 52 Am. St. Rep. 25; *Fox v. Seattle*, 43 Wash. 74, 86 Pac. 379, 117 Am. St. Rep. 1037; *State ex rel. Atkinson v. Ross*, 46 Wash. 28, 89 Pac.

158; *Aylmore v. Seattle*, 48 Wash. 42, 92 Pac. 932; *Hansard v. Green*, 54 Wash. 161, 103 Pac. 40, 132 Am. St. Rep. 1107, 24 L. R. A. (N. S.) 1273; *Blaine v. Seattle*, 62 Wash. 445, 114 Pac. 164, Ann. Cas. 1912D, 315; *Tulloch v. Seattle*, 69 Wash. 178, 124 Pac. 481; *Tennent v. Seattle*, 83 Wash. 108, 145 Pac. 83; *Schooley v. Chehalis*, 84 Wash. 667, 147 Pac. 410; *State ex rel. Ellensburg v. Clausen*, 87 Wash. 111, 151 Pac. 251; *Uhler v. Olympia*, 87 Wash. 1, 151 Pac. 117, 152 Pac. 998.

§ 5620. [5114.] Bond Issue—Notice—Publication.

Bonds may be issued without notice under the provisions of this chapter for the purpose of funding or refunding outstanding warrants in cases where the issuance of such bonds shall have been previously authorized by the voters of such county, city or town, when exchanged at not less than par value, or for the purpose of funding or refunding outstanding bonds, when exchanged at not less than par value, but be-

fore any other bonds shall be issued under the provisions of this chapter, such corporate authorities shall cause a notice of the proposed issuance of such bonds to be given by publication in a daily or weekly newspaper of general circulation published in the county proposing to issue such bonds, or in which county such city or town is situated, at least once a week for four consecutive weeks. Such notice shall state for what purpose and the total amount for which it is so proposed to issue bonds, and if to be divided into series, then into how many series the same are to be divided, and the amount of and period for which each series is to run, also the hour and day for considering bids for such bonds, and asking bidders to name the price and rate of interest at which they will purchase such bonds, and if such bonds are to be divided into series, then to name such price and rate for each series of such bonds, separately; and at the time named in such notice it shall be the duty of the corporate authorities to meet with the treasurer of the county, city or town proposing to issue such bonds, at his office, and with him open said bids, and shall sell said bonds to the person or persons making the most advantageous offer therefor: Provided, however, that said bonds shall never be sold or disposed of below par, and such corporate authorities shall have the right to reject any and all bids, and if all said bids shall be rejected, such corporate authorities shall proceed to re-advertise the sale of said bonds in the manner herein provided. [L. '09, p. 713, § 1. Cf. L. '95, p. 467, § 3; L. '01, p. 66, § 1.]

Cited in 18 Wash, 56, 62.

Application for and Notice of Election: See Remington's Digest, Mun. Corp., § 524; Seymour v. Tacoma, 6 Wash. 138, 32 Pac. 1077; Heszeltine v. Wilbur, 29 Wash. 407, 69 Pac. 1094.

Proceedings Preliminary to Issuance of Bonds—Petition or Assent of Taxpayers or Voters: See Remington's Digest, Counties, § 81; Murry v. Fay, 2 Wash. 352,

26 Pac. 533; Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318; Rehmke v. Goodwin, 2 Wash. 676, 27 Pac. 473; Blaine v. Hamilton, 64 Wash. 353, 116 Pac. 1076, 35 L. R. A. (N. S.) 577; Aylmore v. Hamilton, 74 Wash. 433, 133 Pac. 1027; Kelly v. Hamilton, 76 Wash. 576, 136 Pac. 1148.

See, also, Rust v. Kitsap County, 111 Wash. 170, 189 Pac. 994.

§ 5621. [5115.] Levy, How Provided for.

The corporate authorities of any such county, city or town shall provide annually by ordinance or resolution for the levy and extension on the tax-rolls of such county, city or town, and for the collection thereof, of a direct annual tax in addition to all other county, city or town taxes to be levied according to law, which shall be sufficient to meet the interest on all of said bonds promptly as the same matures, and also sufficient to fully pay each series of bonds as the same matures: Provided, that such ordinance or resolution shall not be repealed until the levy therein provided for shall be fully paid, or the bonds both principal and interest shall be paid or canceled. [L. '95, p. 467, § 4.]

§ 5622. [5116.] Treasurer to Register Bonds Issued.

The treasurer shall keep a register of the bonds issued under the provisions of this chapter, wherein he shall enter the series of each bond, its number, date of issuance, amount, date of maturity, name and postoffice address of purchaser and date of cancellation. [L. '95, p. 468, § 5.]

§ 5623. [5117.] Corporate Authorities Defined.

The words "corporate authorities," used in this chapter, shall be held to mean the county commissioners, common council or other managing body of any county, city or town. [L. '95, p. 468, § 6.]

CHAPTER XVIII.

FUNDS FOR CURRENT EXPENSES IN COUNTIES, CITIES, TOWNS AND SCHOOL DISTRICTS.

§ 5624. [5118.] Anticipated Revenue.

Any county, city, town or school district in this state may borrow money or issue warrants in anticipation of its revenue, to meet its current general expenses, as hereinafter provided: Provided, however, that no county, city, town or school district now or hereafter having an outstanding warrant or floating indebtedness, not funded, shall be permitted to take advantage of the provisions of this chapter until said indebtedness shall be paid, funded, canceled or exchanged as provided in section 5629, or otherwise paid. [L. '95, p. 297, § 1.]

This chapter (the act of March 20, 1895) was intended to be repealed by § 257 of Laws of 1897, page 448, but the title of the act of 1897 omits mention thereof, and consequently the chapter is retained as in force at least as applicable to all corporations except school districts.

This section does not apply to war- warrant indebtedness: *Kenyon v. Spokane*,
rants issued to refund an outstanding 17 Wash. 57, 48 Pac. 783.

§ 5625. [5119.] Deficiency Reported by Treasurer.

Whenever any tax shall have been actually levied, and it shall appear to the treasurer of any such county, city, town, or school district that there are no funds in his hands, as such treasurer, with which to meet the current general expenses of such county, city, town or school district for which such tax has been levied, he shall report such fact to the board of county commissioners, the common council, the board of trustees, or education, or other managing body of such county, city, town or school district, and if in the opinion of a majority of said board, council or other managing body, it is necessary to provide temporary funds for such purposes, such necessity shall be declared by proper order, ordinance or resolution, specifying the amount of such proposed loan or loans, and shall give notice of such proposed loan or loans, by publication once a week for two consecutive weeks in some newspaper of general circulation in the county, calling for bids for such loan or loans, to be submitted within five days from the last publication of such notice, and shall award the same to such bidder as shall offer the lowest rate of interest and the most satisfactory terms, and thereupon the treasurer shall be authorized, and it shall be his duty to proceed to make such loan or loans in the manner and according to the terms of such order, ordinance or resolution and award: Provided, however, that the notes or warrants authorized to be issued under the provisions of this chapter shall not be discounted or disposed of for less than the par value thereof. [L. '95, p. 297, § 2.]

§ 5626. [5120.] Temporary Loans, How Made.

Whenever such temporary loan or loans shall be made, as provided in the foregoing section, and the total indebtedness of such county, city, town or school district, including such proposed loan or loans, shall not exceed any constitutional or statutory limitation of indebtedness, a note or notes shall be issued and signed, as provided in this section, such note or notes to be in denominations of not less than one hundred dollars and not more than one thousand dollars, and shall draw interest at not to exceed eight per centum per annum, and shall be payable within a period not to exceed one year: Provided, however, that if any such note or notes shall not be paid at maturity the same may be renewed for such further period, or periods, as shall be necessary. All notes issued under the provisions of this section shall be substantially in the following form:—

TEMPORARY LOAN.

(Insert name of municipality), State of Washington.

\$ (insert amount.)

Loan No. (insert No.)

(Insert name of place), Washington, (insert date),

For value received (insert time of payment) after date, the treasurer of the (insert name of county, city, town or school district) will pay out of any delinquent or anticipated revenues from all sources, when collected, to the order of (insert name of payee) the sum of (insert amount) dollars, lawful money of the United States, with interest from date at the rate of (insert rate) per centum per annum.

Countersignature:

— — —,

— — —,

(Signature and title of officer.)

(Title of countersigning officer.)

Attest: — — —,

(Seal, if any.)

(Attestation and title of attesting officer.)

[L. '95, p. 298, § 3.]

§ 5627. [5121.] Limitation Exceeded.

Whenever the indebtedness of any such county, city, town or school district shall have reached the limitation or limitations prescribed by the Constitution or general laws of this state, note, or notes issued for the purpose of this chapter shall be in denominations of not less than one hundred dollars and not more than one thousand dollars, and shall draw interest at not to exceed eight per centum per annum, and shall be payable within a period not to exceed one year, and shall be substantially in the following form:—

TEMPORARY LOAN.

(Insert name of municipality), State of Washington.

\$ (insert amount.)

Loan No. (insert No.)

(Insert name of place), Washington, (insert date),

For value received (insert time of payment) after date, the treasurer of the (insert name of county, city, town or school district) will pay

out of any delinquent or anticipated revenues of said (insert name of county, city, town or school district) for the year (insert year of levy), when collected, to the order of (insert name of payee) the sum of (insert amount) dollars, lawful money of the United States, with interest from date at the rate of (insert rate) per centum per annum.

This note shall not be construed to be a debt or obligation of the (insert name of county, city, town or school district). It is secured by an assignment of sufficient of the revenues of said (insert name of county, city, town or school district) to be received under and by virtue of the tax levy for the year (insert year of levy), and payment hereof is restricted to such revenues, and the treasurer is authorized and directed to set aside and reserve such revenues, when collected, or so much thereof as shall be necessary for the payment hereof at maturity. This note is issued under and is within all the limitations prescribed by and is payable in the manner specified in an act entitled (insert title of this act), approved (insert date of approval of this act.)

Countersignature: _____,

_____,
(Title of countersigning officer.)

_____,
(Signature and title of officer.)

(Seal, if any.)

Attest: _____,
(Attestation and title of attesting officer.)

Provided, however, that if any such note or notes shall not be paid at maturity, the same may be renewed for such period or periods as shall be necessary: Provided further, that in no case when the total amount of taxes paid in on any levy, together with all outstanding loans, or warrants issued against said levy, shall be equal to seventy-five per centum of said levy, shall it be lawful to make any additional loan or loans, but in such case warrants may be issued as hereinafter provided: And provided also, that it shall not be lawful to make any temporary loan or loans, nor to issue any warrants against said levy during any one month when the total amount of outstanding loans and warrants made and issued against said levy during said month (exclusive of warrants issued for interest payments and outstanding loans maturing during said month) shall be equal to one-eighth of the total amount of such levy. [L. '95, p. 298, § 4.]

§ 5628. [5122.] Warrants to Contain What.

Whenever any such county, city, town or school district shall have reached its limit of indebtedness as specified in the preceding section, and shall desire to issue warrants, such warrants shall be in manner and form as now required by law, except that each shall contain a clause declaring that the same is not a debt or obligation of such county, city, town or school district, and distinctly limiting the payment thereof, and the payment of interest accruing thereon, to the revenues to be derived from the levy then actually made, and against which the same is drawn; and in case any such warrant shall be presented for payment and there shall be no funds on hand with which to pay the same, it shall be indorsed, "Presented for payment and not paid for want of funds," together with the date of presentation, and shall thereafter draw interest at the legal rate, but such indorsement shall in no case operate to

make such warrant a debt or obligation of said county, city, town or school district, or in any manner extend the payment thereof to any revenue or revenues than that or those against which the same was originally drawn. [L. '95, p. 300, § 5.]

§ 5629. [5123.] Treasurer Authorized to Borrow, When.

When any warrants shall have been issued, as now provided by law, or as provided in this chapter, and shall be outstanding and not called for payment, and the board, council or other managing body of any county, city, town or school district shall deem it necessary or advisable to cancel or exchange the same, and there shall be no funds on hand with which to effect such cancellation, then, in such case, said board, council or other managing body shall, by a majority vote, duly authorize the treasurer to make a temporary loan or loans in the manner hereinbefore provided with which to take up and cancel such warrants, or may cause to be issued, in the manner hereinbefore provided, note or notes in exchange therefor; but in all cases, before any such note or notes shall be issued, said treasurer shall publish a notice calling for the warrants it is proposed to so cancel or exchange, said notice to be so published once a week for two consecutive weeks in some newspaper of general circulation in the county; and interest on such warrants shall cease ten days after the date of the last publication of such notice (if said warrants are not sooner presented); and when warrants aggregating an amount not less than five hundred dollars shall be so presented a note or notes may be issued in exchange therefor, or with which to obtain funds to cancel the same. [L. '95, p. 300, § 6.]

§ 5630. [5124.] Reserve Fund.

In all cases where any temporary loan or loans shall have been made and any note or notes shall have been issued as provided in this chapter, it shall be the duty of the treasurer of such county, city, town or school district, to set aside and reserve out of all revenues, when collected, an amount sufficient to meet the payment of such note or notes at maturity, and said revenues so set aside and reserved shall not be diverted to any other purpose so long as such loan or loans shall remain outstanding and unpaid: Provided, that when any temporary loan or loans shall have been made, as provided in section 5627, and any note or notes shall have been issued as therein provided, or when any warrant shall have been issued as provided in section 5628, then, and in such case, such treasurer shall set aside, and reserve when collected, for the payment of such note or notes, or warrants, only such revenues as shall be derived from the levy against which said note or notes, or warrant, is drawn, and such revenues shall not be diverted to any other purpose so long as such note or notes, or warrants, shall remain outstanding and unpaid: Provided, that when any such treasurer may have five hundred dollars on hand applicable to the payment of any such warrants, he shall publish a call for such warrants in the manner prescribed in the last preceding section, and shall redeem the same in the order of their issuance: Provided, however, that no such warrants shall be paid while any note or notes issued against

said levy under the provisions of section 5627 remains outstanding and unpaid, unless there shall be funds on hand with which to pay such note or notes at maturity. [L. '95, p. 301, § 7.]

§ 5631. [5125.] Notes, Signed by Whom.

All notes issued under the provisions of this chapter shall be signed by the following officers before the same shall be delivered to the purchaser: When issued by a county, the chairman of the board of county commissioners, countersigned by the county treasurer and attested by the county auditor, who shall affix thereto his official seal; when issued by a city or town, by its mayor, countersigned by its treasurer (and comptroller, if any), and attested by its clerk, who shall affix thereto its corporate seal; when issued by a school district, by the chairman of its board of education or directors, countersigned by the county treasurer and attested by the clerk of said district, who shall affix thereto his official seal, if he have any. [L. '95, p. 302, § 8.]

§ 5632. [5126.] Notes to be Registered.

The treasurer of such county, city, town or school district shall keep separate registers of all notes and of all warrants issued under the provisions of this chapter. The register of notes shall at least contain the number of each note, date when issued, to whom issued, where payable, rate of interest, when payable, whether issued generally against such revenue or specially against a specific tax levy, date when paid or renewed, to whom paid or renewed, and shall be kept substantially according to the following form:

REGISTER OF NOTES.

To whom paid or renewed.....	Amount renewed.....	Amount paid.....	Date paid or renewed.....	Amount issued against tax levy for year.....	Amount issued generally against revenue.....	When payable.....	Rate of interest.....	Where payable.....	To whom issued.....	When issued.....	No.....

Such register of warrants shall at least contain the number of such warrant, date when issued, to whom issued, the tax levy against which it is issued, when presented or indorsed, amount, date called for redemption, when paid, amount paid, to whom paid, whether canceled or exchanged by the issuance of notes, and shall be kept substantially in the following form:—

REGISTER OF SPECIAL WARRANTS.

Canceled by note number.....	To whom paid.....	Amount paid.....	When paid.....	Date called for re- demption.....	Amount.....	Date pre- sented or indorsed.....	Issued against tax levy for year.....	To whom issued.....	When issued.....	No.....

[L. '95, p. 302, § 9.]

See note to p. 303, L. '95.

§ 5633. [5127.] Interest not Compounded.

Whenever any note or notes shall have been issued according to the provisions of this chapter, and shall become due and payable, and there shall be no funds on hand with which to pay the same, or any interest thereon, and it shall be deemed desirable to renew said note or notes, as provided in this chapter, the interest due upon said note or notes shall not be included in the sum for which said note or notes shall be renewed, but warrant or warrants may be issued therefor; and said warrant or warrants shall be noninterest bearing, and shall so state upon their face, and shall be paid only when there shall be sufficient funds on hand, received from the revenues against which the original note or notes was issued. [L. '95, p. 303, § 10.]

§ 5634. [5128.] Construction.

This chapter shall not be construed to prevent any county, city, town or school district from issuing warrants, as heretofore provided by law, but it shall be optional with such county, city, town or school district to issue such warrant, or issue warrants or make temporary loans, as provided by this chapter. [L. '95, p. 303, § 11.]

CHAPTER XIX.**FUNDS AND TAX LEVIES IN CERTAIN CITIES.**

Assessment of taxes in first-class cities: See § 11318 et seq.

Assessment of taxes in other cities: See § 11328 et seq.

§ 5635. [5129.] Creating Current Expense and Indebtedness Funds.

In all municipal corporations, having less than twenty thousand inhabitants, there shall be maintained a fund to be designated as "Current Expense Fund," and, after the first day of February, eighteen hundred and ninety-eight, a fund to be designated as "Indebtedness Fund." [L. '97, p. 222, § 1.]

Cited in 24 Wash. 472; 31 Wash. 542; 68 Wash. 549, 552.

Under this chapter, a claim thereafter creating a general liability of the city is payable out of the current expense fund: *Townsend Gas. & Elec. L. Co. v. Hill*, 24 Wash. 469, 64 Pac. 778.

This section supplanted former laws requiring moneys from the same sources to be paid into the "general fund": *State ex rel. Polson v. Hardcastle*, 68 Wash. 548, 124 Pac. 110.

§ 5636. [5130.] License Moneys, Disposition of.

All moneys collected by such corporations from licenses for the sale of intoxicating liquors and from all other licenses shall be credited and applied by the treasurer to said "Current Expense Fund": Provided, that this chapter shall not exempt such corporations from paying ten per cent of all money collected for liquor licenses, to the state. [L. '97, p. 222, § 2.]

§ 5637. [5131.*] Levies.

Such municipal corporations shall levy and collect annually a property tax for the payment of current expenses, not exceeding fifteen mills on the dollar; a tax for the payment of indebtedness (if any in-

debtedness exists) not exceeding six mills on the dollar, and all moneys collected from the taxes levied for payment of current expenses shall be credited and applied by the treasurer to "Current Expense Fund"; and all moneys collected from the taxes levied for the payment of indebtedness shall be credited and applied to a fund to be designated as the "Indebtedness Fund": Provided, that the city council, by unanimous vote of all its members at a regular meeting may levy a property tax for the payment of current expenses not exceeding eighteen mills on the dollar: And provided further, that if the qualified electors of any such municipality shall, at a special election to be held for that purpose, vote in favor of a larger levy for the payment of current expenses than eighteen mills on the dollar of assessed valuation, such larger levy for such purpose may be made accordingly: Provided further, that this act shall not be held to apply to cities of the third class, or in any way modify the law in relation thereto. [L. '21, p. 418, § 1; L. '19, p. 510, § 1; L. '13, p. 274, § 1. Cf. L. '97, p. 222, § 3.]

Cited in 39 Wash. 626; 78 Wash. 258; 102 Wash. 622.

Tax Levies in Cities in General: See Remington's Digest, Mun. Corp., § 536, and cases cited.

This section is not impliedly repealed by section 9073, *infra*, relating to tax levies in second-class cities, but must be taken in *pari materia* therewith: *Benn v. Grays Harbor County*, 102 Wash. 620, 173 Pac. 632.

A tax levy by a city of the third class in excess of the legal limit of ten mills on the dollar "for all purposes," cannot be sustained on the ground that the excess was made for the purpose of retiring outstanding indebtedness of the city: *Owings v. Olympia*, 88 Wash. 289, 152 Pac. 1019; *Whitfield v. Davies*, 78 Wash. 256, 138 Pac. 883.

§ 5638. [5132.] Basis for Tax Levy.

The levy of tax for current expenses shall be based upon an estimate of the expenses for the ensuing year, which estimate shall be adopted by a majority vote of the councilmen present at the meeting at which the levy is made, and shall be entered in the record of the proceedings of the council, and in making such estimate, the probable revenues from licenses and from all sources, other than from taxes shall be taken into consideration and the levy shall not exceed, by more than twenty per cent, the amount of such estimate. Current expenses shall be deemed to include all salaries, the expenses of the various departments of the city government, the making, improvement and repairs of streets and sidewalks (excepting such improvements, the cost of which is to be assessed against any specific property), the making and improvement of sewers, and any and all other expenses necessary to be incurred in maintaining the corporation and in its government in accordance with its charter and the needs of its inhabitants. [L. '97, p. 222, § 4.]

§ 5639. [5133.] Tax for Indebtedness to be Fixed by Council.

The tax for payment of indebtedness shall be based upon a statement of such indebtedness, which shall be prepared by the clerk and approved by the council by a majority vote, at the meeting at which the levy is made, which statement shall be entered in the record of the proceedings of the council. In making the levy, consideration shall be taken of all outstanding warrants, certificates and all other obligations and indebtedness of the city, with the interest thereon, for the payment

of which no provision is made by law, by the levy of a special tax, or otherwise than by a general tax, and this chapter shall not affect existing laws relating to the levy or collection of any tax, or the maintenance of any fund, for the payment of any bonded or funded indebtedness, or of the interest thereon. [L. '97, p. 223, § 5.]

See supra, §§ 5601, 5621, tax for funding bonds.

Cited in 24 Wash. 473; 39 Wash. 626.

§ 5640. [5134.] Surplus in Street and Sewer Funds Go to Current Expense Fund.

On the first day of February, 1898, or as soon thereafter as practicable, all moneys in the hands of the treasurer to the credit of the street fund, or the sewer fund, in excess of the amount necessary to pay any and all warrants outstanding against said funds, shall be transferred and credited and applied to the credit of the current expense fund. [L. '97, p. 223, § 6.]

§ 5641. [5135.] Certain Moneys Belong to Indebtedness Fund.

All moneys collected on and after the first day of February, 1898, from taxes of the year 1896, and previous years, and from penalty and interest thereon, shall be paid into the indebtedness fund. [L. '97, p. 223, § 7.]

Cited in 39 Wash. 627.

§ 5642. [5136.] Certain Moneys Belong to Current Expense Fund.

From and after the first day of February, 1898, any and all moneys which, by any law enacted prior hereto, are payable into the general fund, except taxes, shall be credited and applied to the current expense fund. [L. '97, p. 223, § 8.]

§ 5643. [5137.] How Applied.

All moneys in the current expense fund shall be paid and applied upon current expenses and from and after the first day of February, 1898, all current expenses shall be paid out of said current expense fund. [L. '97, p. 224, § 9.]

§ 5644. [5138.] Separate Funds Maintained, When.

Any such municipal corporation maintaining waterworks, lighting plants, cemetery or other public works or institutions, from which rents or other revenues or income are derived, shall maintain separate funds for each of said public works or institutions, designated as "Waterworks Fund," "Lighting Fund," "Cemetery Fund," or otherwise as the case may be. No special tax shall be levied for the maintenance of such waterworks, electric lighting plant, cemetery or other public works or institutions, but the expense of such public works or institutions, less the rents or other revenues or income therefrom shall be considered in levying taxes for payment of current expenses, and any deficit in the maintenance of such public works or institutions shall be paid out of the current expense fund, and any surplus in said "Waterworks Fund," "Lighting Fund," "Cemetery Fund," or other like funds, shall,

at the end of each fiscal year, be paid and transferred to the current expense fund: Provided, that this chapter shall not affect existing laws relating to any funded or bonded indebtedness incurred in the constructions or purchase of such public works or institutions, or to the levy and collection of taxes for the payment of such funded or bonded indebtedness: Provided, that if the council shall find, and enter such finding in the record of their proceedings, that it is necessary to retain such surplus, or any part thereof, in such fund, for the purpose of extending or repairing such public works or institutions, or for the purpose of paying interest or principal of any indebtedness incurred in the construction or purchase of such public works or institutions, or for the purpose of creating or adding to a sinking fund for the payment of such indebtedness, then such surplus, or any part thereof, may be so retained or paid upon such indebtedness or interest thereon, or may be transferred to such sinking fund. [L. '97, p. 224, § 10.]

§ 5645. [5139.] Proceedings Where Corporate Limits Changed.

In all cases where the limits of such corporations have been or shall be extended, and additional territory annexed, it shall be the duty of the council and officers of the corporation to arrange and keep and maintain the accounts and funds of the corporation in such a manner that the interests of the inhabitants and taxpayers of the several districts of the corporation in the various funds and property of the city shall be clearly shown, and in all transactions these different interests shall be considered and protected. [L. '97, p. 225, § 11.]

§ 5646. [5140.] Vote by Ballot.

All elections for the validation of any debt created by any city, which has since become consolidated with any other city, shall be by [ballot], and the vote shall be taken in the new consolidated city as the same is constituted at the time of any such election. [L. '97, p. 225, § 12.]

Fines. See "Justices of the Peace and Constables," § 7577.

Actions on, see §§ 963—966.

Fire Drills. See "Education," § 5106.

Fire-escapes. See "Inspection," § 6871.

Firemen. Pensions, see "Municipal Corporations," § 9559.

TITLE XXXIV.

FIRES.

See also, Forests and Forest Fires.

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| 5647. Damages for negligently permitting fire to spread. | 5651. Kindling fire with intent to injure another's property. |
| 5648. Lumbermen, when liable for kindling fires. | 5652. Kindling fire on another's land without malice. |
| 5649. Common-law rights not abrogated. | 5653. Setting fire to lumber, produce, etc. |
| 5650. Maliciously setting fire to prairie and other grounds. | 5654. Kindling fire on another's land while hunting, etc. |

§ 5647. [5141.] Damages for Negligently Permitting Fire to Spread.

If any person shall for any lawful purpose kindle a fire upon his own land, he shall do it at such time and in such manner, and shall take such care of it to prevent it from spreading and doing damage to other persons' property, as a prudent and careful man would do, and if he fail so to do he shall be liable in an action to any person suffering damage thereby to the full amount of such damage. [L. '77, p. 300, § 3; Cd. '81, § 1226.]

Cited in 42 Wash. 534; 61 Wash. 573; 95 Wash. 562.

Sufficiency of Evidence of Negligence Under This Section: Kuehn v. Dix, 42 Wash. 532, 85 Pac. 43.

Liability of private persons for fires. 30 Am. St. Rep. 501.

Weather conditions as affecting negligence in setting fire on one's own premises. 20 Ann. Cas. 699.

Liability for setting fires which spread to property of others. 21 L. R. A. 255; 36 L. R. A. (N. S.) 194.

Liability for fires caused by stationary engine, furnace or the like. Ann. Cas. 1917C, 771.

Liability of owner of premises for injury to person or property from debris in street due to fire. 14 A. L. R. 224.

§ 5648. [5142.] Lumbermen, When Liable for Kindling Fires.

Persons engaged in driving lumber upon any waters or streams of this state may kindle fires when necessary for the purposes in which they are engaged, but shall be bound to use the utmost caution to prevent the same from spreading and doing damage; and if they fail so to do, they shall be subject to all the liabilities and penalties of this act in the manner as if the privilege granted by this section had not been allowed. [L. '77, p. 300, § 5; Cd. '81, § 1228.]

"This act" includes this title, except §§ 5650, 5653.

§ 5649. [5143.] Common-law Rights not Abrogated.

The common-law right to an action for damages done by fires is not taken away or diminished by this act, but it may be pursued notwithstanding the fines or penalties set forth in sections 5651 and 5652; but any person availing himself of the provisions of section 5647 shall be barred of his action at common law for the damage so sued for and no action shall be brought at common law for kindling fires in the manner described in the last section; but if any such fires shall spread and do

damage, the person who kindled the same and any person present and concerned in driving such lumber, by whose act or neglect such fire is suffered to spread and do damage, shall be liable in an action on the case for the amount of damages thereby sustained. [L. '77, p. 300, § 6; Cd. '81, § 1229.]

"This act": See note to last section.

Sections 5651, 5652, are amendments. See L. '91, pp. 122, 123, §§ 13, 14. See repealing clause to L. '91, p. 133, § 46, which saves the foregoing three sections of the L. '77, p. 300.

Cited in 95 Wash. 562.

This section preserves the common-law remedy: *Sanberg v. Cavanaugh Timber Co.*, 95 Wash. 556, 164 Pac. 200.

§ 5650. [5144.] Maliciously Setting Fire to Prairie and Other Grounds.

If any person shall maliciously or wantonly set on fire any prairie or other grounds other than his own or those of which he is in the lawful possession, or shall willfully or negligently permit or suffer the fire to pass from his own grounds or premises to the injury of another, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars. [Cf. Cd. '81, § 847; L. '90, p. 127, § 9; 2 H. C., § 81.]

See *supra*, § 2522, setting without permit of fire warden.

§ 5651. [5145.] Kindling Fire With Intent to Injure Another's Property.

If any person shall maliciously, with intent to injure any other person, by himself or any other person, kindle a fire on his own land or the land of another person, and by means of such fire the buildings, fences, crops, or other personal property or wooded timber lands of any other person shall be destroyed or injured, he shall, on conviction, be punished by a fine not less than twenty dollars nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than twelve months, according to the aggravation of the offense. [L. '77, p. 300, § 2; Cd. '81, § 1225; L. '91, p. 122, § 13; 2 H. P. C., § 82.]

See *supra*, § 2523, refusing to extinguish.

§ 5652. [5146.] Kindling Fire on Another's Land Without Malice.

If any person shall, without malice, kindle a fire in any field, pasture, inclosure, forest, prairie, or timber land, not his own, without the consent of the owner, and the same shall spread and do damage to any buildings, fences, crops, cordwood, bark, or other personal property, not his own, or to any wood or timber land, not his own, he shall, on conviction, be punished by a fine of not less than ten nor more than five hundred dollars, and costs, according to the aggravation of the offense, and shall stand committed till the fine and costs are paid. [Cf. L. '77, p. 300, § 1; Cd. '81, § 1224; L. '91, p. 123, § 14; 2 H. P. C., § 83.]

See *supra*, § 2523, penalty for negligently setting.

§ 5653. [5147.] Setting Fire to Lumber, Produce, etc.

Every person who shall willfully and maliciously set fire to any pile or parcel of boards, timber, piles, or other lumber, cordwood, ricks,

stacks, or shocks of grain, hay, or other vegetable products, or vegetable products severed from the soil not in ricks, stacks, or shocks, or any standing grass or grain, or other cultivated vegetable products of the soil, shall, upon conviction thereof, be imprisoned in the county jail not more than one year nor less than one month, and be fined in any sum not exceeding five hundred dollars. [L. '54, p. 83, § 41; Cd. '81, § 824; 2 H. P. C., § 41.]

See *supra*, § 2784 et seq., arson generally.

§ 5654. [5148.] Kindling Fire on Another's Land While Hunting, etc.

Any person who shall enter upon the lands of another person for the purposes of hunting or fishing, and shall, by the use of firearms, or other means, kindle any fire thereon, shall be punished by a fine not less than ten nor more than five hundred dollars, if such fire be kindled without malice; if such fire be kindled maliciously, and with intent to injure any other person, such offender shall be punished by a fine not less than twenty nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than twelve months. [Cf. L. '77, p. 300, § 4; Cd. '81, § 1227; L. '91, p. 123, § 15; 2 H. P. C., § 84.]

Fiscal Agency. See "Finance," § 5484.

FISH AND OYSTERS.

TITLE XXXV.

FISH AND OYSTERS.

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CHAPTER I.

FISHERIES CODE.

For prior legislation on this subject see L. '56, p. 11; L. '63, p. 570; L. '77, pp. 230—235, 292, 293; L. '79, pp. 101—104, 111—113; L. '81, p. 41; L. '90, p. 233, § 1; 1 H. C., § 2568.

§ 5655. [5150.] Short Title.

This act shall be known as the "Fisheries Code of Washington."
 [L. '15, p. 67, § 1.]

Cited in 92 Wash. 28.

The initiative measure proposed to amend this section was void: State ex rel. Berry v. Superior Court, 92 Wash. 16, 159 Pac. 92.

Fish in Public Waters: See Remington's Digest, Fish, §§ 1, 2; Morris v. Graham, 16 Wash. 343, 47 Pac. 752, 58 Am. St. Rep. 33; Legoe v. Chicago Fishing Co., 24 Wash. 175, 64 Pac. 141; State v. Tice, 69 Wash. 403, 125 Pac. 168, 41 L. R. A. (N. S.) 469; State ex rel. Constanti v. Darwin, 102 Wash. 402, 173 Pac. 29; Griffith v. Holman, 23 Wash.

347, 63 Pac. 239, 83 Am. St. Rep. 821, 54 L. R. A. 178.

Power of states to regulate taking of fish in tide waters. 23 Am. St. Rep. 837.

State ownership of fish and game. Ann. Cas. 1917B, 949, 978, 980.

Fishery rights in navigable waters. 15 Ann. Cas. 708; Ann. Cas. 1915C, 1152; 17 L. R. A. (N. S.) 1236; 38 L. R. A. (N. S.) 286.

Governmental control over right of fishery. 39 L. R. A. 581; L. R. A. 1916E, 523.

§ 5656. [5150-3.] Duties of Commission.

It shall be the duty of [the state fish] commission:

To establish and maintain such state fish hatcheries and cultural stations as in its judgment may be necessary for the propagation, protection and preservation of fish and shell-fish.

To cause the commissioner to examine all oyster reserves and to do or cause to be done such things as may be deemed advisable to conserve, protect and develop said reserves.

To examine the clam and mussel beds located on lands belonging to the state, and with the approval of the state board of land commissioners to withdraw such lands from sale and lease and make reserves thereof.

To take such steps as are advisable for the conservation, protection and development of such reserves; also to do those things that may be necessary for the protection and development of the shrimp, clam and mussel beds on state lands.

The members of such board shall receive no compensation as such board, but shall be allowed actual traveling expenses. [L. '15, p. 67, § 3.]

See *infra*, § 10874, duties of fish commission devolve upon director of fisheries and game.

See *infra*, § 10893, state fish commission abolished.

See *infra*, § 10865, division of fisheries created.

Fish Commissioners, Duties: See Remington's Digest, Fish, § 17; *Halleck v. Davis*, 22 Wash. 393, 60 Pac. 1116.

§ 5657. [5150-4.] State Fish Commissioner.

The term "commissioner" when used in this act shall mean the state fish commissioner. [L. '15, p. 68, § 4.]

See *infra*, § 10893, state fish commissioner abolished.

§ 5658. [5150-6.*] Duties of Commissioner.

The commissioner shall devote his time to the duties of his office and shall enforce the laws for the propagation, protection and preservation of food, shell, game and commercial fishes. He shall purchase, construct, charter and operate the boats necessary to properly patrol the waters of the state in the enforcement of the laws. He shall have charge and control of and operate and maintain the fish hatcheries now or that may hereafter be owned by the state. He shall select and purchase suitable lands for hatchery purposes and build hatcheries thereon when so directed by the fish commission. He shall make an annual typewritten and a biennial printed report on the first day of April of each year to the governor, containing a detailed statement of his actions under this act, of the operation and result of the laws pertaining to the fish industry, the method of taking fish, the number of fish hatched and where distributed, the amount of expense incurred by his department, and full and complete statistics of the fishing business and suggestions as to needed legislation. He shall designate which are the food, shell, game and commercial varieties, when such designations are not specifically made by the laws of this state. [L. '17, p. 780, § 1. Cf. L. '15, p. 68, § 6.]

See *infra*, § 10873, supervisor of fisheries.

See *infra*, § 10874, duties devolve upon director of fisheries and game.

§ 5659. [5150-7.] Power to Inspect.

The commissioner shall have power to inspect all canneries, boats, nets, wheels, traps and all other appliances, and all property used in catching, packing, curing, preparing or storing food or shell-fish, or in the fish industry, and may enter on any property at any time for any such purpose. [L. '15, p. 69, § 7.]

§ 5660. [5150-8.] Authority to Arrest.

The commissioner and those authorized by him shall have authority to arrest, without writ, order or process, any person in the act of violating any of the provisions of this act, and they are hereby made peace officers for such purpose. If any person knowingly or willfully resists or opposes such officer in the discharge of his said duties, he shall be guilty of a gross misdemeanor. [L. '15, p. 69, § 8.]

See note to § 5659.

§ 5661. [5150-9.] Commissioner may Administer Oaths.

The commissioner may administer oaths in any matter connected with the duties of his office, and may require any report, statement or application made or submitted to him to be made under oath. [L. '15, p. 69, § 9.]

See note to § 5659.

§ 5662. [5150-10.] Commission may Prohibit Fishing.

The commission may prohibit fishing for both food and game fish in any river or stream, or any part thereof, should they consider it necessary for the protection of the food and game fishes mentioned in this act. When the commission shall desire to close any river or stream to fishing they shall publish in a weekly newspaper in such county or counties through which such stream or river flows for not less than two successive issues a notice stating that from a certain date, which shall not be less than fifteen days from the date of said notice, to a date also to be fixed in said notice, said stream or river, or the portion thereof therein described, shall be closed to fishing. It shall be unlawful to take any of the food and game fishes mentioned in this act, by any means whatever, from any stream or river during the closed period defined in such notice, except the Columbia River where the same forms a state boundary. [L. '15, p. 70, § 10.]

See note to § 5656.

§ 5663. [5150-11.] To Designate Mouths of Rivers.

The commissioner shall designate the mouths of rivers by driving piles or establishing monuments. In the designation of the mouths of the rivers of this state the commissioner shall be guided by the shore headlands on either side of the river and his designation shall be final. He shall designate by the erection of monuments and signs the fishing limits of rivers, and when the mouth of a river has been so designated the commissioner shall cause a plat of the same, showing its location, to be filed in his office for public inspection, and shall also furnish the auditor of the county in which the mouth of said river or stream is located with a copy of said plat, which the auditor shall keep on file for public inspection. [L. '15, p. 70, § 11.]

See note to § 5659.

§ 5664. [5150-12.*] Assistants and Employees—Compensation.

The commissioner may employ the following assistants to serve under his direction and during his pleasure:

(1) A general superintendent of hatcheries, who shall receive a yearly salary of eighteen hundred dollars (\$1800).

(2) As many inspectors as he may deem necessary, who shall receive a compensation not to exceed four dollars and fifty cents (\$4.50) per day for each day actually employed. The fish commissioner may, whenever he deems the same advisable, designate any one of said inspectors as deputy fish commissioner, who may serve as such deputy fish commissioner during the pleasure of the commissioner.

(3) The necessary employees for the conduct of the commissioner's office; for the operation of the department's patrol boats; for the maintenance and operation of the hatcheries, fish cultural and experimental stations; the patrolmen necessary for the protection of the state oyster, clam and shrimp reserves; and the employees necessary, in the judgment of the commissioner, to conduct the business of the fisheries department.

(4) The employees of the commissioner shall be reimbursed their necessary traveling expenses, and the salaries and compensation of all employees not specifically designated shall be fixed by the commissioner. [L. '17, p. 781, § 2; L. '15, p. 70, § 12.]

See note to § 5659.

See *infra*, § 10872, assistant director of fisheries.

See *infra*, § 10873, assistant director of game and fish.

§ 5665. [5150-13.] Bonds of Employees of Commissioner.

Each employee, if required by the commissioner, shall give a bond to the state with a surety company authorized to do business in this state as surety in the sum of two thousand dollars (\$2,000) conditioned for the faithful performance of his duties, subject to the approval of the commissioner, the cost of bond to be paid by the state. [L. '15, p. 71, § 13.]

§ 5666. [5150-14.] Duties of Inspectors.

Each inspector shall perform the duties to which he may be assigned by the commissioner, and shall have the power to perform each and every act and thing permitted, provided or directed to be done by law by the commissioner in the enforcement of the laws relating to the duties of his office. [L. '15, p. 71, § 14.]

§ 5667. [5150-15.] Terms Defined.

Wherever the word "salmon" occurs in this act it shall be construed to include and apply to the sockeye, silver, chinook, steelhead, chum and humpback salmon, and the so-called salmon trout and each and every species of the genus *oncorhynchus* commonly known as salmon. [L. '15, p. 71, § 15.]

§ 5668. [5150-16.] Definitions.

The term "person or persons" when used in this act shall be taken to include partnerships, associations and corporations. The term "seine"

in this act is intended to cover all forms of nets known as seines, purse-seines or purse-nets, trawls, beam trawls, stow-nets, drag-nets, smelt drag bag-nets, bag-nets, draw-nets, reef-nets and dredge-nets. [L. '15, p. 72, § 16.]

§ 5669. [5150-17.] Puget Sound Defined.

Wherever the term "Puget Sound" occurs in this act it shall be construed to include all tide waters of the Strait of Juan de Fuca, the tide waters of Georgia Strait, the tide waters of Washington Sound, the tide waters of Puget Sound, and all other tide waters emptying into the same, and all the bays, inlets and estuaries thereof. [L. '15, p. 72, § 17.]

Fishing locations within the ebb and flow of the tide in Snohomish River are in the waters of Puget Sound, within the meaning of this section; an estuary being

that portion of the lower course of a river subject to tides: *Vail v. McGuire*, 50 Wash. 187, 96 Pac. 1042.

§ 5670. [5150-18.] Districts Defined.

For all purposes necessary for the administration of this act, the several portions of the state shall be divided into four districts, as follows:

(1) The Puget Sound district, which shall consist of Puget Sound, as by this act defined, and its tributaries.

(2) The Columbia River district, which shall consist of all the waters of the Columbia River and its tributaries within the confines of this state.

(3) The Grays Harbor district, which shall consist of all the waters of Grays Harbor and its tributaries, and the Pacific Ocean within three miles of the shore line north of the south entrance of Grays Harbor and south of Cape Flattery, and all the rivers and streams emptying therein.

(4) The Willapa Harbor district, which shall consist of the waters of Willapa Harbor and its tributaries, the Pacific Ocean within three miles of the shore line between the south entrance of Grays Harbor and North Head, and all the rivers and streams emptying therein. [L. '15, p. 72, § 18.]

§ 5671. [5150-19.] Fishing—Where Permitted.

The use of pound-nets, traps, traps fished at both ends of lead, fish-wheels and other fixed appliances, purse-nets, drag-seines and other seines for catching salmon, and the use of set-nets and gill-nets is hereby authorized in all the waters of this state, except as prohibited by this act. [L. '15, p. 72, § 19.]

§ 5672. [5150-20.] Fishing—Where Prohibited—Puget Sound.

It shall be unlawful to construct, own, operate or maintain any pound-net, trap, fish-wheel, or other fixed appliance for the purpose of catching salmon or other food fishes within any river or stream flowing into Puget Sound, or within Puget Sound within a distance of three miles of the mouth of any river, measured by the most direct water-course, or within the part of Puget Sound known as Deception Pass, or

within one-half mile of the western entrance thereof, or within any salt water at a greater depth than sixty-five feet at low tide.

It shall be unlawful to use any purse-net, purse seine, drag seine or other like seine or net within two miles of the mouth of any such river, measured by the most direct watercourse, or within any such river.

It shall be unlawful, except with hook and line, to take any of the food fishes mentioned in this act in the Skagit River above the Great Northern Railway bridge across the same at Mount Vernon, and in the Snohomish River above the Snohomish wagon bridge, or above the wagon bridge at Riverton in the Duwamish River, and in all other rivers and streams flowing into Puget Sound. [L. '15, p. 73, § 20.]

§ 5673. [5150-21.*] Chambers Creek.

It shall be unlawful at any time to take any fish with any appliance whatsoever, except with hook and line, in Chambers Creek, in the county of Pierce, and within one mile of the Northern Pacific Railway bridge located across the mouth of said creek. [L. '17, p. 782, § 3. Cf. L. '15, p. 73, § 21.]

§ 5674. [5150-22.] Waters of Thurston and Mason Counties and Oyster-beds.

It shall be unlawful at any time to take any fish with any fishing appliance whatsoever, except with hook and line and smelt drag bag-nets, within the limits of Eld Inlet, Budd Inlet, Henderson Inlet and Totten Inlet situated in Thurston and Mason counties: Provided, within that part of Budd Inlet lying in township eighteen (18), north of range two (2) west, Willamette Meridian, and sections thirty-three (33), thirty-four (34) and thirty-five (35) of township nineteen (19), north of range two (2) west of the Willamette Meridian, or over any oyster-beds of the state no fishing appliance whatsoever shall be used except hook and line: Provided, further, that if any salmon shall be caught by an appliance other than hook and line within said waters the same shall be immediately liberated and turned alive into the water. [L. '15, p. 73, § 22.]

§ 5675. [5150-23.*] Willapa Harbor.

It shall be unlawful to take or fish for salmon, except with hook and line, in any of the following tributaries of Willapa harbor above tide water in said rivers, viz.:

North River, Willapa River, south fork of Willapa River, Nasel River, Palix River, Nema River, Bear River, Cedar River, and Smith Creek, and for the purposes of this act the head of tide water shall be:

On North River, where the north boundary line of section 24, of township 15 north, range 10 west of the Willamette Meridian crosses said river.

On Willapa River where Louderback's Slough empties into the said Willapa River in the eastern portion of section 20, township 14 north, range 8 west of Willamette Meridian.

On the south fork of the Willapa River, the drawbridge of the Northern Pacific Railway Company, being the center of lots 8 and 11 of section 24, township 14 north, range 9 west of the Willamette Meridian.

On the Nasel River, at the gap in the main log boom.

On Cedar River, the mouth of said river, or the line between townships 14 and 15 north, ranges 10 and 11 west of the Willamette Meridian.

On Palix River, where the south line of section 22, township 15 north, range 10 west of the Willamette Meridian crosses said river.

On North Nema River, at the schoolhouse on lot 3 of section 22, township 12 north, range 10 west of the Willamette Meridian.

On south Nema River, at what is known as Carruther's Landing, being on the east and west half section line extending through section 27, township 12 north, range 10 west of the Willamette Meridian.

On Bear River, at Masny's Landing, on the half section line extending east and west through sections 7 and 8 of township 10 north, range 10 west of the Willamette Meridian.

On Smith Creek, at the mouth thereof, being where lots 1 and 2 of section 35, township 15 north, of range 10 west of the Willamette Meridian abut upon the entrance of the Willapa Harbor. [L. '17, p. 782, § 4. Cf. L. '15 p. 74, § 23.]

§ 5676. [5150-24.*] Grays Harbor.

It shall be unlawful to take or fish for salmon, except with hook and line, in the following tributaries of Grays Harbor: In Chehalis River, above point one-half mile below the mouth of Wynooche River, and one-half mile above the mouth of the Humptulips River, and one-half mile above the mouth of the Elk River, and one-half mile above the mouth of Johns River.

From and after the passage of this act it shall be unlawful to erect any fish-trap, pound-net or fish-wheel in any of the streams emptying into Grays Harbor, Willapa Harbor, or any of the streams of these districts, as by this act defined: Provided, however, the right to erect fish-traps, pound-nets or fish-wheels on locations existing in said districts in 1914 is hereby recognized.

It shall be unlawful to fish in any river or stream emptying into the Pacific Ocean between the north entrance to Grays Harbor and Cape Flattery with any appliance whatsoever except gill-nets and set-nets, and it shall be unlawful to fish with any appliances in said waters between the hours of 6 A. M. Saturday and 6 P. M. Sunday of each week of each year. [L. '17, p. 783, § 5; L. '15, p. 75, § 24.]

§ 5677. [5150-25.*] Columbia River.

It shall be unlawful to take or fish for salmon, except with hook and line, in the Kalama River, Lewis River, Wind River, Little White Salmon River, Big White Salmon River, Wenatchee River, Methow River, Little Spokane River, Colville River and Yakima River, and in the Columbia River, within one mile below the mouths of the above named rivers: Provided, however, that the commissioner shall open the Yakima River to a point four hundred feet below the Prosser Dam to fishing by white people and Indians for food for themselves and their families only, said fishing to be carried on at such limited times and under such rules and regulations as shall be from time to time prescribed by the commissioner. No fish-traps shall be located on or within three miles

below the mouth of Lewis River, but fishing with gill-nets is permitted in the Columbia River to a point within one mile below the mouth of the above-named rivers and a quarter of a mile out from where the same empty into the Columbia River. It shall be unlawful for any person or persons, firm or corporation, to fish for salmon, sturgeon or other anadromous fish by means of devices known as purse seines in any of the waters of the Columbia River in the state of Washington or over which the state of Washington has concurrent jurisdiction, east of a certain line which shall be drawn from the present inshore end of the north jetty on the Columbia River to the knuckle of the south jetty on said river, which knuckle is approximately four miles westerly from the government dock at Fort Stevens. Said line will pass approximately three-eighths ($\frac{3}{8}$) of a mile westerly from buoy No. 10, as shown on the Coast and Geodetic Survey No. 6151, dated January 5, 1917. [L. '17, p. 784, § 6; L. '15, p. 75, § 25.]

§ 5678. [5150-26.] Set-net not Fixed Appliance.

A set-net is not a fixed appliance within the meaning of this act, but it shall be unlawful to erect or maintain any set-net within the limits of the end and lateral passageways prescribed in this act for fixed appliances. [L. '15, p. 76, § 26.]

§ 5679. [5150-27.] Trap, Pound-net and Set-net Location—How Acquired.

Any person, firm or corporation occupying or desiring to occupy any fishing location where it may be lawful to construct a pound-net, trap or set-net in the waters of the state, shall cause such location to be accurately surveyed by a competent civil engineer, unless a survey thereof has already been made, in which event such existing survey may be used, and shall cause a location map to be made of such location from the actual survey thereof, which shall contain a plat and description of said fishing location sufficient for its ascertainment and identification on the premises. It shall also contain a certificate by the claimant, or by his agent or attorney, stating that he claims the fishing location shown thereon, specifying the date and number of the license under which the same is held and containing the postoffice address of the claimant. Such map, with the certificate thereon, shall be filed in the office of the county auditor of the county in which such fishing location is situated, and a duplicate copy thereof in the office of the commissioner. From and after the date of filing in the office of the county auditor, such map shall constitute full and complete notice that such location is owned, held, occupied and claimed by the person, firm or corporation designated thereon as the claimant. It shall be the duty of the county auditor and the commissioner in whose offices any such map may be offered for filing to receive and keep the same on file. They shall also keep an index to all such maps, showing the hour and date of filing names of the claimants and serial number of the maps, in the order filed, all of which shall be indorsed on the maps when filed. No informality or omission on the part of such public officers shall impair or prejudice the right of any claimant of such fishing location.

From and after filing such map the claimant of the location thereon shown, his heirs, administrators, successors and assigns shall have the exclusive right to hold, occupy and fish such location, to renew the license therefor, and to mortgage, sell and transfer the same during the time that he or they in other respects shall comply with the law pertaining thereto.

It shall not be necessary to file any map or plat of any location heretofore made under existing laws in any case where any map has heretofore been filed: Provided, that all pound-nets, fish-trap, set-net or other fishing locations heretofore made by locators or owners thereof in accordance with existing laws shall be unaffected and unimpaired by any of the provisions of this section, and any location legal when established shall continue valid under the provisions of this act, and the locators or owners of such previously established locations shall continue to occupy, own, hold and enjoy the same, and may mortgage, sell, transfer and lease the same, with the right to renew their licenses therefor in the same manner and with the same legal effect as though said locations had been established under the provisions of this act. Any person, firm or corporation being the owner, holder or occupant of any trap or pound-net location in the Columbia River, Grays Harbor, or Willapa Harbor, shall, within ninety days after this act takes effect, file with the auditor of the county in which their said locations are situated, a location map as hereinbefore provided in this section, and a copy of the same in the office of the commissioner.

From and after filing such map the claimant of the location thereon shown, his heirs, administrators, successors and assigns shall have the exclusive right to hold, occupy and fish such location, to renew the license therefor, and to mortgage, sell, lease and transfer the same during the time that he or they in other respects shall comply with the law pertaining thereto. [L. '15, p. 76, § 27.]

Sites and Locations—In General: See Remington's Digest, Fish, § 7; State ex rel. Alaska Packers' Assn. v. Crawford, 13 Wash. 633, 43 Pac. 892; Gerhard v. Worrell, 20 Wash. 492, 55 Pac. 625; Halleck v. Davis, 22 Wash. 393, 60 Pac. 1116; Legoe v. Chicago Fishing Co., 24 Wash. 175, 64 Pac. 141; Cherry Point Fish Co. v. Nelson, 25 Wash. 558, 66 Pac. 55; Vail v. McGuire, 50 Wash. 187, 96 Pac. 1042; Muller v. Apex Fish Co., 57 Wash. 140, 106 Pac. 625; Guinn v. Roelofs, 71 Wash. 342, 128 Pac. 653; Wilson v. Prickett, 79 Wash. 89, 139 Pac. 754.

Actions—Rights and Remedies: See Remington's Digest, Fish, § 11; Walker v. Stone, 17 Wash. 578, 50 Pac. 488; Hastings v. Anacortes Packing Co., 29 Wash. 224, 69 Pac. 776; Johansen v. Mulligan, 41 Wash. 379, 83 Pac. 417; Harper v. Grasser, 86 Wash. 475, 150 Pac. 1175.

— **Special Injury to Individuals:** See Remington's Digest, Fish, § 12; Morris v. Graham, 16 Wash. 343, 47 Pac. 752, 58

Am. St. Rep. 33; Cherry Point Fish Co. v. Nelson, 25 Wash. 558, 66 Pac. 55.

— **Pleadings:** See Remington's Digest, Fish, § 13; Hastings v. Anacortes Packing Co., 29 Wash. 224, 69 Pac. 776; Fidalgo Island Canning Co. v. Womer, 29 Wash. 503, 69 Pac. 1121; Gile v. Baseel, 38 Wash. 212, 80 Pac. 437.

— **Evidence:** See Remington's Digest, Fish, § 14; Cherry Point Fish Co. v. Nelson, 25 Wash. 558, 66 Pac. 55; Womer v. O'Brien, 37 Wash. 9, 79 Pac. 474; Fowler v. Harrison, 39 Wash. 617, 81 Pac. 1055.

— **Rights of Purchasers of Location:** See Remington's Digest, Fish, § 15; Gerhard v. Worrell, 20 Wash. 492, 55 Pac. 625; Fall & Sockeye Fish Co. v. Point Roberts Fishing & Canning Co., 24 Wash. 630, 64 Pac. 792.

— **Invalidity of Location:** See Remington's Digest, Fish, § 16; White Crest Canning Co. v. Sims, 30 Wash. 374, 70 Pac. 1003; Womer v. O'Brien, 37 Wash. 9, 79 Pac. 474.

— **Priorities:** See Remington's Digest, Fish, § 9; Legoe v. Chicago Fishing Co., 24 Wash. 175, 64 Pac. 141; Elwood v. Dickinson, 26 Wash. 631, 67 Pac. 370. 582, 64 Pac. 799; White Crest Canning Co. v. Sims, 30 Wash. 374, 70 Pac. 1003; Womer v. O'Brien, 37 Wash. 9, 79 Pac. 474.

— **Abandonment:** See Remington's Digest, Fish, § 10; Legoe v. Chicago Fishing Co., 24 Wash. 175, 64 Pac. 141; Der Meres v. Sandy Spit Fish Co., 24 Wash.

Right to construct fish-traps in front of riparian property. **L. R. A.** 1819A, 1076.

§ 5680. [5150-28.] Drag Seine Locations—How Acquired.

Locations for drag seines may be made by driving a substantial stake or erecting a permanent monument at each end of the location claimed, and posting thereon the number of the license under which the same is operated. No drag seine location the title to which is in the state shall occupy a greater length of the shore line than twice the length of the seine covered by the license therefor. [L. '15, p. 78, § 28.]

§ 5681. [5150-29.] Set-net Locations—How Acquired.

Locations for set-nets may be made by erecting a permanent monument near, or securely anchoring a buoy on the location claimed, upon which shall be posted the number of the license under which such net is operated. There shall be a lateral passageway of at least three hundred feet and an end passageway of thirty feet between all set-nets. It shall be unlawful in the use and operation of a set-net to create any artificial eddy or erect any structure or obstruction for such purpose. [L. '15, p. 78, § 29.]

§ 5682. [5150-30.] Failure to Renew License.

The failure to renew the license or to have made lawful application therefor for any fish-trap, pound-net, fish-wheel or other fixed appliance in any of the waters of this state on the first day of April of any year shall constitute abandonment of the location. [L. '15, p. 78, § 30.]

§ 5683. [5150-31.] Fixed Appliances—Columbia River, Willapa Harbor and Grays Harbor—How Constructed.

No lead of any pound-net, trap, fish-wheel, or other fixed appliance used for catching salmon in the Columbia River and its tributaries, Willapa Harbor and its tributaries, and Grays Harbor and its tributaries shall exceed eight hundred feet in length, and there shall be an end passage-way of at least thirty feet and a lateral passageway of at least nine hundred feet between all such pound-nets, traps, fish-wheels, or other fixed appliances. The lead of any pound-net or trap may be extended to high-water mark only on the tide lands owned by the state, providing such extension does not exceed the length provided in this act. Should the locator or owner neglect to construct his appliances for two consecutive fishing seasons covered by this license, said location shall be deemed abandoned. [L. '15, p. 78, § 31.]

§ 5684. [5150-32.] Fixed Appliances in Puget Sound—How Constructed.

No lead of any pound-net or fish-trap in Puget Sound shall exceed twenty-five hundred feet in length, and there shall be an end passage-way of at least six hundred feet and a lateral passageway of at least twenty-four hundred feet between all pound-nets, traps and other fixed appliances. The lead of any pound-net or trap may be extended to high-

water mark on the tide-lands owned by the state, or on other tide-lands with the consent of the owners thereof: Provided, such extension shall not exceed the length of the lead provided in this act. Should the locator or owner of any pound-net or fish-trap location fail to construct a fishing appliance thereon for four consecutive years, his location shall be deemed abandoned, even though he shall have complied in other respects with the laws pertaining thereto. [L. '15, p. 79, § 32.]

§ 5685. [5150-33.] Passageways—How Determined.

For the purpose of determining end passageways, base lines shall be drawn at right angles with the general course of locations first originally established and intersecting the ends thereof, and the end passageways shall be measured at right angles from such base lines: Provided, however, this section shall not affect any location lawfully existing under previous statutes, and any and all such fishing appliances may be maintained upon such existing locations as though this act had not been passed, or they may be changed to conform to the provisions hereof as to end passageways at the option of the location owner and holder thereof. [L. '15, p. 79, § 33.]

Ascertainment of Passageways: See *Island Canning Co. v. Womer*, 29 Wash. 503, 69 Pac. 1121; *Gile v. Baseel*, 38 Wash. 212, 80 Pac. 437; *Johansen v. Muligan*, 41 Wash. 379, 83 Pac. 417. *Remington's Digest, Fish, § 8; Point Roberts Fishing Co. v. George & Barker Co.*, 28 Wash. 200, 68 Pac. 438; *Fidalgo*

§ 5686. [5150-34.] Set-nets, Puget Sound—How Constructed.

It shall be unlawful to fish for salmon in Puget Sound with any set-net of greater length than five hundred feet, or in the form of a pound-net, or with pots or hearts connected therewith, or that is used or held in any other way than in a substantially straight line. [L. '15, p. 79, § 34.]

§ 5687. [5150-35.] Length of Appliances in Rivers Limited.

No fishing appliance or device of any kind whatsoever, either by lead or any part thereof, shall occupy more than one-third the width of the waters of any stream or river. [L. '15, p. 80, § 35.]

§ 5688. [5150-36.] Nets—Size Mesh.

It shall be unlawful to use any pound-net, trap, fish-wheel or other fixed appliance for catching salmon or other food fish with meshes under three inches, stretch measure. It shall be unlawful to operate in any of the waters of Puget Sound any purse seine, drag seine or other like seine or net of a greater length than five hundred feet with meshes less than two and one-half inches stretch measure, during the year 1915, and after January 1, 1916, with meshes less than three inches stretch measure. It shall also be unlawful to operate in any of the said waters any gill-net of a greater length than five hundred feet with meshes less than five inches stretch measure.

It shall be unlawful to use any gill-net more than twelve hundred feet in length or more than thirty-six meshes deep in Willapa Harbor or any of its tributaries. [L. '15, p. 80, § 36.]

Rem. & Bal. Code, section 5193, determining the size of set-nets, allowable in certain waters, has no bearing upon the prohibition of set-nets in portions of such waters: State v. Vosgien, 82 Wash. 685, 144 Pac. 947.

§ 5689. [5150-37.] Closed Season for Smelt and Herring.

It shall be unlawful to catch or fish for smelt or herring with any purse, drag or like seine of less than 1¼ inch mesh, stretch measure between 8 P. M. and 6 A. M. of any day.

It shall be unlawful to catch or fish for smelt or herring in the waters of Puget Sound with any appliance between 4 o'clock P. M. Friday and 4 o'clock A. M. Sunday of each week. [L. '15, p. 80, § 37.]

§ 5690. [5150-38.*] Herring Spawning Grounds.

The commissioner shall immediately after this act takes effect proceed to definitely locate and chart at least five of the most productive of the herring spawning grounds in the waters of Puget Sound and its tributaries in the state of Washington and particularly at Hadlock, Holmes Harbor, Deception Pass, Jackson Cove, Hales Pass, and Birch Point, and shall mark the boundary of not fewer than five of the most productive of such spawning grounds to be designated by the commissioner by driving at least one pile or erecting at least one monument at either side at right angles with the shore of such spawning grounds, and thereafter it shall be unlawful to take herring in, over or upon the spawning grounds thus marked during the spawning season of such fish upon such grounds, such spawning season to be ascertained by the commissioner and to be promulgated by the commissioner and notice thereof shall be given by posting a copy of such rule printed on cloth upon the pile or monument marking the boundaries of such spawning grounds: Provided, however, that the commissioner may, in his discretion, locate and chart each year certain herring grounds, including herring grounds above reserved, and mark the boundaries thereof by monuments or piles and post notices thereon defining such boundaries, and on said grounds so located and charted fishing for herring alone with nets of a mesh not less than one and one-half (1½) inches stretched measure shall be permitted during such periods of each year as may be prescribed by the commissioner in notices posted by him on said piles or monuments. [L. '17, p. 785, § 7; L. '15, p. 80, § 38.]

§ 5691. [5150-39.] Closed Season for Shrimp.

It shall be unlawful for any person to take shrimp between the first day of January and the last day of March of any year, both dates inclusive, by any means whatsoever in the waters of Puget Sound or its tributaries. [L. '15, p. 81, § 39.]

§ 5692. [5150-40.] Appliances Used Unlawfully may be Confiscated.

Any fishing appliance or part thereof found in the waters of this state wherein the same are prohibited, the same being placed therein for the purpose of illegal fishing is hereby declared a public nuisance and shall be subject to abatement as a public nuisance, and it shall be the duty of the commissioner to enforce the provisions of this section; and any and all appliances used in violation of any of the provisions of this act, viz.: Boats, traps, nets, fish-wheels or other appliances, shall be subject to execution for the payment of any fines imposed on the owner thereof. Such appliance may be seized by the commissioner and may be

forfeited to the state, and the superior courts of the state of Washington shall have exclusive jurisdiction of all such cases. [L. '15, p. 81, § 40.]

Cited in 103 Wash. 233, 238.

Searches and Seizures: See Remington's Digest, Fish, § 20; State v. Umaki, 103 Wash. 232, 174 Pac. 447.

Use of appliance within meaning of prohibition in fish or game law, Ann. Cas. 1912A, 312.

Confiscation of nets found in unlawful use. 39 L. R. A. 590; 3 L. R. A. (N. S.) 997; L. R. A. 1916F, 918.

Validity of statutes authorizing destruction or forfeiture of appliances used in violation of fish or game laws. 1 Ann. Cas. 950; 8 Ann. Cas. 902.

§ 5693. [5150-41.] Fishing Without License Prohibited.

It shall be unlawful to catch, take or fish for food fish with any appliance or by any means whatsoever except with hook and line commonly called angling or trolling unless license so to do has been first obtained from the commissioner.

The presence in any of the waters of this state of any craft of any nature whatever equipped with any of the appliances required to be licensed by the laws of this state for the taking of fish, or of any fishing appliance for which licenses are required shall be prima facie evidence that the owners thereof are engaged in fishing.

Any person who shall engage in fishing with any appliance whatsoever without having first obtained a license or made lawful application therefor shall be deemed guilty of a misdemeanor and the commissioner is hereby authorized to seize said appliance and the same shall be confiscated to the state. [L. '15, p. 81, § 41.]

Cited in 103 Wash. 233, 234, 237.

§ 5694. [5150-42.] Indians Fishing on Reservations.

Nothing in this act shall prevent any Indian from taking fish at any time without a license for the consumption of himself or family with a drag seine not more than three hundred feet in length or with a set-net, in any of the salt waters bordering any Indian reservation and within one-half mile thereof, or with a set-net extending not more than one-third across the waters of any river or stream flowing through or bordering on any such reservation and within five miles of the boundaries thereof. Provided, however, that this section shall not apply to the Nooksack River. [L. '15, p. 82, § 42.]

§ 5695. [5150-43.*] Licenses—To Whom not Issued.

No license for taking or catching salmon or other food or shell-fish required by this act shall be issued to any person who is not a citizen of the United States of the age of eighteen years or over, unless such person has declared his intention to become a citizen, and is and has been an actual resident of the state for one year immediately preceding the application for such license. Nor shall any license be issued to a corporation unless it is authorized to do business in this state. Nothing herein contained shall be construed to prevent the issuance of licenses to Indians, providing such applicant possess the qualifications of residence hereinbefore required, nor prevent the renewal of licenses for fixed appliances by persons now holding the same; and on and after January 1, 1922, no license for the taking or catching of salmon or other food or shell-fish,

required by this act, shall be issued to any person who is not a citizen of the United States, or to any Indian not born in the United States, or to any corporation unless the holders of a majority of its stock are citizens of the United States: Provided, that corporations authorized to do business in this state and holding fishing licenses on January 1, 1922, shall be entitled to licenses and to the renewal thereof from time to time and shall be unaffected by the provisions of this section. [L. '21, p. 710, § 1; L. '15, p. 82, § 43.]

Cited in 102 Wash. 404, 409.

Licenses: See Remington's Digest, Fish, § 6; State ex rel. Curry v. Crawford, 14 Wash. 373, 44 Pac. 876; Morris v. Graham, 16 Wash. 343, 47 Pac. 752, 58 Am. St. Rep. 33; Walker v. Stone, 17 Wash. 578, 50 Pac. 488; Hastings v. Anacortes Packing Co., 29 Wash. 224, 69 Pac. 776; Muller v. Apex Fish Co., 57 Wash. 140, 106 Pac. 625; Gorman & Co. v. Andrews, 50 Wash. 394, 109 Pac. 1033; State v. Hals, 90 Wash. 540, 156 Pac. 395.

The fact that such subjects are not now entitled to become citizens of the United

States on account of the war, under U. S. Comp. Stats. 1916, § 4362, is immaterial; since it cannot be said that the intention of this section, was to confine the right to those entitled to become citizens at the time they apply for a license to fish: State ex rel. Constanti v. Darwin, 102 Wash. 402, 173 Pac. 29.

Discrimination against nonresidents in granting license to take fish. 26 L. R. A. (N. S.) 794; 40 L. R. A. (N. S.) 285; 19 Ann. Cas. 239.

§ 5696. [5150-44.] **Fact of Citizenship and Residence—How Determined.**

When required by the commissioner any person desiring to fish for any food fish in any of the waters of this state, may go before a county clerk of any county of this state or the commissioner, and furnish satisfactory proof of his citizenship, or of the fact that he has declared his intention to become such, and file his own affidavit and the affidavits of two or more persons to the effect that he now is and for a year prior thereto has been an actual bona fide resident of this state, and thereupon such clerk or commissioner shall issue to him a certificate briefly reciting those facts, and thereafter in any prosecution against such person for a violation of the provisions of this act such certificate or a duly authenticated copy of the records in the office of the clerk or commissioner relative thereto shall be prima facie evidence of his citizenship and residence as in this act required. But in all prosecutions under this act the burden of proof shall be upon the defendant to establish the fact of his citizenship and residence. But nothing herein contained shall delay the issuance to any applicant of a license for a fish-trap, fish-wheel or pound-net, which are required by the provisions of this act to be issued on the first day of April of each year. [L. '15, p. 83, § 44.]

§ 5697. [5150-45.] **Certificates—No Fee for Issuing—Registry.**

For taking the affidavits and issuing the certificates herein provided for, no fee shall be charged. The clerk or commissioner shall keep in his office a record of all certificates issued pursuant to this act. [L. '15, p. 83, § 45.]

§ 5698. [5150-46.*] **Licenses—How Transferred.**

Any license may be assigned or transferred to any person or corporation entitled to hold a license under the provisions of this act and notice shall be given of such transfer or assignment within fifteen days from the

date thereof to the commissioner who shall indorse the date of such notice on the license, for which the commissioner shall collect a fee of one dollar. If such notice be not given the license shall be void. The commissioner shall print on the back of each license a copy of this section and any assignee of a license who shall fail within fifteen days to give notice to the commissioner of the assignment of such license shall be guilty of a misdemeanor. [L. '17, p. 785, § 8; L. '15, p. 83, § 46.]

§ 5699. [5150-47.] Blank Licenses—How Provided.

The commissioner shall prepare in blank and consecutively number all licenses required under the provisions of this act, all of which shall expire at the close of the thirty-first day of March following their issuance, and shall be renewed annually thereafter upon application and payment of license fees required by this act. [L. '15, p. 84, § 47.]

§ 5700. [5150-48.*] Fisheries Fund.

All license fees, catch taxes and other taxes, fines and moneys realized from the sale of property seized or confiscated under the provisions of this act, and all bail moneys forfeited under prosecutions instituted under the provisions of this act, and all moneys realized from the sale of any of the property of the state of Washington, under the control of the department of fisheries and game, and all moneys collected for damages and injuries to any such property, shall be paid into the state treasury and placed in the fund known as the "Fisheries Fund," which shall not be used for any purpose other than for the propagation, protection and perpetuation of food and shell-fishes, and the administration and enforcement of the laws relating thereto. All unexpended balance thereof shall continue in such fund, unless otherwise disposed of by the legislature. The director of fisheries and game is directed to expend such funds, as nearly as may be, in the localities from which they are collected. All fines collected shall be remitted monthly by the justice of the peace or by the clerk of the court collecting the same to the county treasurer of the county in which the same shall be collected, and the county treasurer shall at least once a month remit the same to the state treasurer and shall at the same time furnish a statement to the director of fisheries and game showing the amount of fines so remitted and from whom collected. [L. '21, p. 711, § 2; L. '17, p. 786, § 9; L. '15, p. 84, § 48.]

§ 5701. [5150-49.] Remittances to State Treasurer.

All moneys collected by the commissioner shall be deposited in a bank, to be designated by the state fish commission, which bank shall give a surety bond to the state of Washington in a sum designated by the fish commission, said bond to contain such conditions and provisions as may be required by it.

The commissioner shall make daily remittances to the state treasurer of all moneys collected by him from any source whatever, together with a statement showing from whence the moneys are derived. A duplicate of this statement shall be sent to the state auditor. [L. '15, p. 84, § 49.]

See notes to § 5658.

§ 5702. [5150-50.] Expenses.

All expenses incurred under the provisions of this chapter shall be audited by the state auditor, upon bills being presented, properly certified by the fish commissioner, and the said auditor shall from time to time, draw warrants upon the state treasurer for the amount. [L. '15, p. 84, § 50.]

See notes to § 5658.

§ 5703. [5150-51.*] Licenses—How Issued, Fees Therefor.

Licenses herein required shall be issued to any qualified person, firm or corporation, by the director of licenses or his duly authorized deputy upon the receipt of a lawful application therefor, upon a blank to be furnished for that purpose accompanied by the receipt of the state treasurer for the required fee, and the director of licenses shall cause to be indorsed on such application the number of the license issued and the date of issue, and transmit the application to the director of fisheries and game. All applications for licenses shall be filed with the state treasurer accompanied by the proper fees, which shall be respectively as follows:

For each pound-net or fish-trap license for taking salmon at both ends, on Puget Sound, one hundred dollars (\$100.00);

For each pound-net or fish-trap license for taking salmon on Puget Sound, fifty dollars (\$50.00);

For each first-class pound-net or fish-trap license for taking salmon on the Columbia River, twenty-five dollars (\$25.00);

For each second-class pound-net or fish-trap license, fifteen dollars (\$15.00);

(A first-class trap is hereby defined to be a trap on the Columbia River that during the preceding season caught fish of the value of one thousand dollars or more, and a second-class trap, a trap on the Columbia River that caught during the preceding season fish of the value of less than one thousand dollars (\$1,000.00).

For each pound-net or fish-trap license for the taking of salmon in Willapa and Grays Harbor, fifteen dollars (\$15.00);

For each brush weir license for the taking of smelt and herring, twenty-five dollars (\$25.00);

For each stationary fish-wheel license for the taking of salmon, thirty-five dollars (\$35.00);

For each scow fish-wheel license for the taking of salmon, twenty-five dollars (\$25.00);

For each purse seine license, twenty-seven and fifty one-hundredths dollars (\$27.50);

For each gill-net license for the taking of salmon the net to be not over 750 feet long, seven and fifty one-hundredths dollars (\$7.50), and for each additional lineal foot in length one cent (1c).

(All gill-net licenses issued by the state of Oregon shall be valid in the concurrent waters of the Columbia River in this state. The director of licenses when issuing gill-net licenses for the Columbia River district shall furnish to the fisheries department of Oregon the names of all licensees and the numbers of their licenses.)

For each reef-net, five dollars (\$5.00);

For each drag seine license, three cents per lineal foot;

For each set-net license for the taking of salmon, three and seventy-five one-hundredths dollars (\$3.75);

For each dip-bag net license for the taking of smelt or herring, one dollar (\$1.00);

(Any person may use a jigger in the taking of smelt or herring for the use of himself and family without any license therefor.)

For each smelt drag-bag net on Puget Sound not exceeding forty feet in length, one dollar (\$1.00); and each additional foot, three cents per lineal foot;

For each license for beam trawl, ten dollars (\$10.00);

For each license to fish with hook and line for commercial purposes two dollars (\$2.00);

(A hook and line license as herein provided for, when used in salt water, or in the Columbia River, shall permit of the use of not more than six (6) lines to which may be attached a total of twelve (12) hooks, and all to be operated from a single boat or other floating appliance; when used in fresh water, shall consist of a single hook attached to a single line, held in the hand.)

For each set line license, one dollar (\$1.00);

(Not more than one hundred hooks shall be attached to any one set line.)

The licenses issued by the director of licenses for the appliances hereinbefore mentioned shall specify the district wherein the license is to be used and no license for one district shall be used in another.

For each license to take crabs, one dollar (\$1.00);

For each license to take clams and mussels, one dollar (\$1.00);

For each license to take oysters from the state reserves for seed purposes under regulations to be promulgated annually by the director of fisheries and game, five dollars (\$5.00);

For each person, firm or corporation engaged in the business of buying and selling, packing and preserving, or otherwise dealing in trout or other food fish obtained from private hatcheries of this state, two and fifty one-hundredths dollars (\$2.50);

For each restaurant or hotel-keeper serving to guests trout or other food fish obtained from private hatcheries in this state, one dollar (\$1.00);

For each private trout hatchery, twenty-five dollars (\$25.00);

For each codfish canning or curing establishment, five dollars (\$5.00);

For each establishment for the manufacture of fertilizer, oil meal, or other by-products from fish, twenty-five dollars (\$25.00);

For each person, firm or corporation buying, selling or otherwise dealing in halibut as wholesaler or as a broker, five dollars (\$5.00);

For each retail fish dealer, a license fee of one dollar (\$1.00);

(A retail dealer is hereby defined to be a person who sells fish directly to the consumer, whether or not he is the taker or catcher of the fish. A license to take fish in the state of Washington shall not be deemed to give the right to sell the same at retail without a retail license.)

For each fish broker and each wholesale dealer in fish and shell-fish, except halibut, ten dollars (\$10.00);

For each person engaged in freezing, salting, smoking, kippering, preserving fish in ice or otherwise, ten dollars (\$10.00);

For each person engaged as a buyer of food fish for any person, firm or corporation, one dollar (\$1.00);

(No buyers' license shall be issued except to the person, firm or corporation engaging the services of said buyer, application for which shall be made upon blanks to be furnished by the director of licenses.

A person engaged as a buyer of food fish for others is hereby defined to be a person who is engaged as the representative of a person, firm or corporation licensed as a canner, curer, freezer, wholesale fish dealer or broker under the laws of the state of Washington.

Any person, firm or corporation holding a license under this act as a canner, curer, freezer, wholesale dealer, retail dealer, broker, or their buyers, is hereby authorized to purchase fish.

(On the Columbia River, where it forms the boundary between the states of Washington and Oregon, a fisherman, licensed under the laws of the state of Washington, may dispose of his catch to a person, firm or corporation, other than those licensed to buy fish under the laws of the state of Washington: Provided, that he reports the number of fish, species stated separately, so disposed of, and pays to the treasurer of the state of Washington the catch and other taxes provided by this act.)

For each person, firm or corporation not licensed by the state of Washington as canners, wholesale dealers, freezers or curers using scows, boats, or other water craft in the buying of fish on the Columbia River, for each scow, boat or other water craft, a license fee of fifty dollars (\$50.00);

(Such licensee of said scow, boat or other water craft shall give a bond to the state of Washington in the amount fixed by the director of fisheries and game conditioned for the payment to the state of Washington of catch taxes for the fish which he may purchase from the owner, operator, or agent of appliances, licensed by the state of Washington.)

For each person, firm or corporation engaged in canning or preserving salmon or other food fish in the state of Washington, twenty-five dollars (\$25.00);

For each person, firm or corporation engaged in canning or preserving shell-fish in the state of Washington, fifteen dollars (\$15.00);

(For the purpose of this act a case of fish is defined to consist of forty-eight (48) one pound cans, bottles, or their equivalent in weight.)

No person, firm or corporation shall engage in business as a canner, wholesale fish dealer or retail fish dealer, or fish broker, or engage in the business of freezing, salting, smoking, kippering, preserving fish in ice or otherwise, without first having procured a license as required by this act. [L. '21, p. 183, § 1; L. '17, p. 786, § 10; L. '15, p. 85, § 51.]

§ 5704. Payments in Addition to License Fees.

There shall be paid to the treasurer of the state of Washington, for the salmon and other food and shell-fish taken from its waters or from those over which it has jurisdiction, by the person, firm or corporation catching or taking the same, and for the salmon and other food fish taken in the waters of the Pacific Ocean off the western territorial limits of the state of Washington, by the person bringing the same into the

state of Washington, the sums herein mentioned, which shall be in addition to the licenses and other fees provided by this act:

For each Chinook salmon caught in the Columbia River district between the first day of January and the twenty-sixth day of August, both dates inclusive, eleven cents (11c);

For each Chinook salmon caught in the Columbia River district from the twenty-seventh day of August to the thirty-first day of December, both dates inclusive, three and one-quarter cents ($3\frac{1}{4}c$);

For each Chinook salmon caught in Grays Harbor or Willapa Harbor district, four cents (4c);

For each Chinook salmon caught in Puget Sound district, seven and one-half cents ($7\frac{1}{2}c$);

For each dog or chum salmon caught, four-fifths of a cent ($\frac{4}{5}c$);

For each humpback salmon caught, three-fourths of a cent ($\frac{3}{4}c$);

For each silver salmon caught, one and one-half cent ($1\frac{1}{2}c$);

For each sockeye salmon caught, two cents (2c);

For each steelhead salmon caught, four and one-third cents ($4\frac{1}{3}c$);

For each one hundred pounds or fraction thereof of razor clams at the rate of eleven cents (11c) per one hundred pounds;

For all clams and mussels of all varieties other than razor, at the rate of nine cents (9c) per one hundred pounds;

For all crabs at the rate of six and one-half cents ($6\frac{1}{2}c$) per dozen;

For all shrimp at the rate of fifty-four cents (54c) per one hundred pounds;

For all sea bass, at the rate of twenty-six cents (26c) per one hundred pounds;

For all carp at the rate of two and one-half cents ($2\frac{1}{2}c$) per one hundred pounds;

For all black cod at the rate of twenty-two cents (22c) per one hundred pounds;

For all ling-cod at the rate of thirteen cents (13c) per one hundred pounds;

For all rock-cod at the rate of thirty cents (30c) per one hundred pounds;

For all codfish, other than black, ling and rock, at the rate of nine cents (9c) per one hundred pounds;

For all devil-fish at the rate of twenty-six cents (26c) per one hundred pounds;

For all dogfish at the rate of forty-three cents (43c) per ton;

For all flounders, at the rate of nine cents (9c) per one hundred pounds;

For all halibut, at the rate of forty-three cents (43c) per one hundred pounds;

For all herring, at the rate of four and one-half cents ($4\frac{1}{2}c$) per one hundred pounds;

For all mackerel, at the rate of twenty-two cents (22c) per one hundred pounds;

For all salt-water perch, at the rate of twenty-six cents (26c) per one hundred pounds;

For all red-snapper, at the rate of nine cents (9c) per one hundred pounds;

For all sable-fish, at the rate of twenty-six cents (26c) per one hundred pounds;

For all sand-dabs, at the rate of thirty-nine cents (39c) per one hundred pounds;

For all shad, at the rate of ten cents (10c) per one hundred pounds;

For all skates, at the rate of nine cents (9c) per one hundred pounds;

For all smelt caught in the Columbia River district, at the rate of three and one-half cents (3½c) per one hundred pounds;

For all smelt caught in the Puget Sound district, at the rate of fifteen cents (15c) per one hundred pounds;

For all sole, at the rate of thirteen cents (13c) per one hundred pounds;

For each sturgeon caught in the Columbia River district, seventeen cents (17c);

For each sturgeon caught in Puget Sound, Grays Harbor or Willapa Harbor district, twenty-six cents (26c);

For all Dolly Varden trout, at the rate of fifty-five cents (55c) per one hundred pounds;

For all food fish other than those listed, and all fish which may hereafter be classified as food fish by the board of fisheries, at the rate of ten cents (10c) per one hundred pounds.

Payment of the foregoing tax for each and every fish taken or caught shall be made by the person taking or catching the fish unless the fish are sold to some licensed canner, wholesale fish dealer, broker, or person engaged in freezing, salting, smoking, kippering, or otherwise preserving fish, or unless the fish be sold to some other person, firm or corporation who is required under the laws of the state of Washington to be licensed in order to purchase fish in said state, and who by the terms of this act is made liable to the state of Washington for the payment of the catch taxes by this act provided. Payment shall be made for the fish caught or taken during the preceding four months, on March 31st, July 31st, and November 30th of each year.

In case such fish are sold, by the taker or catcher, to a canner, wholesale dealer, broker, or curer of fish, then and in that case the canner, wholesale dealer, broker, or curer of fish purchasing the same is hereby required to pay said catch tax to the state at the time of making the report of fish purchased during the four months' period preceding March 31st, July 31st, and November 30th of each year.

It shall be prima facie evidence that fish were caught within the waters of the state when disposed of within the state by a person operating an appliance licensed under the provisions of this act.

The purpose of this provision is to insure that any person taking any of the salmon or other food or shell-fish from the waters of the state of Washington or those over which it has jurisdiction, or taking any salmon or other food fish from the waters of the Pacific Ocean off the western territorial limits of the state of Washington, shall pay to the state the catch tax by this act provided. [L. '21, p. 188, § 2.]

Cited in 110 Wash. 83, 85.

See note to next section.

§ 5705. [5150-52.*] Licensee to Make Report.

Every licensee of a fishing appliance licensed by the terms of this act shall file a report with the state treasurer, under oath, on a blank to be furnished upon request by the director of fisheries and game, on the last day of March, July and November of each year, for the four months preceding the date on which the report is made, stating the number of salmon, species stated separately, the number of crabs, sturgeon, pounds of smelt, herring, shrimps, clams, shad, sea bass, carp, black, ling, rock and other cod fish; devil-fish, dogfish, flounders, halibut, mackerel, salt-water perch, red-snapper, sable-fish, sand-dabs, skates, sole, Dolly Varden trout, and all other food fish, other than those listed, and all fish which may hereafter be classified as food fish by the board of fisheries, caught during the preceding four months' period together with the name of the person, firm or corporation to whom sold, the number and quantity delivered to each purchaser, and shall at the same time remit to the state treasurer the catch taxes, license charges and the additional fees required by this act and it shall be the duty of the state treasurer, upon receiving any such report, to indorse thereon his duplicate receipt for the taxes, charges and fees, if any, accompanying the report, and transmit the report to the director of fisheries and game, and deposit the moneys received in the state treasury to the credit of the fisheries fund.

Every person receiving a license under the terms of this act must make report on dates specified, irrespective of whether or not any appliance was operated or fish caught during the four months preceding the date of the report.

No owner of any licensed fishing appliance, who has sold the fish caught under his license to any canner, wholesale dealer, broker, or to any person, firm or corporation engaged in freezing, salting, smoking, kippering, mild-curing, curing or otherwise preserving fish, who by the terms of this act are held responsible to the state for the collection of the catch taxes, need remit said taxes at the time of making his report, but remittance in payment of fish caught by said licensee shall be made by the canner, wholesale dealer, broker, or curer of fish to whom said licensee has sold his catch.

And every person, firm or corporation engaged in canning, preserving, salting, smoking, kippering, mild curing, curing, freezing, preserving in ice or otherwise, or in buying, selling, or otherwise dealing in food or shell-fish caught within the waters of the state, or in those over which it has jurisdiction, as canners, fish brokers, wholesalers, or retailers, either as principal, agent or employee, shall on the same dates and for the same periods file reports with the state treasurer, stating the quantity in pounds of all fish canned, preserved or cured or handled, and all purchases and sales made during the preceding period for which the report is made, the varieties stated separately, together with the name of the person, persons, firms or corporations from whom purchased and the place from which the fish were taken and the appliances with which the same were taken, and at the same time shall remit to the state treasurer the catch taxes, license charges, and additional fees required by this act; and it shall be the duty of the state treasurer, upon receiving any such report, to indorse thereon his duplicate receipt for the taxes, charges and

fees, if any, accompanying the report, and transmit the report to the director of fisheries and game, and deposit the moneys received in the state treasury to the credit of the fisheries fund.

Every person, firm or corporation engaging in business as a canner, wholesale fish dealer, fish broker, or in the business of freezing, salting, smoking, kippering, or preserving fish in ice or otherwise shall, at the time of procuring a license, execute to the state of Washington a bond in a sum to be fixed by the director of fisheries and game and subject to his approval, conditioned that at the times herein provided he will pay or cause to be paid to the state treasurer the catch taxes and other charges required to be paid by him as required by law; that he will file the reports required by this act with the state treasurer on March 31st, July 31st, and November 30th of each year, showing all salmon, species stated separately, other food and shell fish purchased by him, the name and license number of the person from whom purchased, and such other information as may be required by the director of fisheries and game, for ascertaining the amount owing or to be owing to the state of Washington for fish taken from the waters of the state and those over which the state has jurisdiction, and for fish taken in the Pacific Ocean off the western territorial limits of the state of Washington and brought into the state of Washington. The director of fisheries and game may require such other provisions to be inserted in said bond as may in his judgment be necessary in order to efficiently administer the laws and to enforce the collection of license fees, taxes and other charges.

Every person, firm or corporation engaged in any branch of the fishing industry, including oysters, clams and shell-fish and including any by-product thereof shall on or before the thirty-first day of March of each year report to the director of fisheries and game in writing upon blanks furnished upon request by the director of fisheries and game the amount of capital invested in the business, the quantity and kind of equipment and the value thereof and where situated, the value of the product handled, the number of employees and the wages paid during the preceding year; and any person, firm or corporation who shall fail to make the reports in this paragraph provided and at the same time make payment of the amounts of money due to the state shall be guilty of a gross misdemeanor and the amounts owing by any such persons for license charges and additional charges shall become and constitute a first lien upon the fishing appliances of any such person and also a lien on the real and personal property of the person owing such sum or sums, from and after a notice of such lien on behalf of the state shall have been filed in the office of the county auditor in which the person owing such amount or amounts shall reside; the notice of lien to be filed by the director of fisheries and game shall be sufficient if it shall state the amount for which the lien is claimed and the person owing same. Every person, firm or corporation owning or operating codfish canning or curing establishments or owning or operating establishments for the manufacture of fertilizer, oil, meal or other by-product from fish or engaged in the buying, selling or dealing in halibut at wholesale or as a broker, shall make reports to the director of fisheries and game at the times and for the periods in this section provided, stating the quantity of fish with the

species bought or sold or handled with the names of the persons from whom purchased and the waters from which taken, and also the quantity and value of all fish or fish by-products handled by them. [L. '21 p. 192, § 3. Cf. L. '17, p. 793, § 11; L. '15, p. 90, § 52.]

Cited in 110 Wash. 83, 85.

Under Laws 1917, pp. 786, 793, §§ 51, 52, which require gill-net fishermen to be licensed and to make reports of the number of fish caught, the statutory exemption from additional fees does not absolve gill-net fishermen from the necessity of making the report: *State v. Hoffman*, 110 Wash. 82, 188 Pac. 25.

Laws 1917, p. 793, § 52, requiring gill-net fishermen to report the number of "fish caught during the preceding four months period," does not require any report where no fish were caught during such period: *State v. Hoffman*, 110 Wash. 82, 188 Pac. 25.

Evidence that fish frozen and preserved by accused might have been caught in Oregon, British Columbia, Alaska or the

state of Washington, does not sustain a conviction for failure to report and pay a tonnage tax on fish frozen by accused, caught within the waters of the state of Washington: *State v. Diamond Ice & Storage Co.*, 105 Wash. 122, 177 Pac. 634.

Under section 2057, supra, requiring an information to be direct and certain, an information charging failure to report and pay a tonnage tax upon fish frozen and preserved by accused, caught within the state of Washington, does not sustain a conviction for failure to report and pay a tonnage tax upon fish which were caught in the waters of Alaska, British Columbia, or elsewhere, even though that also be an offense under the statute: *State v. Diamond Ice & Storage Co.*, 105 Wash. 122, 177 Pac. 634.

§ 5706. [5150-53.] License Number and Lights to be Displayed.

Each fixed appliance for taking food fish shall have displayed thereon in a conspicuous place in black figures not less than six inches in length, painted on a white ground, the license number under which the same is operated.

Each gill-net, and set-net used for the purpose of taking food fish shall have branded on the corks at each end of such net, in figures not less than one-half inch in length, the license number under which the same is operated.

Each boat or vessel used to operate any seine or net for food fish shall have displayed upon the bow thereof in black figures, not less than six inches in length, painted on a white ground, the license number under which such seine or net is operated, preceded by a capital "W." Each pound-net or trap on the Columbia River, Grays Harbor and Willapa Harbor shall between sunset and sunrise conspicuously display a bright light. [L. '15, p. 91, § 53.]

§ 5707. [5150-54.*] Closed Season—Puget Sound.

It shall be unlawful to take or fish for salmon except with hook and line, in Puget Sound and in any of the rivers and streams emptying into it between the hours of 4 o'clock P. M. on Friday and 4 o'clock A. M. Sunday of each week of the months of July and August of each year, except with gill and set-nets as herein provided. It shall be unlawful to take or fish for salmon with gill or set-nets in any of said waters between the hours of 6 o'clock A. M. Saturday and 6 o'clock P. M. Sunday of each week of July and August of each year. It shall be unlawful to take or fish for salmon, except with hook and line, in any of the waters of Puget Sound or any river or stream flowing into the same north of a line extending from Brace Point in King County to Point Southworth in Kitsap County and north of a line extending from Foulweather Bluff in Kitsap

County to Tala Point in Jefferson County from November 10th to December 10th, both dates inclusive, in each year; and it shall be unlawful to take or fish for salmon in the tributary thereof known as Hoods Canal and in any river or stream flowing into the same south of the lines above described between the sixteenth day of November of each year and the first day of January following, both dates inclusive; and it shall be unlawful to take or fish for salmon, except with hook and line, in Carr's Inlet or in any of the waters southerly and westerly thereof or in any of the rivers or streams emptying into such waters, and for the purposes of this act such waters are bounded as follows: Beginning at Gordon Point in Pierce County and running thence northwesterly to Hyde Point on McNeil's Island; thence northeasterly to Gibson Point on Fox Island; thence northwesterly along the south shore of Fox Island to Green Point in Pierce County, between the tenth day of November of each year and the fifteenth day of April of the year following, both dates inclusive; and it shall be unlawful to take or fish for salmon in any of the waters between the waters bounded and described in the preceding clause and a line beginning at Brace Point in King County and running thence westerly to Point Southworth in Kitsap County, or in any of the rivers or streams emptying into such waters between the sixteenth day of November and the thirtieth day of November of each year, both dates inclusive, and between the eighteenth day of January and the fifteenth day of April of each year, both dates inclusive. And it shall be unlawful to take or fish for salmon, except with hook and line, in any of the said described waters or in any of the waters of Puget Sound or in any rivers or streams flowing into such waters (wherein fishing is not otherwise prohibited by the provisions of this act) between the eighteenth day of January and the fifteenth day of April, both dates inclusive, of each year: Provided, that in the waters northerly of a line produced from Brace Point in King County to Point Southworth in Kitsap County, except in the waters of Hoods Canal, fishing with gill-nets and set-nets of a mesh not less than six and one-half ($6\frac{1}{2}$) inches stretch measure, shall be permitted between the nineteenth day of January and the last day of February, both days inclusive of each year. The commissioner shall designate by the erection of monuments and signs all of the above mentioned boundary points.

In the event that the Dominion of Canada or the Province of British Columbia shall enact and enforce laws prohibiting the taking of sockeye salmon above the Westminster bridge at all times and in Georgia Straits and all the waters of Fraser River and its tributaries between the twenty-fifth day of August and the fifteenth day of September of each year, then it shall be unlawful to take or fish for sockeye salmon in any of the waters of Puget Sound between the twenty-fifth day of August and the fifteenth day of September, both dates inclusive, of each year, and any sockeye salmon taken between the last-named dates in the waters of Puget Sound shall be liberated and nothing in this paragraph of this section shall be construed to prevent any person, firm or corporation from operating its fishing appliances for the catching of other varieties of salmon between the last-named dates.

If the Province of British Columbia or Dominion of Canada shall prohibit and prevent the taking of salmon in Georgia Straits and the

Fraser River during a forty-eight hour weekly period in each even-numbered year, beginning at 6 o'clock P. M. Friday and ending not earlier than 6 o'clock P. M. Sunday, then and in that event it shall be unlawful to take or fish for sockeye salmon by any means whatever except with hook and line, in any of the waters of that portion of Puget Sound last described between the hours of 8 o'clock P. M. Thursday and 8 o'clock P. M. Saturday of each week in each even-numbered year. In the event that this proviso becomes effective and during the years while in effect, it shall supersede and render inoperative the thirty-six hour closed period in this section first provided as to and in the waters above described.

If it shall be adjudicated that the foregoing proviso be unconstitutional and invalid for any reason, such adjudication of invalidity of such proviso or any part of this act shall not affect the validity of the act as a whole or any part thereof. [L. '17, p. 795, § 12; L. '15, p. 92, § 54.]

Statute providing closed season as	hunting grounds. Ann. Cas. 1915A,
applicable to private fishing or	1158.

§ 5708. [5150-55.] Certain Nets Prohibited — Skagit River — Puget Sound.

It shall be unlawful to use any gill-net, seine or other net, the meshes of which are less than eight and one-half inches, stretched measure, in the Skagit River between July 1st and September 1st, both dates inclusive, of each year.

It shall be unlawful to use any drag seine, purse seine, gill-net, set-net or other like seine or net, the meshes of which are less than three inches, stretched measure, in Puget Sound, for any purpose whatsoever, during the months of May, June and July. [L. '15, p. 94, § 55.]

§ 5709. [5150-56.] Closed Season, Columbia River.

It shall be unlawful to take or fish for salmon or sturgeon in the Columbia River, its tributaries and in any of the waters or sloughs thereof, west of the north and south line between sections 14 and 15, township 2 north, range 15 east of the Willamette Meridian and within three miles outside the mouth of the Columbia River, by any means whatever, between 12 o'clock noon on the first day of March and 12 o'clock noon on the first day of May and between 12 o'clock noon on the twenty-fifth day of August and 12 o'clock noon on the tenth day of September, and between 6 o'clock P. M. on Saturday of each week and 6 o'clock P. M. of the Sunday following, from the first day of May to the twenty-fifth day of August, both dates inclusive, of each year.

It shall be unlawful to take or fish for salmon or sturgeon in the Columbia River and any of its tributaries above the north and south line between sections 14 and 15, township 2 north, range 15 east of the Willamette Meridian, by any means whatever between 12 o'clock noon on the fifteenth day of March and 12 o'clock noon on the first day of June, and between 12 o'clock noon on the twenty-fifth day of August and 12 o'clock noon on the tenth day of September.

It shall be unlawful to take or fish for salmon in the Snake River and any of its tributaries by any means whatever in any year between 12 o'clock noon on the first day of April and 12 o'clock noon on the first

day of June and between 12 o'clock noon on the first day of August and 12 o'clock noon on the fifth day of September of each year. [L. '15, p. 94, § 56.]

§ 5710. [5150-57.] Closed Season for Grays Harbor and Willapa Harbor.

It shall be unlawful to take or fish for salmon in Grays Harbor or Willapa Harbor or in any of the rivers or streams flowing into the same between the fifteenth day of March and the fifteenth day of April and between the first day of December and the first day of January, all dates inclusive, in each year. [L. '15, p. 95, § 57.]

§ 5711. [5150-58.*] Right to Take Fish for Sale Limited to Citizens.

It shall be unlawful for any person to fish or take for sale or profit any salmon or other food or shell-fish in any of the rivers or waters of this state or over which it has concurrent jurisdiction in civil and criminal cases, unless such person be a citizen of the United States or has declared his intention to become such and is and has been for twelve months immediately prior to the time he engages in such business an actual resident of this state or an adjoining state; but this section shall not apply to Indians. [L. '21, p. 712, § 3; L. '17, p. 798, § 13; L. '15, p. 95, § 58.]

§ 5712. [5150-59.] Closed Season, Strait of Juan de Fuca.

It shall be unlawful to take or fish for salmon between the first day of June and the first day of July, both dates inclusive, by any means whatsoever in the waters of the Pacific Ocean within a distance of three miles of the west shore of Clallam county and west of a line drawn from Tatoosh light in Clallam county to Carmanah light on Vancouver Island, constituting the headlands marking the entrance to the Strait of Juan de Fuca and it shall be unlawful for any person to bring into the state of Washington any salmon caught west of Clallam county and the line above described between the dates mentioned in this section: Provided, however, that this section shall be inoperative unless the Dominion of Canada or the Province of British Columbia shall by law, rule, order or regulation adopt provisions concerning the water herein described similar in intent and purpose to those contained in this section in which event the provisions contained herein shall continue to be and remain in full force and effect. [L. '15, p. 95, § 59.]

§ 5713. [5150-61.] Protection of Young Sturgeon—Penalty.

It shall be unlawful at any time to take or kill young sturgeon under four feet in length, or fish for the same by any device or appliance whatever in the waters of the Columbia River or tributaries thereof, and any person or persons fishing with gill-nets, fish-wheels, or other fishing apparatus whatever in the waters of the Columbia River or tributaries thereof, who on lifting, drawing, taking up or removing any of said nets, or other fishing apparatus, shall find young sturgeon under four feet in length entangled or caught therein, shall immediately with care and the least possible injury to the fish, disentangle and let loose the same and transmit the fish to the water without violence. Any person or persons

violating any of the provisions of this section, or having in their possession young sturgeon under four feet in length, either for consumption or sale, or who is known to willfully destroy the same for so offending, shall be guilty of a misdemeanor. [L. '15, p. 96, § 61.]

§ 5714. [5150-62.] Chinese Lines Prohibited—Penalty.

It shall be unlawful to cast, extend, set, use or continue or assist in casting, extending or using any Chinese sturgeon lines, or lines of a similar character, in the waters of this state. The commissioner or any of his deputies is authorized to seize and destroy any such lines found in said waters, and they are hereby authorized to arrest forthwith any person or persons detected in setting or using any Chinese sturgeon lines of similar character, in the waters of this state. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '15, p. 97, § 62.]

§ 5715. [5150-63.*] Traps, How Closed—Penalty.

Throughout the weekly closed season prescribed in this act, each pound-net or fish-trap shall be closed by an apron placed across the outer entrance to the heart of the trap or pound-net, which apron shall extend from above the surface of the water to the bottom of the water, and shall be securely connected to the piles on either side of the heart of such trap or pound-net, fastened by rings not more than two feet apart on taut wires stretched from the top to the bottom of the piles. And such apron or the appliances by which it is raised and lowered shall be provided with such signals or flags visible at a distance of at least one-half mile from the trap which shall disclose that the trap is closed, which signal or flag shall be of the form and character as may be prescribed by the commissioner under regulations to be issued by him: Provided, that in addition to the foregoing requirements each pound-net or fish-trap in the Columbia River district shall be equipped with a V-shaped opening in the lead of such trap or pound-net, next to the entrance to the heart and immediately adjacent to the apron, of at least ten feet in width at the top and extending below the surface at least four feet below low water, which V-shaped opening shall be open during the full period of each closed season.

For the purpose of enforcing this regulation, the owner or operator of the fish-trap or pound-net in Puget Sound district shall constantly maintain, during the weekly closed season, a watchman, whose duty, among other things, it shall be to cause such pound-net or trap to be closed as above provided. Any owner or operator of a pound-net or fish-trap, or any watchman violating any of the provisions of this section, either by failing to do any act or thing required, or by doing any act or thing prohibited by this section, shall be deemed guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not less than two hundred and fifty dollars (\$250.00), nor more than two thousand dollars (\$2,000.00). [L. '17, p. 798, § 15. Cf. L. '15, p. 97, § 63.]

§ 5716. [5150-64.] Taking Fish from Lawful Owner.

It shall be unlawful to take from any building, scow, live-box, trap, wheel, seine, or net, any caught or impounded fish with the intent of de-

prising the owner of said fish and any person so doing shall be guilty of a gross misdemeanor. [L. '15, p. 98, § 64.]

§ 5717. [5150-65.*] Unlawful Purchase of Fish.

It shall be unlawful for any person, firm or corporation to purchase, handle, deal in or have in his possession any food fish of any variety which were taken from the waters of this state during any of the closed seasons prescribed in this act, or which may hereafter be prescribed by the state fisheries board, and any person who purchases, handles, deals in or has in his possession any such fish during such periods, shall be guilty of a misdemeanor. And it shall be unlawful for any person, firm or corporation to purchase, handle, deal in, or have in his possession, any salmon fish of any variety which were taken beyond the three-mile limit during any of the closed seasons prescribed in this act or which may hereafter be prescribed by the state fisheries board. Any of the salmon, which were lawfully taken in any of the districts of this state, as by this act defined, may be shipped into any other district of this state, even though the taking of salmon in the district into which the shipment is made, may be prohibited at the time said shipment is made. [L. '21, p. 712, § 4; L. '17, p. 799, § 16. Cf. L. '15, p. 98, § 65.]

Cited in 104 Wash. 221.

Laws 1917, p. 799, § 16, making it unlawful to possess or deal in salmon during the closed season cannot be sustained as a valid exercise of the police power for the protection of salmon, in view of the proviso to the act providing that the act shall not apply to salmon taken be-

yond the three-mile limit outside the straits of Juan de Fuca; since the proviso defeats the purpose which is the one justification of such legislation: *State v. Belknap*, 104 Wash. 221, 176 Pac. 5.

Possession of game during closed season as unlawful. 2 Ann. Cas. 230; 3 L. B. A. (N. S.) 163.

§ 5718. [5150-66.*] Taking or Sale of Young Salmon or Salmon Trout Prohibited.

Any person who by any means, except with hook and line for the sole use of himself and family, shall catch or take any salmon, or salmon trout of any variety less than fifteen inches in length, and who shall not immediately return the same alive to the water, or who shall buy or sell or offer for sale, or have in his possession any such fish shall be guilty of a misdemeanor. [L. '17, p. 800, § 17. Cf. L. '15, p. 98, § 66.]

§ 5719. [5150-67.] Possession Unlawful—Fish Illegally Caught.

It shall be unlawful to buy, sell or have in possession any of the food fishes mentioned in this act, caught or taken in any of the waters of this state wherein it is unlawful to catch or take the same. [L. '15, p. 98, § 67.]

§ 5720. [5150-68.] Salmon Canned Within Sixty Hours.

It shall be unlawful to can or preserve for food any salmon that has been removed from the water for a longer period than sixty hours, unless such fish have been kept artificially chilled. [L. '15, p. 98, § 68.]

§ 5721. [5150-69.] Taking Fish Except for Food or Bait Prohibited.

It shall be unlawful to take or fish for, or have in possession, any food fish of any kind, character or description, unless the same are to be used for food or bait. [L. '15, p. 99, § 69.]

§ 5722. [5150-70.] Unlawful to Destroy Food Fish.

It shall be unlawful for any person, firm or corporation wantonly to waste or destroy salmon or other food fishes taken or caught in any of the waters of the state of Washington, and no person engaged in the canning, preserving or curing of food fish shall purchase or engage a greater quantity of fish than he is able to can, preserve or cure within sixty hours after the same are taken from the water, unless such fish have been kept artificially chilled. [L. '15, p. 99, § 70.]

§ 5723. [5150-71.*] Taking Salmon Below Dam or Fish-rack Prohibited.

It shall be unlawful to catch, kill or in any manner destroy, any salmon on or within one mile below any rack, dam or other obstruction erected across any river or stream, except that it shall be lawful for any person to take any steelhead salmon, with hook and line, for his own use or for the use of his family, at any point not less than four hundred feet below any such rack, dam or other obstruction, in any river or stream on which there is no fish hatchery or eyeing station. [L. '17, p. 800, § 18. Cf. L. '15, p. 99, 71.]

§ 5724. [5150-72. Spearing, Shooting, or Snaring Fish Prohibited.

It shall be unlawful to shoot, gaff, snag or snare any food fish in any of the waters of the state. [L. '15, p. 99, § 72.]

§ 5725. [5150-73.*] Taking Salmon for Propagation—By Whom.

It shall be unlawful for any person whomsoever, save the director of fisheries and game and those authorized by him, to take salmon or other fish for propagation purposes within the waters of this state. The director of fisheries and game or those authorized by him may take salmon or other fish at any time and in any manner for propagation or scientific investigation purposes. He may grant authority to take salmon for public propagation purposes under such regulations as he may prescribe to safeguard the interests of the fishery of this state. [L. '21, p. 713, § 5. Cf. L. '15, p. 99, § 73.]

§ 5726. [5150-74.] May Remove Fish Below Hatcheries.

The commissioner may take or remove or cause to be taken or removed in any manner, at any time, any fish of any kind, character or description within one mile below any hatchery or rearing pond. [L. '15, p. 99, § 74.]

See note to § 5658.

§ 5727. [5150-75.] Dolly Varden Trout may be Taken.

It shall be lawful to take, kill capture or destroy at any time, in any lawful manner, or to possess or market, the *Salvelinus Malma*, commonly known as the Dolly Varden or bull trout. [L. '15, p. 100, § 75.]

§ 5728. [5150-76.] Fish not to be Planted Without Consent of Commissioner.

It shall be unlawful to liberate, release, implant, or place any fish of any kind or description in any stream, river, pond, lake, or other

waters of the state, either fresh or salt, without first obtaining the written consent of the commissioner. [L. '15, p. 100, § 76.]

See note to § 5658.

§ 5729. [5150-77.*] Canals and Ditches to be Screened.

Every ditch, channel, canal or water-pipe used for conducting water from any lake, river or stream, where any state fish hatchery is located, for irrigation, manufacturing, domestic or other purposes, shall be provided at its entrance or intake with a fish guard so fixed as to prevent the passage of fish into such ditch, channel, or water-pipe and subject to the approval of the commissioner, which shall be constantly maintained at all times when water is taken or admitted into such ditch, channel, canal or water-pipe: Provided, that such fishguards and screens shall be installed at such places and times as shall be prescribed by the commissioner upon thirty days' notice to the owner or owners of any such water conduit. Every owner, manager, agent or person in charge of such ditch, channel, canal or water-pipe who shall fail to comply with the provisions of this section shall be guilty of a gross misdemeanor.

Each day the end of the ditch, channel, canal or water-pipe is not equipped with this covering as provided shall constitute a separate offense. If within thirty days after notice to equip any such ditch, channel, canal or water-pipe such person shall fail to do so, the commissioner is hereby authorized to take possession of the same in the name of the state of Washington, and to close the same to the entrance of any water until such time as the ditch shall be properly equipped, and the expense incident thereto shall constitute a lien upon the ditch, channel, canal or water-pipe and upon the real and personal property of the person or persons, firm or corporation owning the same. Notice of such lien shall be filed and recorded in the office of the county auditor in the county in which such action is taken. [L. '17, p. 800, § 19. Cf. L. '15, p. 100, § 77.]

§ 5730. [5150-78.] Dams to be Provided With Fishways.

Every dam or other obstruction across or in any stream shall be provided with a durable and efficient fishway, which shall be maintained in a practical and effective condition in such place, form and capacity as the commissioner may approve, for which plans and specifications shall be furnished by the commissioner upon application to him, and which shall be kept open, unobstructed and supplied with a sufficient quantity of water to freely admit the passage of fish through the same. Every owner, manager, agent or person in charge of such dam or obstruction who shall fail to comply with the provisions of this section shall be guilty of a misdemeanor.

If any person, firm or corporation shall fail to construct and maintain such fish-ladder or fishway or to remove such dam or obstruction in a manner satisfactory to the commissioner, then within thirty days after written notice thereof shall have been served upon the owner, his agent or the person in charge thereof, the commissioner may construct a suitable fish-ladder or fishway, or remove such dam or obstruction, and the

actual cost in case of construction of fishway thereof shall constitute a lien upon the dam and upon all the personal property of the person or persons, firm or corporation owning the same.

Notice of such lien shall be filed and recorded in the office of the county auditor of the county in which such dam or obstruction is situated. Such lien may be foreclosed in any action brought in the name of the state of Washington.

If any person or corporation shall fail to make any such fishway or remove such dam or obstruction in a manner satisfactory to the commissioner, then within thirty days after written notice thereof shall have been served on the owner, his agent, or the person in charge, such dam or obstruction shall thereby become a public nuisance and the commissioner may take possession of same in his own name or in the name of the state of Washington and destroy same and no liability shall attach for such destruction. No dam or obstruction shall be erected in any stream in this state to a height that in the judgment of the commissioner shall make a fish-ladder of [or] fishway thereover impracticable. [L. '15, p. 101, § 78.]

§ 5731. [5150-79.] Dams to be Provided With Hatchery.

In the event that any person desired to construct a dam in any of the streams of this state to a height that will make a fish-ladder or fishway thereover impracticable, in the opinion of the commissioner, then such person may make an application to the commissioner for a permit to construct such dam, and the commissioner is hereby authorized to grant such permit in his discretion, upon the condition that the person so applying for such permit shall convey to the state of Washington a site of the size and dimensions satisfactory to the commissioner, at such place as may be selected by the commissioner, and erect thereon a hatchery and hatchery residence, according to plans and specifications to be furnished by the commissioner, and enter into an agreement with the commissioner, secured by a good and sufficient bond, to furnish all water and lights, without expense, to operate said proposed hatchery; and no permit for the construction of any such dam shall be given by the commissioner until the person applying for such permit shall have actually conveyed said land to the state and erected said hatchery and hatchery residence in accordance with the said plans and specifications. The provisions of this section shall not apply to cases where dams have been heretofore constructed in streams to a height where the construction of a fish-ladder is impracticable, provided an agreement has been entered into and executed, with reference to the construction and maintenance of such dam between the commissioner and the owners thereof. [L. '15, p. 102, § 79.]

§ 5732. [5150-80.] Use of Explosives Prohibited.

It shall be unlawful to use or discharge, in any of the waters of this state, any explosive substances of any kind, character or description for the purpose of catching, killing or destroying fish. [L. '15, p. 102, § 80.]

§ 5733. [5150-81.] Casting Waste in Waters.

It shall be unlawful to cast or pass or to suffer or permit to be cast or passed into any waters of this state either fresh or salt, within such distance from any incorporated city or town, any dead fish, heads or offal or other waste from any fish cannery, as the commissioner of public health may determine. [L. '15, p. 103, § 81.]

§ 5734. [5150-82.*] Polluting Waters Prohibited.

It shall be unlawful to cast or pass, to suffer or permit to be cast or passed into any waters of this state, either fresh or salt, any sawdust, planer shavings, wood pulp or other waste, lime, gas, coculus indicus, chemical substances or any refuse or waste material substance or matter at any time whatsoever deleterious to fish or shell-fish: Provided, however, that the director of fisheries and game shall have the power to grant permits for the sawing of logs in such waters as in his judgment can be used for that purpose without injury to food or game fish. [L. '21, p. 713, § 6. Cf. L. '15, p. 230, §§ 1 and 2; L. '15, p. 103, § 82.]

Pollution of Stream: See Remington's Digest, Fish, § 18; State v. Kroenert, 13 Wash. 644, 43 Pac. 876; State v. Botchford, 71 Wash. 114, 127 Pac. 837.

Statutory prohibition of pollution of water to protect fishery. 34 L. R. A. (N. S.) 286.
Pollution of oyster-bed3. 3 A. L. R. 762.

§ 5735. [5150-83.] Attorney General to Prosecute—When.

If any person violates any of the provisions of this act, and the prosecuting attorney of the county wherein such violation occurs shall, after information has been given him by the commissioner, refuse or neglects within five days thereafter to file an information against such alleged violator, it shall be the duty of the attorney general, and he is hereby given the authority when requested by the commissioner to file an information directed in the superior court of said county and in the place and stead of said prosecuting attorney to prosecute the case. [L. '15, p. 103, § 83.]

Offenses—Unlawful possession of crabs— Diamond Ice & Storage Co., 105 Wash. Statutes: State v. Ripley, 104 Wash. 122, 177 Pac. 634.
299, 176 Pac. 343.

Report of fish caught: State v. Hoffman, 110 Wash. 82, 188 Pac. 25.

§ 5736. [5150-84.] Attorney General—May Assist Commissioner.

The commissioner shall have authority to apply to the attorney general for his official opinion upon any question touching the construction and interpretation of the statutes, and the duties of the commissioner under the statutes for the protection of fish and shell-fish, wherein he shall need legal advice; and the attorney general shall furnish from his office such official legal assistance as he may deem necessary in the conduct of any suit brought by the commissioner, in pursuance of the provisions of this act. [L. '15, p. 103, § 84.]

See note to § 5658.

§ 5737. [5150-85.] Venue.

If any person shall fail to make any report or return to the commissioner, action against him shall lie in the superior court of the county in which he resides. [L. '15, p. 104, § 85.]

PRIVATE FISH HATCHERIES.

§ 5738. [5150-86.] Riparian Proprietor may Establish Private Hatchery.

Any riparian proprietor may establish a private fish hatchery for the cultivation of food fishes, and for such purpose and use may, within the limits of his own premises, inclose the waters of any river or stream or lake in this state, subject to the conditions and regulations hereinafter provided, and any person lawfully conducting any such private fish hatchery and engaged in the artificial propagation, culture and maintenance of fishes may take them in his own inclosed waters wherein the same are so cultivated and maintained at any time and for any purpose. [L. '15, p. 104, § 86.]

The riparian proprietor upon the banks of a non-navigable, fresh-water stream owns the exclusive right of fishery in the waters flowing opposite his land, as far as the middle of the stream: Griffith v. Holman, 23 Wash. 347, 63 Pac. 239, 83 Am. St. Rep. 821, 54 L. R. A. 178.

§ 5739. [5150-87.] Private Hatchery—Passageway for Migratory Fish—Passageway for Boats, etc.—Exceptions.

Any person, firm or corporation establishing a private fish hatchery and inclosing the waters of a river or stream, as provided in the preceding section, shall provide and furnish a suitable passageway along said hatchery for migratory fishes naturally frequenting such waters, above and below such hatchery, and shall so place and construct said inclosure as to allow the passage of boats, sawlogs, shingle-bolts, cordwood, fencing posts or rails, without unreasonable delay, when such inclosure is upon a river or a stream navigable and generally used for the navigation of boats, or for the floating down of logs, fencing posts, or rails: Provided, that if the person, firm or corporation inclosing the water of a river or stream, as herein provided, is the sole riparian proprietor thereof from such inclosure to and including the source of such river or stream, such person, firm or corporation shall be excepted from the operation of this section, and shall not be required to furnish any passageway for fish or boats, logs, fencing or other material. [L. '15, p. 104, § 87.]

§ 5740. [5150-88.*] Private Hatchery Defined.

Any person, firm or corporation engaged in the business of taking fish spawn and the artificial hatching thereof, or in the raising of fry and fish therefrom, in any of the waters or streams of this state, shall be deemed to be conducting a private fish hatchery under the terms of this act. The director of fisheries and game is hereby authorized each year to sell to any person, firm or corporation engaged in the business of conducting a private fish hatchery, salmon or trout spawn to an amount not to exceed ten per cent (10%) of the eggs taken from any species at a price not to exceed two dollars (\$2.00) per thousand. [L. '21, p. 714, § 7. Cf. L. '17, p. 802, § 22; L. '15, p. 105, § 88.]

§ 5741. [5150-89.] Sale of Fish from Private Hatchery Prohibited Unless Location, etc., be Approved, and Same Licensed.

No fish spawn, fry or fish from private fish hatchery shall be sold under the terms of this act, unless the location and plans of such hatch-

ery, including the character and size of a fishway and passage be approved by the commissioner, and the same duly licensed as a private fish hatchery.

[L. '15, p. 105, § 89.]

See *infra* § 10862, duty devolves upon director of licenses.

§ 5742. [5150-90.] When Fish may be Sold.

The product of such fish hatchery, fish spawn, fry and fish may be sold at any time of the year by such hatchery or their vendees after having first complied with the terms of this act and the regulations of the commissioner thereto. [L. '15, p. 105, § 90.]

§ 5743. [5150-91.] License Fee Twenty-five Dollars.

Each private fish hatchery, before it shall be entitled to the benefits of this chapter, shall pay an annual license fee of twenty-five dollars to the commissioner. [L. '15, p. 105, § 91.]

§ 5744. [5150-92.] Report to Commissioner.

It shall be the duty of the superintendent or person in charge of any private fish hatchery to make a quarterly report beginning April 1st, to the commissioner of the amount of spawn, fry and number of fish sold, and the name and address of the party receiving the same. It shall be the duty of each person, firm or corporation affected by the provisions of the following section to render to the commissioner a quarterly report giving a detailed statement showing the amount of spawn, fry and number of fish received from any private hatchery, and giving the name and postoffice address of the superintendent or manager of the same. [L. '15, p. 105, § 92.]

See note to § 5656.

§ 5745. [5150-93.*] License Fee for Business of Buying, Packing, Selling, etc.

Every person, firm or corporation buying or selling, packing or preserving, or otherwise dealing in trout or other food fish obtained from private hatcheries in this state shall procure a license for such business from the commissioner and pay therefor a license fee of two dollars and fifty cents (\$2.50), and every restaurant or hotel keeper serving the same to guests shall procure a license for such business from the commissioner of the state and shall pay an annual license fee of one dollar (\$1.00). [L. '17, p. 802, § 21. Cf. L. '15, p. 106, § 93.]

See note to § 5741, *supra*.

§ 5746. [5150-94.] Unlawful to Take Fish Without Permission of Proprietor of Private Hatchery.

No person shall take fish in any manner from the inclosed portion of any river, stream, pond or other water in which a private fish hatchery is located, or in which fish are artificially propagated, cultivated and maintained under the provisions of this chapter, without permission of the owner or proprietor of such hatchery. [L. '15, p. 106, § 94.]

§ 5747. [5150-95.] Tags or Brands on Fish Sold.

The commissioner shall have authority to require tags, branding or other device attached to all fish sold for private hatcheries, and shall designate such tags or devices. [L. '15, p. 106, § 95.]

See note to § 5741.

§ 5748. [5150-96.*] Destruction of Seals and Sea-lions.

The director of fisheries and game shall have the power and it shall be his duty to cause his employees to kill and destroy seals and sea-lions in the waters of the state of Washington, and he shall have the authority to expend such moneys as may from time to time be appropriated by the legislature for such purposes and he shall keep as near as possible an accurate record of the number of seals and sea-lions that are so destroyed. Any person killing or causing to be killed in the waters of the state, any common seal or sea-lion shall be entitled to receive a bounty of three dollars (\$3.00) from any moneys which may be appropriated by the legislature for the payment of the same. All moneys appropriated for such purposes by the legislature of the state shall be expended under the direction of and upon vouchers approved by the director of fisheries and game, who shall adopt rules and regulations providing for the proof of such killing and the surrender and destruction of the scalp of such seal or sea-lion. [L. '21, p. 714, § 8. Cf. L. '15, p. 106, § 96; L. '17, p. 802, § 22.]

§ 5749. [5150-97.] Certificates for Scientific Purposes.

Certificates shall be granted by the commissioner and ex-officio game-warden to any properly accredited person of legal age permitting the holder thereof to collect birds, their nests and eggs or any of the game, food or shell-fish of this state for strictly scientific purposes only. In order to obtain such certificate the applicant must present to the commissioner and ex-officio game-warden a written statement from two well-known scientific men, certifying to the good character and fitness of such applicant and must pay to the commissioner and ex-officio game-warden one dollar for the issuance of the certificate and must file with him a properly executed bond in the sum of one thousand dollars. On proof that the holder of such certificate has killed or taken the nest or eggs of any bird, or has taken any food, shell or game fish for other than scientific purposes, this bond shall be forfeited to the state and the certificate shall become void and the holder shall be held subject for each offense to a fine not less than ten dollars and not more than five hundred dollars. [L. '15, p. 107, § 97.]

See, *infra*, § 10875, duties devolve upon director of fisheries and game.

§ 5750. [5150-99.*] Clams, Closed Season, Ocean and Harbor Beaches.

It shall be unlawful for any person or persons whomsoever to take or dig clams from the beaches of the Pacific Ocean in this state or from the beaches of Grays Harbor or Willapa Harbor, or to have in their possession if the same have been taken for the purpose of canning or for sale, between the first day of June of each year and the first

day of March of the following year, both dates inclusive, or to take or dig clams at any time except with fork, pick or shovel operated by hand.

On or before the first day of February of each year the commissioner may reserve and withdraw for said year from use for the taking of clams such portion of the tide lands owned by the state and such portion of the beaches of the Pacific Ocean as he may deem necessary, and shall give notice of such reserve and withdrawal from use by publication for one week in a newspaper published in the county in which such tide land or beach is situated, such notice to be given within ten days after making such reserve or withdrawal; and it shall be unlawful for any person or persons whomsoever to take or dig clams except for the use of himself and family from any tide lands or beaches so reserved or withdrawn by the commissioner from and after the first of March of each year, in which such notice shall be published: Provided, that nothing herein shall be construed to prevent the state from selling or leasing any of its tide lands in the manner now provided by law: And provided further, that if any of the tide lands of the state are sold or leased which are included within the reservation or withdrawal herein provided for, that the said reservation shall thereupon cease to be effective as to said tide lands when sold or leased.

Nothing in this section shall prevent the taking of clams for the consumption of the taker or his family or guests at all times without a license, and nothing in this section shall prevent the holder of a crab-fishing license or any persons designated by him from taking clams for use as bait only between the first day of October and the thirty-first day of May following, upon the payment of a special license fee of one dollar (\$1) for each such digger of clams. [L. '17, p. 803, § 23. Cf. L. 15, p. 108, § 99.]

See note to § 5659.

Clams, because of their fixed habitation in the soil, become the subject of private ownership when the title to clam-beds passes from the state: *State v. Van Vlack*, 101 Wash. 503, 172 Pac. 563.

§ 5751. [5150-100.*] Clams and Mussels on Puget Sound.

It shall be unlawful for any person to take or dig clams or mussels from any of the tide lands abutting on Puget Sound or from the waters of Puget Sound below the line of low tide, or have them in his possession, if the same have been taken for the purpose of canning or selling, between the first day of April and the first day of September of each year, or to take or dig clams or mussels at any time except with fork, pick or shovel, operated by hand: Provided, that nothing in this section shall prevent the taking of clams or mussels by the taker for the consumption of himself or family or guests at all times, without a license. [L. '17, p. 804, § 24. Cf. L. '15, p. 108, § 100.]

Cited in 101 Wash. 504.

This section applies to all lands which in their natural state are affected by

the ebb and flow of the tide: *State v. Van Vlack*, 101 Wash. 503, 172 Pac. 563.

§ 5752. Impairment of Supply.

The food fishes in the waters of the state of Washington shall be preserved, protected and perpetuated, and to that end such food fishes

shall not be possessed, sold or disposed of at such times as will impair the supply thereof. [L. '21, p. 715, § 10.]

§ 5753. Rules and Regulations Authorized.

The state fisheries board shall have the power from time to time to make, adopt, amend and promulgate, in the manner provided by law, rules and regulations governing the possession, disposal and sale of food fishes within the state of Washington, whether taken within or without the state of Washington, fixing the times when the possession, disposal or sale of the several classes of, or all, food fishes is prohibited. [L. '21, p. 715, § 11.]

See *infra*, § 10867, new state fisheries board.

See *infra*, § 10875, duties of fisheries board devolve upon director of fisheries and game.

See *infra*, § 10893, state board of fish commissioners abolished.

§ 5754. Contracts by Fisheries Board.

The state fisheries board shall have the power to enter into contracts and agreements with the United States, or any state or territory thereof, and with any foreign government, for the purpose of securing fish or fish eggs, and for the erection and maintenance of eyeing stations, fish hatcheries, rearing ponds and other appliances for the propagation of fish within or without the territorial limits of the state of Washington; and the director of fisheries and game shall have the power, and it shall be his duty, to execute and carry out any such contracts or agreements made by the state fisheries board. [L. '21, p. 715, § 12.]

See note to § 5753.

§ 5755. [5150-101.] Taking or Fishing for Crabs.

It shall be unlawful for any person, firm or corporation to take or have in their possession for the purpose of selling or canning any female or any male crab measuring less than six and one-half inches across its back or to take or fish from any of the waters of the state or have in its possession after the same has been taken, for the purpose of selling or canning any crab, during the months of July, August and September of each year: Provided, that any such person who has a crab in his possession caught during the month of June may retain the same in his possession lawfully until the fifth day of July thereafter: Provided that nothing in this section shall prevent the taking of crabs for the consumption of the taker or his family or guests, at all times without a license, and it shall be unlawful for any person, firm or corporation to take or catch any crabs with beam trawl or drag seine.

It shall be unlawful for any person, firm or corporation to take, capture or remove from any of the waters of the state of Washington any crab by the use of a spear or other sharp instrument whereby the shell of any said crab is broken or penetrated. [L. '15, p. 108, § 101.]

Cited in 104 Wash. 300, 305.

The possession of crabs, in cold storage, either for the purpose of sale during

the closed season or later, is unlawful after July 5th, under this section: State v. Ripley, 104 Wash. 299, 176 Pac. 343.

OYSTERS.

§ 5756. [5150-102.] Oysters, Duties of Commission.

On or before the tenth day of April of each year, the state fish commission shall designate which of the oyster reserves of the state shall be opened for the taking of oysters therefrom during the ensuing calendar year.

It shall be the duty of the state fish commission to:

Annually fix the price which shall be charged per sack of one hundred and twenty pounds of oysters which it shall decide to sell from the oyster reserves of the state.

Annually formulate rules and regulations governing the taking of such oysters.

Annually designate those reserves which shall be open for sale of oysters therefrom, and it shall be unlawful to take oysters from the oyster reserves of the state unless the same shall be opened by order of the fish commission.

The state fish commission shall authorize the commissioner when to improve or cause to be improved any of the oyster reserves, and it is hereby declared to be the policy of the state to annually improve some portion of the reserves, to the end that all may finally become productive, and to have these reserves yield a revenue sufficient for their maintenance and betterment, and, in fixing the price at which oysters shall be sold from the reserves, the state fish commission shall take into consideration such policy; and it is further declared to be the policy of the state to maintain the oyster reserves for the purpose of furnishing a seed supply to the owners of oyster lands, which have heretofore been acquired and improved under previous statutes, or which may hereafter be acquired and improved under the laws of this state, and for this purpose all the oyster reserves are hereby forever reserved from sale or lease.

As soon as an appropriation is made therefor, the fish commission shall cause the commissioner to erect monuments, establishing the boundaries of the several oyster reserves in the state, said monuments to be of stone or cement of not less than one hundred pounds in weight, and marked with letters "S. R." cut thereon not less than three inches long and one-half inch deep.

It shall be the duty of the state fish commission to protect all reserves, reseed, replant, and do such other things as in its judgment are necessary for their care and protection.

For the purposes of this section, a merchantable oyster is defined to be an oyster of the age of three or more years. [L. '15, p. 109, § 102.]

See *infra*, § 10874, duties devolve upon director of fisheries and game.

Oyster and Clam Beds: See Remington's *Oyster and Clam Beds*, 63 Wash. 364, 115 Pac. 737.
Digest, Fish, § 3; Riddell v. Brown, 25 Wash. 514, 65 Pac. 758; Scott v. Olympia Oyster Co., 105 Wash. 244, 177 Pac. 732.

§ 5757. [5150-103.] License to Take Seed Oysters.

Any person before taking any seed oysters from the reserves of this state shall secure a license from the commissioner. Such oysters are to

be used for seed purposes only, and the taker must affirm in writing that they are secured to be used upon the terms and conditions hereinafter provided. [L. '15, p. 110, § 103.]

See *infra*, § 10862, duties of commissioner devolve upon director of licenses.

§ 5758. [5150-104.] Manner of Procuring License—To Specify Time for Taking Seed.

No license shall be granted to take seed from the oyster reserves except between the dates fixed by the state fish commission and between the hours designated by it; and no person, firm or corporation shall take from the state oyster reserves an amount of oysters to exceed five hundred sacks to each acre prepared for seeding, and all seed taken from the state oyster reserves under the provisions of this act must be used upon lands situated in the state of Washington, and described in the application for license. Any person, firm or corporation desiring to take oysters from the state oyster reserves for the purpose of seeding his, her or their oyster-beds, may make application to the commissioner for a license so to do, said application to be made upon forms to be provided by said commissioner in substance as follows: It shall show the date when made; the name of person, firm or corporation making the same; a description of the land upon which the oysters are to be placed, said description of land to show county, township, name of bay or inlet where land is located; sufficient for identification upon the premises; it shall show the amount of land prepared for seeding; whether the same is diked or not; whether it is hard ground or mud, and, if mud ground, whether any crust or shell, sand or other substance has been formed to protect the seed oysters. The applicant must state in his application the number of sacks of oysters desired to be taken under the license, which amount must not exceed five hundred sacks per acre for all ground properly prepared to receive them. Where the applicant desires the license to be made in the name of any other person than himself or themselves or his or their agent, he shall so state. And no person, firm or corporation shall take oysters from any of the reserves in this state without first having procured a license so to do. The applicant must agree to pay to the commissioner, such price per sack and under such rules as may be prescribed by the state fish commission, for all oysters taken under his license, and in all other things to comply with the rules and regulations governing the taking of oysters from the oyster reserves as set forth in the license; and that all oysters taken in pursuance of the license will be put on the ground described in the application. Every applicant shall declare upon oath or affirmation that all things stated therein are true. It shall be unlawful for any person, firm or corporation so acquiring oysters under such license to use said oysters upon any other ground than that stated in his application, or for any other purpose whatsoever. [L. '15, p. 110, § 104.]

See note to § 5757.

§ 5759. [5150-105.] Moneys to Go to State Oyster Reserve Fund.

All moneys received from the disposal of oysters from the reserves and from sales and leases and from licenses for the taking of oysters

from the reserves shall be paid into the "state oyster reserve fund" and all expenses incurred on account of the oyster reserves shall be paid from said fund: Provided, that moneys coming into the fund from said sales, leases, license, etc., from Willapa Harbor shall be expended upon the oyster reserves of Willapa Harbor, and moneys so received from Puget Sound shall be expended on the oyster reserves in Puget Sound: And provided further, that any moneys now in the possession of the state treasurer of the state of Washington held in a special fund pursuant to section 8072 shall be transferred to said state oyster reserve fund for the improvement and protection of the reserves on Puget Sound, and any and all moneys received pursuant to said section 8072 in the future shall be paid into said state oyster reserve fund for the improvement and protection of the reserves on Puget Sound. [L. 15, p. 112, § 105.]

§ 5760. [5150-106.] Penalty for Violation.

If any person, firm or corporation shall take oysters from any of the state oyster reserves contrary to the provisions of this act, or shall go upon said reserve and rake up, or otherwise prepare oysters to facilitate the taking of same, he shall be guilty of a gross misdemeanor, and forfeit any license he, she, or it may then hold. [L. '15, p. 112, § 106.]

Sufficiency of Information: See *State v. Johnson*, 82 Wash. 347, 144 Pac. 57.

§ 5761. [5150-107.] Acquisition by Discovery of Oyster-beds.

Any person or persons, being a citizen or citizens of the United States, who shall discover any bed or beds of oysters in any bay or arm of the sea bordering upon this state, that has not been before discovered, shall, by right of said discovery, be entitled to the exclusive right or privilege of gathering or dredging oysters on said bed or beds for the term of five years. The person or persons making such discovery, who desires to avail himself of the rights and privileges hereby granted, shall be required to designate the place and area of the bed or beds so discovered, with stakes or other artificial marks, and shall make affidavit before the auditor of the county in which such discovery has been made that he located the premises so described, accompanied by a description and diagram of the same, which shall be filed in the office of said county auditor: Provided, that the restriction and protection of the discoveries shall be ten acres. [L. '15, p. 112, § 107.]

§ 5762. [5150-108.] Penalty for Gathering Oysters from Beds Located by Another.

It shall be unlawful for any person to gather oysters by any means on any bed located in accordance with the preceding section, except at the option and by the permission of the party or parties holding the same, under a penalty of five hundred dollars fine for so offending, or imprisonment, to be recovered in a civil suit to be brought in the name of the state. [L. '15, p. 113, § 108.]

§ 5763. [5150-109.] Rights of Planters.

When any person has, acting in good faith, planted oysters on tide or shore lands not containing any bed of natural oysters belonging to the state of Washington, and not otherwise occupied for purposes of trade or commerce, such oysters shall, pending the sale, lease or reservation of such lands by the state, be considered as personal property, and the unauthorized taking of the same shall subject the offender to civil and criminal prosecution, as in any similar case of violation of property rights: Provided, that the grounds holding the oysters have been kept suitably marked by stakes or other landmarks; but such stakes or other landmarks having been removed by accident or design shall not excuse any person from wrongfully taking the oysters thereby marked, if he knew the ground to have been planted with oysters. [L. '15, p. 113, § 109.]

§ 5764. [5150-110.] Deep-water Planting—Penalty.

When any person has, acting in good faith, planted oysters on any grounds lying deeper than the level of the water, said grounds being under the jurisdiction of the state of Washington, and not otherwise occupied for the purpose of trade or commerce, such oysters shall pending the sale, lease or reservation of such lands by the state of Washington, be considered as personal property, and the unauthorized taking of the same shall subject the offender to civil and criminal prosecution, as in any similar case of violation of property rights: Provided, that the grounds holding the oysters have been kept suitably marked by stakes or other landmarks, but such stakes or other landmarks having been removed by accident or design shall not excuse any person from wrongfully taking the oysters thereby marked, if he knew the grounds, to have been planted with oysters. [L. '15, p. 113, § 110.]

§ 5765. [5150-111.] Penalty for Removing Oysters.

Any person who shall, without due authority, remove oysters belonging to any other person, either from plant beds or cull beds, or from any boat or water craft, or from any float or crate, shall be guilty of a gross misdemeanor. The penalties provided in this section shall not prevent the recovery by the injured party, in civil action, of damages for any unlawful removing of oysters. [L. '15, p. 114, § 111.]

§ 5766. [5150-112.] Providing for the Return of Small Oysters to Beds.

It shall be unlawful for any person to destroy oysters taken from their natural beds, by assorting or culling them on land or shore and leaving the small oysters there to die; but in all cases the small oysters must be returned to their natural beds, or to the private beds for cultivation; and, if any person shall offend against the provisions of this section, or in any way wantonly destroy the small oysters, he shall be guilty of a misdemeanor. [L. '15, p. 114, § 112.]

§ 5767. [5150-113.] Oysters—Chilled in Transit.

No person shall, within the state, sell, offer for sale, or have in his possession oysters, except oysters for planting purposes, which shall or

may be hereafter shipped into this state unless said oysters shall have been during the entire time consumed in the shipment, kept in a chilled condition, at a temperature not greater than thirty-four degrees F. Any person violating this section shall be guilty of a misdemeanor. [L. '15, p. 114, § 113.]

§ 5768. [5150-114.] Not to Affect Existing Laws.

This act shall in no manner apply to the provisions of any act heretofore enacted by the legislature of the state of Washington, providing for the sale of tide and shore lands for the purpose of oyster planting. [L. '15, p. 115, § 114.]

§ 5769. [5150-115.] Commissioner may Dredge for Purpose of Discovery—May Permit Others.

The commissioner of the state of Washington may and he is hereby authorized to dredge or permit others to dredge in all the waters of the state of Washington for the purpose of discovering whether any particular waters not already reserved, leased or appropriated under existing laws, or the provisions of this act, contain oysters in a natural state, and regulate the taking thereof, under such rules as the state fish commission may prescribe. [L. '15, p. 115, § 115.]

See *infra*, § 10874, duties devolve upon director of fisheries and game.

§ 5770. [5150-116.] Joint Compact Between the States of Washington and Oregon.

Should congress, by virtue of the authority vested in it under section 10, Article I, of the Constitution of the United States, providing for compacts and agreements between states, ratify the recommendations of the conference committees of the states of Washington and Oregon, appointed to agree on legislation necessary for the regulation, preservation and protection of fish in the waters of the Columbia River, or its tributaries, over which said states have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, said recommendation being as follows: "We further recommend that a resolution be passed by the legislatures of Washington and Oregon, whereby the ratification by congress of the laws of the states of Washington and Oregon shall act as a treaty between said states, subject to modification only by joint agreement by said states"; and said recommendation having been approved by resolution adopting the report of the conference committee, then, and in that event, there shall exist between the states of Washington and Oregon a definite compact and agreement, the purport of which shall be substantially as follows:

All laws and regulations now existing or which may be necessary for regulating, protecting or preserving fish in the waters of the Columbia River, or its tributaries, over which the states of Washington and Oregon have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, shall be made, changed, altered and amended in whole or in part, only with the mutual consent and approbation of both states. [L. '15, p. 115, § 116.]

§ 5771. [5150-117.] Penalties.

Any person who shall violate or who shall fail to observe, obey and comply with the provisions of this act for which no penalty is herein prescribed, shall be guilty of a misdemeanor. [L. '15, p. 116, § 117.]

Criminal Prosecution: See Remington's Digest, Fish, § 19; State v. Tabell, 10 Wash. 498, 39 Pac. 101; State v. Cherry Point Fish Co., 72 Wash. 420, 130 Pac. 499.

See, also, Offenses—Information—Variance: State v. Diamond Ice & Storage Co., 105 Wash. 122, 177 Pac. 634.

§ 5772. [5150-119.] Saving Clause.

Any acts or parts of acts herein repealed, which are re-enacted in form or in substance in this act, shall not be construed as new acts, but as continuations and amendments of such act or parts of acts. All rights of action under existing laws, which this act in any way supersedes or repeals, if the same at the time this act takes effect shall not have been commenced, shall proceed under the provisions of this act.

Any action or proceedings pending in the courts under existing laws, which this act in any way supersedes or repeals, shall proceed without being in any way affected by this act. All licenses heretofore issued shall continue and remain in force during the time that they should continue under existing laws, and all rights and privileges under such licenses shall rest and remain in the holders thereof until the date of their expiration, and the holders thereof shall be entitled to all property rights accruing to them thereunder, and to the renewal of such rights by the renewals of such licenses as provided in this act.

The present commissioner and state game-warden heretofore appointed under existing laws shall continue to act as commissioner and state game-warden under the provisions of this act, until the date of the expiration of the term for which he was appointed, unless sooner removed for cause by proper authority. [L. '15, p. 116, § 119.]

"Act" refers to this chapter, except the last section.

§ 5773. [5150-120.] Game Fish Laws.

The provisions of this act shall apply exclusively to food and shellfish and the same shall be enforced regardless of any conflicting provisions of any game fish laws of the state of Washington now in existence or hereafter passed, and no act lawfully done under the provisions of this act shall be deemed unlawful in the event that such act conflicts with any provisions of such game fish laws. [L. '15, p. 117, § 120.]

§ 5774. Fishing Rights to Yakima Indians.

To obviate difficulties arising out of the conflict existing between certain state laws and a certain treaty made by Governor Isaac I. Stevens, acting for the United States government, with certain tribes of Indians known as the Yakima Nation, the state fish commission is hereby empowered to make regulations under which Indians belonging to the Yakima Nation may fish at Prosser Falls, in the Yakima River, state of Washington, under conditions not otherwise permitted by the laws of the state of Washington, so that any Indian belonging to any

tribe of the Yakima Nation, who has maintained his tribal relations and who resides within this state, may take salmon or other food fish, by any reasonable means, at any time, at said Prosser Falls, for the use of himself and family, but this right is not to extend to others than such Indians: Provided, that any other person may take food fish with hook and line for the use of himself and family at all reasonable times at the above-mentioned place, under the rules and regulations prescribed by the state fish commission. [L. '21, p. 173, § 1.]

See note to § 5656.

CHAPTER II.

STATE OYSTER COMMISSION AND OYSTER LAND RESERVES.

§ 5776. [5242.] Records.

The secretary [of the State Oyster Commission] shall keep a true, full and correct record of all meetings of said commission. Said records shall be kept in the office of the commissioner of public lands and shall be public records open for inspection of the public during office hours. [L. '03, p. 340, § 2.]

Acquisition or lease of oyster lands: See "Lands of the State," § 8040.

See *infra*, § 10874, duties of fish commissioner as to state oyster commission devolve upon director of fisheries and game.

See *infra*, § 10893, state oyster commission abolished.

§ 5779. [5264.] Natural Oysters, How Lawfully Gathered.

It shall at all times be unlawful to gather with any tool or implement, or in any way whatever, any oysters from any natural oyster-bed, except the person so gathering shall be on and working from a boat or water craft of some kind, said water craft being afloat during the time he is gathering. Any person violating any provision of this section shall, on conviction thereof, be fined in any sum not less than one hundred dollars nor more than four hundred dollars, and, at the discretion of the court, be imprisoned in the county jail not less than two months nor more than six months; one-half the aforesaid fine to be paid by the state to the informer. [Cf. 1 H. C., §§ 2590—2592; L. '95, p. 49, §§ 1, 4; L. '97, p. 304, § 22.]

This section includes the first and fourth sections of the act of 1895, and probably supersedes section 2, which was as follows: "It shall at all times and places be unlawful, in gathering oysters from any natural bed of oysters, to use a common garden rake or any instrument of similar construction and operation." See L. '95, p. 48, § 2.

§ 5780. Clams and Shell-fish—Propagation on Oyster Lands.

That any person, firm, or corporation in possession of tidelands from the state of Washington, and holding the same under contract or deed from the state of Washington, containing provisions restricting use of said lands or any portion thereof to the cultivation of oysters only, shall hereafter be, and they are hereby, given the further right to use said lands or any portion thereof, for the cultivation and propagation of clams and any and all edible shell-fish. [L. '19, p. 488, § 1.]

Flags. See § 2675-1.

Food. See "Health."

Forcible Entry and Detainer. See §§ 810—837.

TITLE XXXVI.

FORESTS AND FOREST FIRES.

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CHAPTER I.—FIRES.

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CHAPTER II.—REFORESTATION AND PRESERVATION OF TIMBER.

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CHAPTER I.

FIRES.

§ 5781. [5277-1.] Defining Terms.

In this act, unless the context or subject matter otherwise requires, the word "board" shall be held to mean "state board of forest commissioners"; "forester" shall be held to mean "state forester and fire warden"; "warden" shall be held to mean "fire-warden"; "wardens" shall be held to mean "fire-wardens"; "ranger" shall be held to mean "forest ranger"; "rangers" shall be held to mean "forest rangers"; "one" shall be held to mean "person, firm or corporation," and "forest material" shall be held to mean "forest slashing, chopping, woodland or brushland." [L. '11, p. 623, § 1.]

For former law repealed by L. '05, p. 328, § 14, see L. '03, pp. 205—208.

See *infra*, § 10819, division of forestry created.

See *infra*, § 10893, state board of forest commissioners, state forester and fire warden abolished.

§ 5782. [5277-2.] Powers and Duties of Board.

The board shall supervise all matters of forest policy and forest management under the jurisdiction of the state, and shall have power to authorize all needful and proper expenditures for forest protection; it shall have full power to appoint a forester; to make rules and regulations for the prevention, control and suppression of forest fires as it deems necessary; to regulate and control the official acts of the forester, his assistants, the wardens, and the rangers, and to remove at will any of these officials. It shall be the duty of the board to collect information regarding the timber lands owned by the state, through investigation made by the forester, his assistants, the wardens and the rangers regarding the condition of the timber lands belonging to the state, the investigation to include any damage caused by forest fires, and any illegal cutting, or trespassing upon the state timber lands.

The board is hereby authorized, when in its judgment it appears advisable, to accept on behalf of the state, any grant of land within the state, which shall then become a part of the state forests: Provided, that no grant shall be accepted until the title has been examined and approved by the attorney general of the state and a report made to the board of the result of such examination. [L. '11, p. 623, § 2.]

See *infra*, §§ 5802, 10825, duties devolve upon director of conservation and development.

§ 5783. [5277-3.] Appointment of Forester—Audit of Bills.

The board shall audit and inspect all bills of salary and expenses incurred by the wardens for their official accounts, and all other bills properly authorized by the wardens for the prevention, suppression, checking, or control of forest fires. When so audited and inspected, the board shall present a statement thereof for each county, accompanied by the original bills, to the state auditor, who shall audit the same, and if found correct, the state auditor shall draw his warrant on the state treasurer in payment thereof, and the state treasurer is hereby authorized to pay said warrants out of any money in the treasury appropriated for such purposes. [L. '11, p. 624, § 3.]

See *infra*, § 10820, supervisor of forestry.

See *infra*, §§ 5802, 5811, 10825, duties devolve upon director of conservation and development.

See *infra*, § 10893, state forester and fire warden abolished. Part of this section omitted as superseded.

§ 5784. [5277-4.] Assistants—Duties.

The forester may at his discretion, subject to the approval of the board, appoint trained forest assistants, possessing technical qualifications, and may employ necessary clerical assistants, and fix the amount of their respective salaries, which shall be payable in equal monthly installments to each assistant so appointed or employed.

He shall act as secretary of the board, or he may delegate that duty to one of his assistants. He shall, acting under the supervision of the board, and whenever he may deem it necessary to the best interests of the state, co-operate in forest surveys, in forest studies, in forest prod-

ucts studies, in forest fire fighting and patrol, and in the preparation of plans for the protection, management, replacement of trees, wood lots, and timber tracts, with any of the several departments of the governments of other states, and with the government or with the departments of the government of the United States, with the Dominion of Canada, or with any province thereof, and with counties, towns, corporations, and individuals within the state of Washington.

He shall, subject to the rules and regulations of the board, have direct charge and supervision of all matters pertaining to forestry, including the forest fire service of the state.

The term "forest fire service" as used in this act shall be held to include all wardens, rangers and help especially employed for preventing or fighting forest fires.

In times of emergency or unusual danger the forester is empowered to mass the forest fire service of the state where its presence might be required by reason of forest fires, and to take charge of, and direct the work of suppressing such fires.

The forester shall enforce all laws for the preservation of the forests within the state, investigate the origin of all forest fires, vigorously prosecute all violators of this act; prepare and print for public distribution an abstract of the forest laws and the forest fire laws of Washington, together with such rules and regulations as may be formulated by the board.

The forester may, with the approval of the board, publish for free distribution, information pertaining to forestry, and to forest products, which he may consider of benefit to the people of the state.

It shall be the duty of the forester to annually notify the county clerk in each county where wardens or rangers are appointed, giving the names of such appointees.

The forester shall furnish notices printed in large letters on cloth, calling attention to the dangers from forest fires, and to the penalties for the violation of this act; such notices to be posted in conspicuous places by the wardens or rangers in all timbered districts along roads and trails, streams and lakes, frequented by tourists, campers, hunters and fishermen, and in other visited regions.

The forester shall, subject to the approval of the board, prepare all necessary printed forms for use of wardens and rangers, in connection with the granting of applications for permits to burn; for the appointment of wardens and rangers, and any and all forms or blanks required or desirable, and shall supply each warden and ranger with such forms and blanks.

The forester shall become familiar with the location and the areas of all state timbered and cut-over lands, and shall prepare maps of each of the timbered counties showing the state land therein, and supply such maps to each warden and in all ways that are practical and feasible protect such lands from the dangers of fire, trespass, and the illegal cutting of timber, reporting from time to time direct to the board such information as may be of benefit to the state in the care and protection of its timber.

It shall be the duty of the forester to institute inquiry into the extent, kind, value and condition of all timber lands within the state;

the amount of acres, and the value of the timber that is cut and removed each year, to determine what state lands are chiefly valuable for growing timber; the extent to which timber lands are being destroyed by fire; and also to examine into the production, quality and quantity of second-growth timber, with a view of ascertaining conditions for reforestation, and not later than the first day of December of each year, make a written report to the board upon all such tracts so examined by him, together with detailed information as to the work of the forest fire service of the state. [L. '11, p. 624, § 4.]

See notes to § 5783.

§ 5785. [5277-5.*] Wardens—Duties of Foresters and Wardens—Compensation.

The forester shall, subject to the approval of the board, have power to appoint within any county in this state where there is timber requiring protection, one or more wardens for all or any portion of the period during which the forester deems that forest fire dangers exist.

The forester may, subject to the approval of the board, and at such times and in such localities as he deems the public welfare demands, employ one or more wardens whose duty it shall be to examine deforested lands of the state, and ascertain if such lands are chiefly valuable for agriculture, or if they are chiefly valuable for timber growing, with a view to reforestation. The said wardens, shall, under the direction of the forester, engaged in the discovery of inflammable materials, and cause, or assist in the burning of such material at such times as the burning can be done without endangering adjacent timber, or other property. The said wardens, under the direction of the forester, shall prevent and detect trespass and illegal cutting upon state timber lands, and shall enforce the laws in respect to such trespass and illegal cutting.

The forester shall have power to temporarily suspend any warden or ranger who may be incompetent or unwilling to discharge properly the duties of his office, and to appoint his successor temporarily, until his action shall be passed upon by the board.

The wardens shall make their headquarters at the county seat of the county which they represent, and be equipped with suitable office quarters in the county courthouse by the county commissioners.

The board of county commissioners of any county in which there has been no warden appointed, may request the forester to appoint a warden, and the forester may, if in his judgment the necessity exists, appoint, subject to the approval of the board, one or more wardens for each county.

The authority of the wardens respecting the prevention, suppression and control of forest fires, summoning, impressing or employing help, or making arrests for the violation of this act, may extend to any adjacent county, or to any part of the state in times of great fire danger.

The salaries and necessary expenses of all wardens, together with all wages and expenses incurred for help and assistance in forest fire protection shall be fixed by the state board of forest commissioners, the wages and salaries to be based on but not to exceed going wages

and salaries for similar work, and shall be borne in the proportion of two-thirds by the state and one-third by the county in which the service was given and the expense incurred for forest fire protection.

All accounts of the wardens shall be submitted to the forester as well as all bills for forest fire protection authorized by the wardens, and when such bills are approved and paid as provided for in section 5783, the amount of one-third of all such outlays in each county shall be due and payable on demand from each of said counties into the state treasury, and credited to the fund appropriated by this act.

All wardens and rangers shall render reports to the forester on such blanks or forms, or in such manner, and at such times as may be ordered, giving a summary of how employed, the area of country visited, expenses incurred, and such other information as may be called for by the forester. [L. '21, p. 298, § 1. Cf. L. '11, p. 627, § 5.]

See note to § 5783, *supra*.

§ 5786. [5277-6.] Duties of Warden.

Each warden shall be at all times under the direction and control of the forester, and shall perform such other duties at such times and places as he may direct.

It shall be the duty of wardens to post over the forest areas notices of warning giving the date of the closed season as provided for in section 5788, and copies of all such laws and rules as they may be directed to post by the forester.

They shall investigate all fires and report all of a serious or threatening character to the forester immediately. They shall patrol their districts; visit all parts of roads and trails, and frequented places and camps as far as possible, warn campers or other users of fire, see that all locomotives are provided with spark-arresters, and with adequate devices for preventing the escape of fire or live coals from ash-pans and fire-boxes, in accordance with the law; extinguish small or smoldering fires; summon, impress or employ help to stop conflagrations; see that all laws for the protection of forests are enforced, and arrest and cause to be prosecuted all offenders. [L. '11, p. 628, § 6.]

§ 5787. [5277-7.*] Ex-officio Rangers—Compensation.

All state land cruisers, all game-wardens, when approved by the forester, and all rangers and assistant rangers of the United States forest service, when recommended by their forest supervisors, and commissioned by the forester, shall be ex-officio rangers.

Timber cruisers and citizens of the state advantageously located may, at the discretion of the forester, be appointed rangers, and vested with their duties and powers.

Rangers shall receive no compensation for their services except when employed in co-operation with the state and under the provisions of this act, and shall not create any indebtedness, or incur any liability on behalf of the state: Provided, that rangers actually engaged in extinguishing, or preventing the spread of fire in brush, slashings, choppings, timber or elsewhere that may endanger timber or other property, shall when their accounts for such service have been approved by the fire-

wardens in authority, be entitled to receive compensation for such services at a rate to be fixed by the state board of forest commissioners. [L. '17, p. 104, § 1. Cf. L. '11, p. 629, § 7.]

§ 5788. [5277-8.*] Closed Season—Fires—Permits.

No one shall burn any forest material within any county in this state in which there is a warden or ranger during the period beginning the first day of May west of the summit of the Cascade Mountains, and the first day of June east of the summit of the Cascade Mountains and ending, unless sooner ended by proclamation of the governor, on the first day of October in each year, which period is hereby designated as the closed season, without first obtaining permission in writing from the forester, or a warden or a ranger, and afterwards complying with the terms of said permit; and anyone violating any provisions contained in the preceding portions of this section shall, upon conviction thereof, be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or be imprisoned in the county jail not exceeding thirty (30) days. Such permission for burning shall be given only upon compliance with such rules and regulations as the board shall prescribe, which shall be only such as the board deems necessary for the protection of life or property.

The forester, any of his assistants, any warden or ranger, may at his discretion, refuse, revoke, or postpone the use of permits to burn when such act is clearly necessary for the safety of adjacent property. [L. '21, p. 300, § 2. Cf. L. '11, p. 629, § 8.]

See notes to § 5783.

Under this section, one may be convicted of burning "logs and stumps" located in his own dooryard; since a yard in which there are logs and stumps is manifestly located in a forest or slashing or woodland: *State v. Hendricks*, 68 Wash. 670, 123 Pac. 1077.

This section has no application to fires where the fire-warden sent rangers to personally superintend the burning and take charge thereof: *Waldy v. Preston Mill Co.*, 80 Wash. 25, 141 Pac. 192.

§ 5789. [5277-9.*] Burning Forest Material — Control — Assistance — Penalty.

No one shall burn any forest material until all dry snags, stubs and dead trees over twenty-five (25) feet in height, within the area to be burned, shall have been cut down and until such other work shall have been done in and around the slashing or chopping, to prevent the spread of fire therefrom, as shall be required to be done by the forester, or any warden or ranger.

When any person shall have obtained permission from the forester, warden or ranger, to burn any slashings made for the purpose of clearing land, the warden may, at his discretion, furnish him with a man to supervise and control the burning, who shall represent and act for such warden, and shall have all the power and authority of a warden while engaged in such service, including the right to revoke such permit, if in his opinion the burning authorized would endanger any valuable timber or other property. Such a man shall serve only until such time as the party burning may be able to keep the fire under control himself.

The forester and wardens are hereby authorized and empowered to employ a sufficient number of men to extinguish or prevent the spreading of any fires that may be in danger of destroying any valuable timber or other property of the state. The forester, or any warden by special authority of the forester, may provide needed tools and supplies, and transportation when necessary for men so employed.

Every man so employed, and also the representative of the warden supervising the burning, shall be entitled to compensation at a rate to be fixed by the state board of forest commissioners, and the warden shall issue a certificate to each man so employed showing the number of hours worked by him and the amounts due to him, upon which, after approval by the forester, the men shall be entitled to receive payment from the state in the manner provided for in section 5783.

Any person refusing to render assistance when called upon by any warden, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100). [L. '17, p. 105, § 2. Cf. L. '11, p. 630, § 9.]

§ 5790. [5277-10.] Suspension of Permits and Game Laws.

In times and localities of unusual fire danger, the governor, with the advice of the forester, may suspend any or all permits or privileges authorized by section 5788, and may prohibit absolutely the use of fire therein mentioned.

Whenever during an open season for the hunting of any kind of game within this state, it shall appear to the governor that by reason of extreme drought, the use of firearms or fire by hunters is liable to cause forest fires, he may by proclamation suspend the open season and make it a closed season for the shooting of wild birds or animals of any kind, for such time as he may designate, and during the time so designated all provisions of law relating to closed seasons for game shall be enforced. [L. '11, p. 631, 10.]

§ 5791. [5277-11.*] Removing Notices—Penalty.

Any person who shall willfully or needlessly deface or remove any warning placard or notice posted under the requirements of this act, shall be guilty of a misdemeanor, and shall upon conviction be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each offense, or by imprisonment in the county jail not exceeding thirty (30) days.

Any person who shall upon any land within this state set any fire, except for necessary lumbering operations, or at the proper places on camping grounds which have been prepared and designated for recreation purposes, which fire shall spread and damage or destroy property of any kind not his own, shall upon conviction be punished by a fine of not less than ten dollars (\$10) nor more than five hundred dollars (\$500). If such fire be set or left maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisonment in the county jail for not less than one month, nor more than one year, or by both such fine and imprisonment.

During the closed season any person who without a written permit from the state board of forest commissioners, shall kindle a fire, in or dangerously near any forest material, except for necessary lumbering operations or at the proper places on camping grounds which have been prepared and designated for recreation purposes, or who shall be a party to kindling such fire, or who shall by throwing away any lighted cigar, cigarette, matches, or by use of firearms, or in any other manner start a fire in forest material, and who shall fail immediately to extinguish the same, shall upon conviction, be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or be imprisoned in the county jail not exceeding two (2) months.

Provided, that nothing in this section contained shall absolve any person from liability on account of negligence.

The state board of Forest Commissioners is hereby authorized and empowered, and it is its duty to designate and prepare such camping grounds as it may determine for the purpose of carrying out the provisions of this section. [L. '21, p. 301, § 3. Cf. L. '11, p. 631, § 11.]

§ 5792. [5277-12.] Notice of Damage.

Any and all inadequately protected forests, or deforested land covered wholly or in part by inflammable debris, or otherwise likely to further the spread of fire, which by reason of such location or condition, or lack of protection, endanger life or property, when adjoining, lying near, or intermingling with other forest land, is hereby declared to be a public nuisance, and whenever the forester shall learn thereof, he shall notify the owner, or person in control or possession of said land, advise him of means and methods that should be taken for its protection, and request him to take the proper steps to that end. [L. '11, p. 632, § 12.]

§ 5793. [5277-13.] Burning Wood-waste—Penalty.

It shall be unlawful for anyone manufacturing lumber or shingles, or other forest products, to destroy wood-waste material by burning the same at or near any mill situated within one-quarter of one mile of any forest material, without properly confining the place of said burning and without further safeguarding the surrounding property against danger from said burning by such additional devices as the forester may require.

It shall be unlawful for anyone to destroy any wood-waste material by fire within any burner or destructor operated at or near any mill, and situated within one-quarter of one mile of any forest material, or to operate any power-producing plant using in connection therewith any smokestack, chimney, or other spark emitting outlet, without installing and maintaining on such burner or destructor or on such smokestack, chimney or other spark-emitting outlet a safe and suitable device for arresting sparks.

Anyone violating the provisions of this section shall upon conviction thereof, be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each and every violation, or by imprisonment of not less than thirty (30) days in the county jail. [L. '11, p. 632, § 13.]

§ 5794. [5277-14.] Closed Season—Restrictions.

It shall be unlawful for anyone to operate any spark-emitting railroad locomotive, logging locomotive, logging, or farming engine, or boiler, at any time during the closed season, or for anyone to operate any railroad locomotive, logging locomotive, or logging or farm engine or boiler, within one-quarter of one mile of any forest material during the closed season, without such railroad locomotive, logging locomotive, logging, or other engine or boiler is provided with and uses a safe and suitable device for arresting sparks.

It shall be unlawful for anyone to operate during the closed season any railroad locomotive, logging locomotive, or logging, or other engine or boiler, within one-quarter of one mile of any forest material, without such railroad locomotive, logging locomotive, or logging or other engine or boiler is provided with and uses an adequate device to prevent the escape of fire or live coals from all ash-pans, and all fire-boxes, except when said ash-pans and said fire-boxes are being cleaned when not in motion.

Everyone failing to comply with the provisions of this section, shall upon conviction pay a fine for each railroad locomotive, logging locomotive, or other engine or boiler, for each day so operated without such spark-arresting or without such adequate device to prevent the escape of fire or live coals from said ash-pans or said fire-boxes, of not less than ten dollars (\$10), nor more than fifty dollars (\$50) per day for each railroad locomotive, logging locomotive, or other engine or boiler so used, and shall be prohibited from further use of such railroad locomotive, logging locomotive, or other engine or boiler until such spark-arrester or such adequate device for preventing the escape of fire or live coals from said ash-pans and said fire-boxes, is provided and used therewith. [L. '11, p. 633, § 14.]

§ 5795. [5277-15.] Railroads—Fire on Right of Way.

No one operating a railroad shall permit to be deposited by his, or its, employees, and no one shall deposit during the closed season, fire or live coals upon the right of way outside of the yard limits, and within one-quarter of one mile of any forest material, without such deposit of fire or live coals shall be immediately extinguished.

Anyone violating the provisions of this section respecting the deposit of fire or live coals, shall upon conviction pay a fine of not less than twenty-five dollars (\$25), nor more than one hundred dollars (\$100) or be imprisoned in the county jail not exceeding thirty (30) days.

Wardens and rangers shall report any lack of sufficient spark-arresters, and any lack of adequate devices for preventing the escape of fire and live coals, as provided in this act, to the forester, and to the prosecuting attorney of their county, and the superior court of that county where suit is first instituted, shall have jurisdiction of the offense. [L. '11, p. 634, § 15.]

§ 5796. [5277-16.*] Burnings on Right of Way—Permits—Public Work.

Everyone clearing right of way for railroad, public highway, private road, ditch, dike, pipe or wire line, or for any other transmission, or

transportation utility right of way, shall pile and burn on such right of way all refuse timber, brush and debris cut thereon, as rapidly as the clearing or cutting progresses, or at such other times as the forester, or his authorized representatives may specify, and if during the closed season, in compliance with the law requiring burning permits. No one clearing any land or right of way, or in cutting or logging timber for any purpose, shall fell, or permit to be felled, any trees so that they may fall on to land owned by another, without first obtaining permission from such owner in addition to complying with the terms of this section for the disposal of refuse. All the terms of this section and other forest laws of the state shall be observed in all clearings of right of way or other land on behalf of the state itself or any county thereof, either directly or by contract; and unless unavoidable emergency prevents, provision shall be made by all officials directing such work for withholding a sufficient portion of the payment therefor, until the piling and burning is completed, to insure the completion of the piling and burning in compliance with the provisions of this section. [L. '17, p. 106, § 3. Cf. L. '11, p. 634, § 16.]

§ 5797. [5277-17.] Stationary Engineers—Watchman—Regulations.

Everyone operating a stationary engine, for the logging of timber, or the clearing of land of tree stumps, or other wood material, shall during the closed season:

(a) Maintain a watchman at the point where the said donkey-engine, or other portable or stationary engine may be located, said watchman to be on duty for at least two hours following every time when the said donkey-engine, or other portable stationary engine shall cease operations.

(b) Cut down all snags, stubs and dead trees over twenty-five feet in height within a radius of fifty (50) feet from each donkey-engine or other portable or stationary engine. [L. '11, p. 635, § 17.]

§ 5798. [5277-18.] Fire Patrol.

Everyone operating a logging locomotive during the closed season, shall:

Have a man whose duty it shall be to follow each logging locomotive, except a locomotive using oil for fuel, for the purpose of acting as fire patrol, the said man to begin the said patrol at approximately thirty (30) minutes after the starting of the logging locomotive which it is his duty to follow.

Anyone who shall violate any of the provisions contained in sections 5796, 5797 or 5798, shall be punished by a fine not to exceed one hundred dollars (\$100) or by imprisonment in the county jail for not less than thirty (30) days. [L. '11, p. 635, § 18.]

§ 5799. [5277-19.] Arrests.

The forester, his assistants, wardens, rangers, and all police officers are hereby empowered to make arrests without warrant of persons violating this act. [L. '11, p. 636, § 19.]

§ 5800. [5277-20.] Duty of Prosecuting Attorney.

Whenever an arrest shall have been made for a violation of any of the provisions of this act or whenever information of such violation shall

have been lodged with him, the prosecuting attorney of the county in which the criminal act was committed, shall prosecute the offender or offenders, with all diligence and energy. If any prosecuting attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and by imprisonment of not less than thirty (30) days, nor more than one year in the county jail. The penalties of this section shall apply to any magistrate, with proper authority, who refuses or neglects to cause the arrest and prosecution of any person or persons when complaint under oath of violation of any provisions of this act has been lodged with him. [L. '11, p. 636, § 20.]

§ 5801. [5277-21.] Fines.

All fines collected under this act shall be paid into the county treasury of the county in which the offense was committed. [L. '11, p. 636, § 21.]

§ 5802. Division of Forestry Assumes Powers and Duties.

The director of conservation and development, through and by means of the division of forestry, shall, upon his appointment, qualification and assumption of the duties of his office, exercise all the powers and perform all the duties vested in, and required by this act to be performed by either the state forester and fire warden or the state board of forest commissioners. The director of conservation and development shall have the power and authority and it shall be his duty to receive, and disburse through and by means of the division of forestry, any and all moneys contributed, allotted or paid by the United States under the authority of any act of congress for use in co-operation with the state of Washington in protecting and developing forests. [L. '21, p. 302, § 4.]

See also, § 10893.

§ 5803. [5149.] Destruction of Forests by Fire.

Any person or persons who shall willfully and deliberately set fire to any wooded county or forest belonging to this state or the United States, within this state, or to any place from which fire shall be communicated to any such wooded county or forest, or who shall accidentally set fire to any such wooded county or forest, or to any place from which fire shall be communicated to any such wooded county or forest, and shall not extinguish the same or use every effort to that end, or who shall build any fire for lawful purposes or otherwise in or near any such wooded county or forest, and through carelessness or neglect shall permit said fire to extend to and burn through such wooded county or forest, shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdiction shall be punishable by fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both such fine and imprisonment: Provided, that nothing herein contained shall apply to any person who in good faith shall set a back-fire to prevent the extension of a fire already burning. All fines collected under this section shall be paid into the county treasury for the benefit of the common school fund of the county in which they are collected. [L. '91, p. 226, § 1; 2 H. P. C., § 84a.]

See supra, § 2522, setting without permit of fire-warden.

§ 5804. Owners to Protect Against Fires.

Every owner of forest land in the state of Washington shall furnish or provide therefor, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the state board of forest commissioners: Provided, however, that for the purposes of this section forest land shall be deemed to be adequately protected if within one mile of the owner's permanent residence or if the owner shall furnish patrol and protection therefor equal in standard, efficiency and seasonal duration to that of those who are in good faith maintaining organized patrol and protection of their lands against fire with the approval of the state board of forest commissioners: Provided further, that for the purposes of this section forest lands, lying in counties east of the summit of the Cascade Mountains, shall be deemed to be adequately protected where patrol is furnished by the United States forest service of a standard and efficiency and seasonal duration, deemed by the state board of forest commissioners to be sufficient for the proper protection of the forest land of such counties. [L. '17, p. 349, § 1.]

§ 5805. Protection Provided by State Forester.

If any owner or owners of forest land shall neglect or fail to provide adequate fire protection therefor as required by section 5807, then the state forester, under direction from the state board of forest commissioners, shall provide such protection therefor at a cost not to exceed five (5) cents an acre per annum. Any amounts paid or contracted to be paid by the state forester for this purpose shall be a lien upon the property patrolled and protected and, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred, on which date the state forester shall be prepared to make statement thereof upon request to any forest owner whose own protection has not been previously approved by him as adequate, shall be reported by the state forester to the county assessors of the county or counties in which the property is situated who shall extend the amounts upon the tax-rolls covering such property, and the amounts shall be collected at the time and in the same manner by the same procedure and with the same penalties attached that the next general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the state board of forest commissioners by certifying the same to the county treasurer of the county in which the land involved is situated. Upon the collection of said assessments the county officials shall repay said amounts to the state forester to be applied to the expenses incurred in carrying out the provisions of this section: Provided, that the state forester is hereby authorized and required to include in the assessment herein authorized against the owner or owners of forest lands neglecting to provide adequate fire protection, a sum not to exceed one-half of one cent per acre, to cover the necessary and reasonable cost of office and clerical work incurred in the enforcement of the provisions of section 5804 et seq. and subsequent amendments thereto, and is authorized to expend any sums heretofore collected from owners of forest lands or coming from any other source for any necessary office and clerical

expenses in connection with the enforcement of the provisions of section 5807: Provided further, that the state forester is required to furnish a good and sufficient bond of a surety company running to the state of Washington, in a sum as great as the probable amount of money annually coming into his hands under the provisions of this act, conditioned for the faithful performance of his duties as such officer and for a faithful accounting for all sums received and expended thereunder, which bond shall be approved by the attorney general. [L. '21, p. 196, § 1. Cf. L. '17, p. 349, § 2.]

Cited in 103 Wash. 320, 322.

Sums paid out under this section are not "state" funds or taxes for state pur-

poses to be paid into the treasury: State ex rel. Sherman v. Pape, 103 Wash. 319, 174 Pac. 468.

§ 5806. Uncontrolled Forest Fire a Public Nuisance—Expense of Abatement—Lien on Offender's Property.

Any fire on any forest land in the state of Washington burning uncontrolled and without proper precaution being taken to prevent its spread is hereby declared a public nuisance by reason of its menace to life or property. Any person, firm or corporation responsible for either the starting or the existence of such fire is hereby required to control or extinguish it immediately, without awaiting instructions from a forest officer, and if said responsible person, firm or corporation shall refuse, neglect or fail to do so, the state forester, or any fire warden or forest ranger acting with his authority, may summarily abate the nuisance thus constituted by controlling or extinguishing the fire and the cost thereof may be recovered from said responsible person, firm or corporation by action for debt and, if the work is performed on the property of the offender, shall also constitute a lien upon said property. Such lien may be filed by the state forester in the office of the county auditor and foreclosed in the manner provided by law for the foreclosure of liens for labor and material. It shall be the duty of the prosecuting attorney for the county to bring such action for debt, or to foreclose such lien, upon the request of the state forester. [L. '17, p. 350, § 3.]

§ 5807. Cut-over Land or Slashing, Public Nuisance.

Any and all cut-over land or slashings in the state of Washington covered wholly or in part by inflammable debris and which by reason of such condition is likely to further the spread of fire and thereby endanger life or property, a finding to which effect by the state forester shall be prima facie evidence of such fact, is hereby declared a public nuisance, and the owner or owners thereof or the agency responsible for its existence, if such be not the owner, are hereby required to abate such nuisance forthwith under the general direction of the state forester.

If the person, firm or corporation responsible for the existence of any such nuisance shall refuse, neglect or fail to abate it after a ten days notice by the state forester, the latter may summarily cause it to be abated and the cost thereof and of any patrol or fire fighting made necessary by such nuisance may be recovered from said person, firm or corporation responsible therefor or from the owner of the land on which such nuisance existed by an action for debt and said costs shall also be a lien upon said land and may be enforced in the same manner, with the same effect and

by the same agencies as the lien provided for in section 5806. [L. '21, p. 198, § 2. Cf. L. '17, p. 351, § 4.]

§ 5808. Co-operative Protection by Timber Owners.

When any responsible protective agency or agencies composed of timber owners other than the state shall agree to undertake systematic forest protection in co-operation therewith and such co-operation shall appear more advantageous to the state than the maintenance of the independent system provided elsewhere by law, the state forester may, with the approval of the state board of forest commissioners, designate suitable areas to be official co-operative districts and substitute thereto whenever necessary, in place of the county wardens elsewhere provided by law, such district wardens, with such district headquarters and duties, as may be agreed upon by him and by the co-operating agencies to render such co-operation most effective. He may also co-operate in the compensation of such wardens, or in the payment of other expenses for the prevention and control of fire in such official fire districts, to such extent as the board of forest commissioners may deem equitable on behalf of the state, and claim for such payments shall be approved and paid in the manner prescribed for claims outside such co-operative districts. [L. '17, p. 351, § 5.]

§ 5809. Forest Land.

For the purposes of this act any land shall be considered forest land which has enough timber, standing or down, or inflammable debris, to constitute in the judgment of the state board of forest commissioners a fire menace to life or property. [L. '17, p. 352, § 6.]

§ 5810. Notices—Sufficiency of Service.

Any notice required by this or other acts to be served by a forest officer shall be sufficient if a written or printed copy thereof is delivered, mailed or telegraphed by a forest officer to the person to receive notice or to his responsible agent, or, in case the name or address of such person or agent is unknown to the officers and cannot be obtained by reasonable diligence, by posting such copy in a conspicuous place upon the premises concerned by this notice. [L. '17, p. 352, § 7.]

§ 5811. Division of Forestry to Perform Duties of State Forester.

The director of conservation and development, through and by means of the division of forestry, shall, upon the appointment, qualification and assumption of his duties, exercise all the powers and perform all the duties vested in, and required by this act to be performed by, either the state forester or the state board of forest commissioners. [L. '21, p. 198, § 3.]

CHAPTER II.

REFORESTATION AND PRESERVATION OF TIMBER.

§ 5812. State Acquisition of Lands for Reforestation.

The director of conservation and development is authorized to acquire by purchase or gift any lands which, by reason of their location, topography and geological formation, are unsuitable for agricultural

development, and are chiefly valuable for the purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the state, as state forest lands: Provided, that not to exceed five dollars per acre shall be paid for any lands purchased under this act: Provided further, that the director is authorized to acquire by purchase at a price not to exceed one dollar per acre, or by gift, any such lands reserving to the vendor or donor all oils, gases, coal, minerals and fossils of every name, kind or description, or either or any of them, which may be in or upon said lands and the right to enter upon said lands for the purpose of prospecting for or opening, developing and working mines thereon and taking and removing therefrom the materials reserved. [L. 21, p. 662, § 1.]

Validity and construction of legislation respecting forestry. *Ann. Cas.*

1917A, 5, 38, 40, 46; *Ann. Cas.* 1918E, 709.

§ 5813. Reservation from Sale.

Whenever any lands are designated as state forest lands, the commissioner of public lands shall be notified and shall note such designation upon the records of his office, and shall keep a record describing all of such lands, the date, when and how acquired and the price, if any, paid therefor; and thereafter such lands shall be reserved from sale or lease: Provided, however, that the timber on such lands may be sold whenever the director of conservation and development shall notify the commissioner of public lands that such timber is suitable for sale: Provided further, that such lands shall be subject to lease under the laws relating to mineral lands of the state, but under such conditions as shall not interfere with and impair their use as state forest lands. [L. '21, p. 663, § 2.]

§ 5814. Seeding and Development.

The director of conservation and development is authorized to seed and develop forests on any lands designated by him as state forest lands, and shall furnish such care and fire protection for any such lands as he shall deem advisable. [L. '21, p. 663, § 3.]

§ 5815. Logged-off or Deforested Lands Reported.

The commissioner of public lands, supervisor of forestry and the supervisor of geology, shall, on or before the first day of January of each year, report to the director of conservation and development any logged-off lands or deforested lands belonging to the state or held in private ownership, coming to their knowledge and observation during the preceding year, of the same character as the lands described in section 5812. [L. '21, p. 663, § 4.]

§ 5816. Appropriation.

There is hereby appropriated the sum of five thousand dollars, payable out the reclamation revolving fund of the state, not otherwise appropriated, for the purpose of carrying out the provisions of this act. [L. '21, p. 664, § 5.]

§ 5817. Delegation of Powers.

The state forester and fire-warden shall exercise all the powers and perform all the duties in this act vested in, and required to be per-

formed by, the director of conservation and development and the supervisor of forests, until such time as such officers shall be appointed, qualify, assume and exercise the duties of their respective offices; and the state geologist shall exercise all the powers and perform all the duties in this act vested in, and required to be performed by, the supervisor of geology, until such time as such officer shall be appointed, qualify, assume and exercise the duties of his office. [L. '21, p. 664, § 6.]

§ 5818. Forests and Timber Protected.

All forests and timber upon all lands in the state of Washington, lying west of a line one mile west of the eastern boundary of range ten west of the Willamette Meridian and north of the north boundary line of Grays Harbor county, shall be protected and preserved from the fire hazard to which they are or may be exposed by reason of the unusual quantity of fallen timber upon such lands. It shall therefore be unlawful for any person, firm, company or corporation, their officers, agents or employees, to do or commit any act which shall expose any of the forests or timber upon such lands to the hazard of fire. [L. '21 p. 202, § 1.]

§ 5819. Governor to Make Rules.

The governor shall have the power and it shall be his duty to make, adopt, amend and promulgate rules and regulations for the preservation and protection of the forests and timber situated upon the lands described in section 5818, from damage or destruction by fire. [L. '21, p. 202, § 2.]

§ 5820. Publication of Rules.

All such rules and regulations or amendments thereto shall be promulgated by the governor by publication in a newspaper of general circulation published at the state capitol, and shall take effect and be in force at the times specified therein. [L. '21, p. 202, § 3.]

§ 5821. Violations of Rules.

Any person violating or failing to comply with any rules or regulations of the governor, made under the provisions of this act, shall be guilty of a gross misdemeanor. [L. '21, p. 202, § 4.]

§ 5822. Appropriation.

There is hereby appropriated from the general fund the sum of one hundred thousand dollars (\$100,000) or so much thereof as may be necessary, to be expended by the governor in such manner as he may deem necessary, to protect and preserve such forests and timber from damage or destruction by fire. [L. '21, p. 203, § 5.]

§ 5823. Governor to Appoint Agents, etc.

The governor may appoint such agents or employees as he may deem necessary to properly carry out the provisions of this act, and he may empower such agents or employees to allow claims or to do any other act which the governor is authorized by this act to perform. [L. '21, p. 203, § 6.]

TITLE XXXVII.

FRAUDS.

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CHAPTER I.

STATUTE OF FRAUDS.

§ 5824. [5288.] Deeds in Trust for Grantor Void as to Creditors.

All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors of such person. [L. '54, p. 403, § 1; L. '60, p. 298, § 1; L. '63, p. 412, § 1; Cd. '81, § 2324; 1 H. C., § 1452.]

Cited in 1 Wash. 263, 364; 6 Wash. 268; 36 Wash. 681; 75 Wash. 463.

REAL PROPERTY AND ESTATES AND INTERESTS THEREIN—Creation of Estates or Interests in General: See Remington's Digest, Frds., St. of, § 9; Churchill v. Stephenson, 14 Wash. 620, 45 Pac. 28; Raymond v. Johnson, 17 Wash. 232, 49 Pac. 492, 61 Am. St. Rep. 908; Mack v. Mack, 39 Wash. 190, 81 Pac. 707; Herkenrath v. Ragley, 59 Wash. 52, 109 Pac. 279; Herrick v. Miller, 69 Wash. 456, 125 Pac. 974; Croup v. De Moss, 78 Wash. 128, 138 Pac. 671; Mason's Estate, In re, 95 Wash. 564, 164 Pac. 205.

See, also, Stewart v. Cadeau, 109 Wash. 292, 186 Pac. 894; O'Reilly v. Tillman, 111 Wash. 594, 191 Pac. 866; Martin v. Bateman, 111 Wash. 634, 191 Pac. 759.

This section denounces as fraudulent and void such conveyances only as are made in trust for the use of the grantor: Samuel v. Kittenger, 6 Wash. 261, 33 Pac. 509.

See, also, Gottstein v. Wist, 22 Wash. 581, 61 Pac. 715.

If the legal title to land has been transferred upon the parol promise of the grantee, made in bad faith and with intent to deceive, that he would hold same in trust for grantor, the transaction does not come within the statute of frauds, as trusts arising from fraud are excepted from its operation: Rozell v. Vansyckle, 11 Wash. 79, 39 Pac. 270.

Judicial Sales: See Remington's Digest, Frds., St. of, § 21; Rice v. Ahlman, 70 Wash. 12, 126 Pac. 66.

GROUND OF INVALIDITY: See Remington's Digest, Fraud. Conv., §§ 1—6; Commercial Bank v. Chilberg, 14 Wash. 47, 44 Pac. 112; Sanders v. Main, 12 Wash. 665, 42 Pac. 122; Straw-Ellsworth Mfg. Co. v. Cain, 20 Wash. 351, 55 Pac. 321; Victor v. Glover, 17 Wash. 37, 48 Pac. 788, 40 L. R. A. 297.

Retaining possession of warranty deed by the grantor in failing circumstances is not alone a sufficient badge of fraud to warrant setting aside, as fraudulent, a deed given to a mortgagee of the premises in satisfaction of the mortgage: Cashmere State Bank v. Richardson, 105 Wash. 105, 177 Pac. 727.

NATURE AND FORM OF TRANSFER: See Remington's Digest, Fraud. Conv., §§ 7—13; Ewing v. Van Wagenen, 6 Wash. 39, 32 Pac. 1009; Jones v. North Pacific Fish & Oil Co., 42 Wash. 332, 84 Pac. 1122, 114 Am. St. Rep. 131, 6 L. R. A. (N. S.) 940; Northwestern Mutual Life Insurance Co. v. Chehalis County Bank, 65 Wash. 374, 118 Pac. 326; Bader v. Johnson, 78 Wash. 350, 139 Pac. 32; Vincent v. Snoqualmie Mill Co., 7 Wash. 566, 35 Pac. 396; Cook v. Moody, 18 Wash. 114, 50 Pac. 1020, 63

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Payment or Satisfaction of Liabilities: Lumberman's Nat. Bank v. Gross, 37 Wash. 18, 79 Pac. 470.

Collusive Legal Proceedings in General: Wooding v. Wooding & Co., 10 Wash. 531, 39 Pac. 137.

PROPERTY AND RIGHTS TRANSFERRED: See Remington's Digest, Fraud. Conv., §§ 15, 17; Girault v. Hotaling Co., 7 Wash. 90, 34 Pac. 471; Klosterman v. Harrington, 11 Wash. 138, 39 Pac. 376; Deering v. Holcomb, 26 Wash. 588, 67 Pac. 240, 561; Traders' Nat. Bank v. Schorr, 20 Wash. 1, 54 Pac. 543, 72 Am. St. Rep. 17; Meikle v. Cloquet, 44 Wash. 513, 87 Pac. 841.

INDEBTEDNESS, INSOLVENCY AND INTENT OF GRANTOR: See Remington's Digest, Fraud. Conv., §§ 18, 19; Mayer v. Frasch, 7 Wash. 504, 35 Pac. 409; Wiggins v. Shaw, 99 Wash. 408, 169 Pac. 853; Wagner v. Law, 3 Wash. 500, 28 Pac. 1109, 29 Pac. 927, 28 Am. St. Rep. 56, 15 L. R. A. 784; Hamilton Brown Shoe Co. v. Adams, 5 Wash. 333, 32 Pac. 92; Allen v. Chambers, 18 Wash. 341, 51 Pac. 478; Frederick v. Shorey, 4 Wash. 75, 29 Pac. 766; Preston-Parton Mill Co. v. Dexter Horton Co., 22 Wash. 236, 60 Pac. 412, 79 Am. St. Rep. 928; Deering v. Holcomb, 26 Wash. 588, 67 Pac. 240, 561.

Transactions Between Husband and Wife: See Remington's Digest, Fraud. Conv., § 20; Klosterman v. Harrington, 11 Wash. 138, 39 Pac. 376; Carkeek v. Boston Nat. Bank, 16 Wash. 399, 47 Pac. 884; Ruuth v. Morse Hardware Co., 74 Wash. 361, 133 Pac. 587; Petrovitsky v. Smith, 86 Wash. 151, 149 Pac. 641; Boothe v. Bassett, 82 Wash. 95, 143 Pac. 449; Kasper v. Spokane Merchants' Assn., 87 Wash. 447, 151 Pac. 800; Allen v. Allen, 96 Wash. 689, 165 Pac. 889.

Intent to Defraud Pre-existing Creditors: See Remington's Digest, Fraud. Conv., § 21; O'Leary v. Duvall, 10 Wash. 666, 39 Pac. 163; Bank of California v. Puget Sound etc. Co., 20 Wash. 636, 56 Pac. 395; Hotaling Co. v. Clancy, 21 Wash. 1, 56 Pac. 929; Allen v. Kane, 79 Wash. 248, 140 Pac. 534.

See, also, *Chapman v. Critzer*, 110 Wash. 424, 188 Pac. 412.

CONSIDERATION: See *Remington's Digest*, *Fraud. Conv.*, §§ 22—26; *Klosterman v. Vader*, 6 Wash. 99, 32 Pac. 1055; *Koth v. Kessler*, 59 Wash. 641, 110 Pac. 540; *Bank of California v. Puget Sound Loan & T. Co.*, 20 Wash. 636, 56 Pac. 395; *Gottstein v. Wist*, 22 Wash. 581, 61 Pac. 715; *Mansfield v. First Nat. Bank*, 5 Wash. 665, 32 Pac. 789, 999; *Warren v. His Creditors*, 3 Wash. 48, 28 Pac. 257; *Goodfellow v. Le May*, 15 Wash. 684, 47 Pac. 25; *Carkeek v. Boston Nat. Bank*, 16 Wash. 399, 47 Pac. 884; *Browitt v. Fiegle*, 103 Wash. 334, 174 Pac. 444.

See, also, *Chapman v. Critzer*, 110 Wash. 424, 188 Pac. 412.

CONFIDENTIAL RELATIONS OF PARTIES: See *Remington's Digest*, *Fraud. Conv.*, §§ 27, 28; *O'Leary v. Duvall*, 10 Wash. 666, 39 Pac. 163; *Ewing v. Van Wagenen*, 6 Wash. 39, 32 Pac. 1009; *Liebenthal v. Price*, 8 Wash. 206, 35 Pac. 1078; *Bates v. Drake*, 28 Wash. 447, 68 Pac. 961; *Goodfellow v. Le May*, 15 Wash. 684, 47 Pac. 25; *Armstrong v. Armstrong*, 100 Wash. 270, 170 Pac. 587.

RESERVATIONS AND TRUSTS FOR GRANTOR: See *Remington's Digest*, *Fraud. Conv.*, §§ 29, 30; *Peterson v. Tull*, 85 Wash. 546, 148 Pac. 598; *Adams v. Dempsey*, 35 Wash. 80, 76 Pac. 538.

PREFERENCES TO CREDITORS — Right of Debtor to Prefer Creditors: See *Remington's Digest*, *Fraud. Conv.*, §§ 31—33; *Turner v. Iowa Nat. Bank*, 2 Wash. 192, 26 Pac. 256; *Benham v. Ham*, 5 Wash. 128, 31 Pac. 459, 34 Am. St. Rep. 851; *Samuel v. Kittenger*, 6 Wash. 261, 33 Pac. 509; *Furth v. Snell*, 6 Wash. 542, 33 Pac. 830; *Puget Sound Nat. Bank v. Levy*, 10 Wash. 499, 39 Pac. 142, 45 Am. St. Rep. 803; *Victor v. Glover*, 17 Wash. 37, 48 Pac. 788, 40 L. R. A. 297; *West Coast Grocery Co. v. Stinson*, 13 Wash. 255, 43 Pac. 35; *Troy v. Morse*, 22 Wash. 280, 60 Pac. 648; *Peterson v. Doak*, 43 Wash. 251, 86 Pac. 663; *McAvoy v. Jennings*, 44 Wash. 79, 87 Pac. 53; *Holt Mfg. Co. v. Bennington*, 73 Wash. 467, 132 Pac. 30; *Daniels v. Pacific Brewing & Malt-ing Co.*, 86 Wash. 416, 150 Pac. 609; *Meakin v. Ludwig*, 99 Wash. 180, 169 Pac. 24; *Chezum v. Parker*, 19 Wash. 645, 54 Pac. 22; *Kemp v. Folsom*, 14 Wash. 16, 43 Pac. 1100.

Payment or Satisfaction of Debt: See *Remington's Digest*, *Fraud. Conv.*, § 34; *Langert v. David*, 14 Wash. 389, 44 Pac. 875; *National Surety Co. v. Udd*, 65 Wash. 471, 118 Pac. 347; *Union Securities Co. v. Smith*, 93 Wash. 115, 160 Pac. 304.

See, also, *Rowan v. United States Fid. & Guar. Co.*, 105 Wash. 432, 178 Pac.

473; *Sergeant v. Russell*, 110 Wash. 216, 189 Pac. 406.

Mortgages and Other Transfers as Security: See *Remington's Digest*, *Fraud. Conv.*, §§ 35—38; *Hyman v. Barmon*, 6 Wash. 516, 33 Pac. 1076; *Compton v. Schwabacher Bros. & Co.*, 15 Wash. 306, 46 Pac. 338; *Mansfield v. First Nat. Bank*, 5 Wash. 665, 32 Pac. 789, 999; *Smith v. Hopkins*, 10 Wash. 77, 38 Pac. 854; *Bradley v. Gotzian*, 12 Wash. 71, 40 Pac. 623.

KNOWLEDGE AND INTENT OF GRANTEE: See *Remington's Digest*, *Fraud. Conv.*, §§ 43, 44; *Wagner v. Law*, 3 Wash. 500, 28 Pac. 1109, 29 Pac. 927, 28 Am. St. Rep. 56, 15 L. R. A. 784; *O'Leary v. Duvall*, 10 Wash. 666, 39 Pac. 163; *Berlin v. Van de Vanter*, 25 Wash. 465, 65 Pac. 756; *Goodyear Rubber Co. v. Schreiber*, 29 Wash. 94, 69 Pac. 648; *Smith v. Hopkins*, 10 Wash. 77, 38 Pac. 854; *Burrell v. Bennett*, 20 Wash. 644, 56 Pac. 375; *Reed v. Loney*, 22 Wash. 433, 61 Pac. 41; *Roberts v. Stiltner*, 101 Wash. 397, 172 Pac. 738.

RIGHTS AND LIABILITIES OF PARTIES AND PURCHASERS: See *Remington's Digest*, *Fraud. Conv.*, §§ 48—53, and cases cited.

REMEDIES OF CREDITORS AND PURCHASERS: See *Remington's Digest*, *Fraud. Conv.*, §§ 54—108, and cases cited. See, also:

§ 82. **Burden of Proof:** *Cashmere State Bank v. Richardson*, 105 Wash. 105, 177 Pac. 727.

§ 88. **Admissibility:** *Du Pont de Nemour Powder Co. v. Pederson*, 108 Wash. 335, 184 Pac. 316.

§ 91. **Fraud—Sufficiency:** *Du Pont de Nemours Powder Co. v. Pederson*, 108 Wash. 335, 184 Pac. 316.

§ 92. **Transaction Between Relatives—Preference — Consideration — Evidence—Sufficiency:** *Fisher v. Ward*, 104 Wash. 589, 177 Pac. 682; *Rowan v. United States Fid. & Guar. Co.*, 105 Wash. 432, 178 Pac. 473; *Peterson v. Mohammed*, 113 Wash. 117, 193 Pac. 215.

§ 93. **Transactions Between Husband and Wife — Evidence — Sufficiency:** *Burgess v. Conforth*, 109 Wash. 150, 186 Pac. 263.

§ 95. **Preferences—Retaining Possession — Intent — Evidence — Sufficiency:** *Rowan v. United States Fid. & Guar. Co.*, 105 Wash. 432, 178 Pac. 473; *Chapman v. Critzer*, 110 Wash. 424, 188 Pac. 412.

§ 97. **Transaction Between Relatives—Preference — Consideration—Evidence — Sufficiency:** *Fisher v. Ward*, 104 Wash. 589, 177 Pac. 682; *Cashmere State Bank v. Richardson*, 105 Wash. 105, 177 Pac. 727.

§ 5825. [5289.] Contracts, etc., Void Unless in Writing.

In the following cases specified in this section, any agreement, contract and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, that is to say: (1) every agreement that by its terms is not to be performed in one year from the making thereof; (2) every special promise to answer for the debt, default, or misdoings of another person; (3) every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry; (4) every special promise made by an executor or administrator to answer damages out of his own estate; (5) an agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission. [L. '05, p. 110, § 1. Cf. L. '54, p. 403, § 2; L. '60, p. 298, § 2; L. '63, p. 412, § 2; Cd. '81, § 2325; 1 H. C., § 2432.]

See *infra*, § 10618 et seq., leases.

See *infra*, § 10550, and notes, statute of frauds as to real property.

See *infra*, § 11345, contracts by telegraph.

Cited in 8 Wash. 546; 20 Wash. 704; 28 Wash. 484; 29 Wash. 533; 36 Wash. 330, 331; 38 Wash. 696; 44 Wash. 328, 330; 45 Wash. 467; 46 Wash. 133, 138; 47 Wash. 647; 43 Wash. 580, 679; 50 Wash. 279, 497, 498; 53 Wash. 423, 639; 54 Wash. 522, 592, 594; 56 Wash. 618; 57 Wash. 287, 501; 61 Wash. 278, 423; 63 Wash. 566, 570; 64 Wash. 65; 65 Wash. 285; 67 Wash. 20, 266; 68 Wash. 326; 69 Wash. 205; 71 Wash. 56, 426; 72 Wash. 312, 541; 74 Wash. 346, 428; 75 Wash. 214, 684; 79 Wash. 341; 80 Wash. 121; 81 Wash. 239, 258, 262; 83 Wash. 184; 85 Wash. 481; 88 Wash. 32; 93 Wash. 376; 96 Wash. 337, 340; 99 Wash. 313, 324—326; 100 Wash. 159, 163, 165; 103 Wash. 688; 106 Wash. 330; 107 Wash. 9, 51, 52.

CONTENTS OF MEMORANDUM.

— **Designation and Description of Parties:** See Remington's Digest, Frds., St. of, § 32; Mead v. White, 53 Wash. 638, 102 Pac. 753, 132 Am. St. Rep. 1092, 23 L. R. A. (N. S.) 1197; Kahlotus Grain & Supply Co. v. Blair, 101 Wash. 645, 172 Pac. 818.

A contract is signed within the meaning of the statute of frauds whether the name of the party to be charged appears at the bottom, top, middle or side of the paper: Tingley v. Bellingham Bay etc. Co., 5 Wash. 644, 32 Pac. 737, 33 Pac. 1055.

The use, by the seller of flour, of a blank form, with its name printed at the top, filled out by its authorized agent showing the terms of the contract of sale, is a sufficient "signing" of the contract by the seller to satisfy the statute of frauds: Wright v. Seattle Grocery Co., 105 Wash. 383, 177 Pac. 818.

— **Statement of Consideration:** See Remington's Digest, Frds., St. of, § 33; Parks v. Elmore, 59 Wash. 584, 110 Pac. 381.

— **Subject Matter in General:** See Remington's Digest, Frds., St. of, § 34; Swartswood v. Naslin, 57 Wash. 287, 106 Pac. 770; Engleson v. Port Crescent Shingle Co., 74 Wash. 424, 133 Pac. 1030; Goodrich v. Rogers, 75 Wash. 212, 134 Pac. 947.

The indorsement of a note in consideration of the sale of stock is not an oral promise, but is an engagement in writing, within the statute of frauds: Ginnett v. Greene, 87 Wash. 40, 151 Pac. 99.

An agreement to pay the debt of another is not taken out of the operation of the statute of frauds by letters referring to the closing up of the matter or to the "understanding" of a third person as to the promise, none of which determines what the agreement was without resort to parol evidence; since the memorandum must be complete without resort to such evidence: Campbell v. Weston Basket & Barrel Co., 87 Wash. 73, 151 Pac. 103.

A memorandum of an order for the sale of goods describing the thing sold, the names of the parties, price and terms of payment, signed by the party charged, meets the requirements of the statute of frauds, though informal and containing abbreviations which it is necessary to explain by oral evidence: Nut House v. Pacific Oil Mills, 102 Wash. 114, 172 Pac. 841.

To satisfy the statute of frauds, the memorandum must in itself contain all the terms of the contract; and a con-

tract partly in writing and partly in parol is an oral contract under the statute: *Coleman v. St. Paul & Tacoma Lumber Co.*, 110 Wash. 259, 188 Pac. 532.

See, also, *Lewis v. Elliot Bay Logging Co.*, 112 Wash. 83, 191 Pac. 803.

The failure of a contract for the sale of wheat for future delivery, to fix the time for payment, does not render it void under the statute of frauds; since in such case the law provides that payment and delivery shall be concurrent acts: *Dement Brothers Co. v. Coon*, 104 Wash. 603, 177 Pac. 354.

SUBDIV. 1. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR—Stipulations as to Time: See *Remington's Digest*, Frds., St. of, § 7-1; *Spokane Canal Co. v. Coffman*, 61 Wash. 357, 112 Pac. 383.

See, also, *Seal v. Long*, 112 Wash. 370, 192 Pac. 896.

Possibility of Discharge or Other Termination Without Performance: See *Remington's Digest*, Frds., St. of, § 8; *Field's Estate, In re*, 33 Wash. 63, 73 Pac. 768; *Union Savings & Trust Co. v. Krumm*, 88 Wash. 20, 152 Pac. 681.

An agreement to pay a commission on a sale of goods, in consideration of the agent's release of an option, permitting a sale to another, is not within the statute of frauds as not to be performed within one year, because no time was fixed; especially where it was fully executed on the part of the promisee: *Maze v. Feuchtwanger*, 106 Wash. 327, 179 Pac. 850.

SUBDIV. 2. PROMISES TO ANSWER FOR DEBT, DEFAULT OR MISCARRIAGE OF ANOTHER—Nature of Debt, Default or Miscarriage: See *Remington's Digest*, Frds., St. of, § 1; *McKenzie v. Puget Sound Nat. Bank*, 9 Wash. 442, 37 Pac. 668, 43 Am. St. Rep. 844; *Barto v. Phillips*, 28 Wash. 482, 68 Pac. 895; *First National Bank of Pullman v. Gaddis*, 31 Wash. 596, 72 Pac. 430; *Taylor v. Howard*, 70 Wash. 217, 126 Pac. 423.

Oral promises by a trustee for creditors that claims would be paid in full fall within the inhibition of the statute of frauds: *Kirkland v. Dressel*, 104 Wash. 668, 177 Pac. 643.

Where the guaranty to answer for the debt of another had been executed, parol evidence was admissible to prove the existence of the contract: *Dudley v. Duval*, 29 Wash. 528, 70 Pac. 68.

Upon an action to charge defendant with the debt of another to plaintiff, the evidence is sufficient to make out a prima facie case, where the debtor testifies that he was a tenant of defendant on shares, that he surrendered the lease to defendant who agreed to pay plaintiff the value of plaintiff's services performed for the tenant (although the ser-

vices were performed under agreement for a share of the crop) and this evidence is corroborated by plaintiff and one other witness: *Dimmick v. Collins*, 24 Wash. 78, 63 Pac. 1101.

Promise to Debtor to Discharge Debt—Assumption of Debt in Consideration of Transfer of Property: See *Remington's Digest*, Frds., St. of, § 2; *Silby v. Frost*, 3 W. T. 388, 17 Pac. 887; *Don Yook v. Washington Mill Co.*, 16 Wash. 459, 47 Pac. 464; *Ordway v. Downey*, 18 Wash. 412, 51 Pac. 1047, 52 Pac. 228, 63 Am. St. Rep. 892; *Gilmore v. Skookum Box Factory*, 20 Wash. 703, 56 Pac. 934; *Dimmick v. Collins*, 24 Wash. 78, 63 Pac. 1101.

Promise to Indemnify—Contracts of Insurance: See *Remington's Digest*, Frds., St. of, § 3; *Beckman v. Edwards*, 59 Wash. 411, 110 Pac. 6, Ann. Cas. 1912B, 40; *Ford v. Aetna Life Ins. Co.*, 70 Wash. 29, 126 Pac. 69.

Original or Collateral Promise in General: See *Remington's Digest*, Frds., St. of, § 4; *Kelley v. Greenough*, 9 Wash. 659, 38 Pac. 158; *McGraw v. Franklin*, 2 Wash. 17, 25 Pac. 911, 26 Pac. 810; *Gay v. Schaefer*, 52 Wash. 269, 100 Pac. 334; *Mead v. White*, 53 Wash. 638, 102 Pac. 753, 132 Am. St. Rep. 1092, 23 L. R. A. (N. S.) 1197; *Burns v. Bradford-Kennedy Lumber Co.*, 61 Wash. 276, 112 Pac. 359; *Mazzini Society v. Corgiat*, 63 Wash. 273, 115 Pac. 93; *Wells & Morris v. Brown*, 67 Wash. 351, 121 Pac. 828, Ann. Cas. 1913D, 317; *McKay v. Northern Bank & Trust Co.*, 69 Wash. 186, 124 Pac. 372; *Bicknell v. Henry*, 69 Wash. 408, 125 Pac. 156; *Davies v. Carey*, 72 Wash. 537, 130 Pac. 1137; *Lovell v. Haye*, 85 Wash. 109, 147 Pac. 632; *First Nat. Bank v. Geske & Co.*, 85 Wash. 477, 148 Pac. 593, Ann. Cas. 1917B, 564; *Ginnett v. Greene*, 87 Wash. 40, 151 Pac. 99; *Campbell v. Weston Basket & Barrel Co.*, 87 Wash. 73, 151 Pac. 103; *Union Savings & Trust Co. v. Krumm*, 88 Wash. 20, 152 Pac. 681; *Hart v. Bogle*, 88 Wash. 125, 152 Pac. 1010; *Union Machinery & Supply Co. v. Darnell*, 89 Wash. 226, 154 Pac. 183; *Greenbaum v. Stern*, 90 Wash. 156, 155 Pac. 751; *Washington Printing Co. v. Osnier*, 99 Wash. 537, 169 Pac. 988; *Dixon v. Parker, Moran & Parker*, 102 Wash. 101, 172 Pac. 856.

A promise is shown to be a collateral one, where it appears that plaintiff, on selling and delivering certain goods delivered to one N., to whom the promise was made, could not give a clear and consistent statement of the transaction, testifying that defendant told him to deliver the goods to N., and "the account would be taken care of"; to "go ahead and sell and we will see you get the money"; and "that is all he said, for me

to furnish N. the stuff and they would pay the bill," and that they would "take care of the account"; especially where the parties, in their correspondence, treated it as N.'s account; since every statement except the third is clearly collateral: *Pressentin v. Hawkeye Timber Co.*, 77 Wash. 388, 137 Pac. 999.

An oral statement by a general contractor, to induce one employed by a subcontractor to continue on the work, to go ahead and he would see him paid, is a collateral promise to answer for the debt or default of another, and void under the statute of frauds, where the work continued as in the past with the subcontractor in charge: *Sieffert Company v. Wright*, 108 Wash. 616, 185 Pac. 577.

Where one promises, upon a valuable consideration, to pay the debt of another to a third person, the latter may maintain an action thereon in his own name: *Moore v. Baasch*, 109 Wash. 568, 187 Pac. 388.

Promise on Transfer of Note: See *Remington's Digest*, Frds., St. of, § 5; *Swenson v. Stoltz*, 36 Wash. 318, 78 Pac. 999, 2 Ann. Cas. 504; *Handsaker v. Pedersen*, 71 Wash. 218, 128 Pac. 230.

New Consideration Beneficial to Promisor—In General: See *Remington's Digest*, Frds., St. of, § 6; *Silby v. Forst*, 3 W. T. 388, 17 Pac. 887; *Dibble v. De Mattos*, 8 Wash. 542, 36 Pac. 485; *Don Yook v. Washington Mill Co.*, 16 Wash. 459, 47 Pac. 964; *Gilmore v. Skookum Box Factory*, 20 Wash. 703, 56 Pac. 934; *Dimmick v. Collins*, 24 Wash. 78, 63 Pac. 1101; *Nordby v. Winsor*, 24 Wash. 535, 64 Pac. 726.

— **Forbearance by Creditor:** See *Remington's Digest*, Frds., St. of, § 7; *McKenzie v. Puget Sound Nat. Bank*, 9 Wash. 442, 37 Pac. 668, 43 Am. St. Rep. 844; *Goldie-Klenert Distributing Co. v. Bothwell*, 67 Wash. 264, 121 Pac. 60, Ann. Cas. 1913D, 849.

SUBDIV. 3. IN CONSIDERATION OF MARRIAGE: See *Remington's Digest*, Frds., St. of, § 10; *Koontz v. Koontz*, 83 Wash. 180, 145 Pac. 201.

SUBDIV. 5. CONTRACTS FOR A BROKER'S COMMISSIONS: See *Remington's Digest*, Frds., St. of, § 20; *Briggs v. Bounds*, 48 Wash. 579, 94 Pac. 101; *Brodarius v. Anderson*, 54 Wash. 591, 103 Pac. 837; *Dean v. Williams*, 56 Wash. 614, 106 Pac. 130; *Jones v. Kehoe*, 61 Wash. 422, 112 Pac. 497; *Crouch v. Forbes*, 63 Wash. 564, 116 Pac. 14; *Orr v. Perky Investment Co.*, 65 Wash. 281, 118 Pac. 19; *Leigh v. Yancey*, 67 Wash. 18, 120 Pac. 512; *Merritt v. American Catering Co.*, 71 Wash. 425, 128 Pac. 1074; *Parker v. Bruggemann*, 72 Wash. 309, 130 Pac. 358;

Engleson v. Port Crescent Shingle Co., 74 Wash. 424, 133 Pac. 1030; *Stewart v. Preston*, 77 Wash. 559, 137 Pac. 993; *Modern Irr. & Land Co. v. Neely*, 81 Wash. 38, 142 Pac. 458; *Armstrong v. Webber & Co.*, 92 Wash. 295, 158 Pac. 957; *Godefroy v. Hupp*, 93 Wash. 371, 160 Pac. 1056; *Nance v. Valentine*, 99 Wash. 323, 169 Pac. 862; *Maloney v. Montana Ranches Co.*, 100 Wash. 156, 170 Pac. 567; *Henneberg v. Cook*, 103 Wash. 685, 175 Pac. 313.

See, also, *Zittel v. Meyer*, 107 Wash. 585, 182 Pac. 585.

— **Description of Lands:** See *Remington's Digest*, Frds., St. of, § 35; *Rochester v. Yesler's Estate*, 6 Wash. 114, 32 Pac. 1057; *Pierce v. Wheeler*, 44 Wash. 326, 87 Pac. 361; *Broadway Hospital and Sanitarium v. Decker*, 47 Wash. 586, 92 Pac. 445; *Cushing v. Monarch Timber Co.*, 75 Wash. 678, 135 Pac. 660, Ann. Cas. 1914C, 1239; *Thompson v. English*, 76 Wash. 23, 135 Pac. 664; *Salin v. Roy*, 81 Wash. 261, 142 Pac. 679; *Baylor v. Tolliver*, 81 Wash. 257, 142 Pac. 678; *West v. Cave*, 98 Wash. 237, 167 Pac. 747; *Rogers v. Lippy*, 99 Wash. 312, 169 Pac. 858; *Nance v. Valentine*, 99 Wash. 323, 169 Pac. 862; *Larue v. Farmers & Mechanics' Bank*, 102 Wash. 434, 172 Pac. 1146; *Nelson v. Davis*, 102 Wash. 313, 172 Pac. 1178.

See, also:

— **Description of Land:** *Kuh v. Lemeke*, 107 Wash. 45, 180 Pac. 889; *Schmidt v. Powell*, 107 Wash. 53, 180 Pac. 892.

— **Sufficiency of Memorandum:** *Big Four Land Co. v. Daracunas*, 111 Wash. 224, 190 Pac. 229.

— **Leases—Description of Lands—Possession:** *Zinn v. Knopes*, 111 Wash. 606, 191 Pac. 822.

— **Statement of Terms and Conditions:** See *Remington's Digest*, Frds., St. of, § 37; *Keith v. Smith*, 46 Wash. 131, 89 Pac. 473, 13 Ann. Cas. 975; *Ross v. Kaufman*, 48 Wash. 678, 94 Pac. 641; *Orr Co. v. Interlaken Land Co.*, 74 Wash. 340, 133 Pac. 599; *Goodrich v. Rogers*, 75 Wash. 212, 134 Pac. 947; *Houtchens Co. v. Nichols*, 81 Wash. 238, 142 Pac. 674; *Foot v. Robbins*, 50 Wash. 277, 97 Pac. 103; *McCrea v. Ogden*, 50 Wash. 495, 97 Pac. 503 (overruled in Id.), 54 Wash. 521, 103 Pac. 788; *Ankeny v. Young Bros.*, 52 Wash. 235, 100 Pac. 736; *Moses Land Scrip & Realty Co. v. Stack-Gibbs Lumber Co.*, 56 Wash. 529, 106 Pac. 207; *Nut House v. Pacific Oil Mills*, 102 Wash. 114, 172 Pac. 841.

Separate Writings: See *Remington's Digest*, Frds., St. of, § 39; *Forland v. Boyum*, 53 Wash. 421, 102 Pac. 34.

PLEADING, EVIDENCE AND INSTRUCTIONS — Pleading Contract or Transaction Within Statute—As Cause of Action in General: See Remington's Digest, Frds., St. of, § 55; Fox v. Utter, 6 Wash. 299, 33 Pac. 354.

— **Matter in Avoidance of Bar of Statute:** See Remington's Digest, Frds., St. of, § 56; Shelton v. Conant, 10 Wash. 193, 38 Pac. 1013.

Pleading Statute as Defense—Sufficiency of Denials and Allegations: See Remington's Digest, Frds., St. of, § 57; Browder v. Phinney, 37 Wash. 70, 79 Pac. 598; Moses Land Scrip & Realty Co. v. Stack-Gibbs Lumber Co., 56 Wash. 529, 106 Pac. 207; Taylor v. Howard, 70 Wash. 217, 126 Pac. 423; Seattle Taxicab & Transfer Co. v. Kinney, 74 Wash. 179, 132 Pac. 1013; Cushing v. Monarch Timber Co., 75 Wash. 678, 135 Pac. 660, Ann. Cas. 1914C, 1239; Thompson v. English, 76 Wash. 23, 135 Pac. 664; Goodrich v. Rogers, 75 Wash. 212, 134 Pac. 947; Arbogast v. Johnson, 80 Wash. 537, 141 Pac. 1140; First Nat. Bank v. Geske & Co., 85 Wash. 477, 148 Pac. 593, Ann. Cas. 1917B, 564; Brown v. Kausche, 98 Wash. 470, 167 Pac. 1075.

Evidence—Admissibility in General: See Remington's Digest, Frds., St. of, § 58; Brewer v. Cropp, 10 Wash. 136, 38 Pac. 866; Don Yook v. Washington Mill Co., 16 Wash. 459, 47 Pac. 965; Dudley v. Duval, 29 Wash. 528, 70 Pac. 68; Sutter v. Moore Inv. Co., 30 Wash. 333, 70 Pac. 746; Browder v. Phinney, 37 Wash. 70, 79 Pac. 598; Broadway Hospital and Sanitarium v. Decker, 47 Wash. 586, 92 Pac. 445.

See, also, Lewis v. Elliot Bay Logging Co., 112 Wash. 83, 191 Pac. 803.

— **Sufficiency:** See Remington's Digest, Frds., St. of, § 59; Anderson v. Schneider, 22 Wash. 363, 60 Pac. 1125; Dimmick v. Collins, 24 Wash. 78, 63 Pac. 1101; Adams County Mercantile Co. v. Walla Walla Livestock Co., 64 Wash. 285, 116 Pac. 669; Pressentin v. Hawk-eye Timber Co., 77 Wash. 388, 137 Pac. 999.

Instructions: See Remington's Digest, Frds., St. of, § 60; Fox v. Utter, 6 Wash. 299, 33 Pac. 354.

Statutory Provisions—Record or Filing of Written Instrument: See Remington's Digest, Fraud. Conv., § 40; Whiting Mfg. Co. v. Gephart, 6 Wash. 615, 34 Pac. 161; Bonneviere v. Cole, 90 Wash. 526, 156 Pac. 527; Churchill v. Miller, 90 Wash. 694, 156 Pac. 851.

Contracts relating to sale of real estate within statute of frauds. 17 Am. Dec. 58.

What contracts within statute of frauds because not to be performed

within one year. 93 Am. Dec. 86; 43 Am. Rep. 42; 138 Am. St. Rep. 590.

Validity within statute of contract capable of performance within one year by one party and so performed. 13 Ann. Cas. 916; Ann. Cas. 1915C, 548.

Contract not to be performed in one year but terminable at option of parties as within statute of frauds. 17 Ann. Cas. 207; Ann. Cas. 1912B, 731.

Whether contract which depends upon contingency for performance within one year is within statute of frauds. 4 Ann. Cas. 174; Ann. Cas. 1916E, 1136.

Validity of contract for year's employment to commence in the future. 5 Ann. Cas. 330; 2 L. R. A. (N. S.) 738.

Validity of oral lease for one year to commence in the future. 5 Ann. Cas. 829; 18 Ann. Cas. 1078; 49 L. R. A. (N. S.) 820.

Contracts for services which may, but which are not intended to, be performed within a year as within the statute. 15 L. R. A. (N. S.) 313.

What, within the meaning of the statute of frauds, is a contract to answer for or pay the debt of another. 126 Am. St. Rep. 487.

Promises to pay the debt of another, when need and when need not be in writing. 5 Am. Dec. 321; 46 Am. Rep. 296; 95 Am. Dec. 251.

Contemporary promise of one person to pay where benefit inures to another as a promise to answer for default of another within the statute of frauds. 15 L. R. A. (N. S.) 214; 32 L. R. A. (N. S.) 598.

Is agreement by vendee to pay encumbrance within statute of frauds as promise to answer for the debt of another. 15 L. R. A. (N. S.) 1087.

Promise by other than the principal to indemnify a surety as one to answer for the debt, default or miscarriage of another. 1 A. L. R. 383.

Validity of oral promise by stockholder to pay debt of corporation. 8 A. L. R. 1198.

Promise of marriage as within statute of frauds as contract not to be performed in a year. L. R. A. 1915D, 1190.

When is promise made in consideration of marriage within statute of frauds. 10 A. L. R. 321.

Right to recover commissions under oral contract employing real estate broker where statute requires written contract. 13 *Ann. Cas.* 977; *Ann. Cas.* 1915A, 1133; 9 *L. R. A. (N. S.)* 933.

Validity of statute requiring written contract for commission for sale of realty. *Ann. Cas.* 1913C, 727; 33 *L. R. A. (N. S.)* 973.

Necessity of securing written contract from purchaser to entitle real estate broker to commission. 46 *L. R. A. (N. S.)* 129.

Part performance to take contracts not to be performed in a year out of the statute of frauds. *L. R. A.* 1916D, 884.

§ 5826. [5290.] Contract for Sale of Goods Void, When.

No contract for the sale of any goods, wares, or merchandise, for the price of fifty dollars or more, shall be good and valid, unless the purchaser shall accept and receive part of the goods so sold, or shall give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized. [L. '54, p. 403, § 3; L. '60, p. 298, § 3; L. '63, p. 413, § 3; Cd. '81, § 2326; 1 H. C., § 1453.]

Cited in 8 Wash. 191; 55 Wash. 19; 56 Wash. 534; 62 Wash. 396; 64 Wash. 287; 76 Wash. 602; 85 Wash. 480; 102 Wash. 116; 105 Wash. 386; 110 Wash. 267, 290, 292.

SALES OF GOODS—Nature of Property: See Remington's Digest, Frds., St. of, § 22; Hewson v. Peterman Mfg. Co., 76 Wash. 600, 136 Pac. 1158, *Ann. Cas.* 1915D, 346, 51 *L. R. A. (N. S.)* 398.

Corporate stock is goods, wares and merchandise, within the meaning of the statute of frauds: Coleman v. St. Paul & Tacoma Lumber Co., 110 Wash. 259, 188 Pac. 532.

Whether Contract is for Sale or Work and Labor: See Remington's Digest, Frds., St. of, § 23; Puget Sound Iron Co. v. Worthington, 2 W. T. 472, 7 Pac. 882, 886.

Articles to be Manufactured: See Remington's Digest, Frds., St. of, § 24; Fox v. Utter, 6 Wash. 299, 33 Pac. 354; Puget Sound Machinery Depot v. Rigby, 13 Wash. 264, 43 Pac. 39.

Acceptance in General: See Remington's Digest, Frds., St. of, § 25; Reinhart v. Gregg, 8 Wash. 191, 35 Pac. 1075.

Delivery and Receipt: See Remington's Digest, Frds., St. of, § 26; Peacock Mill Co. v. Honeycutt, 55 Wash. 18, 103 Pac. 1112; Gaisell v. Johnston, 68 Wash. 470, 123 Pac. 783.

Part Payment: See Remington's Digest, Frds., St. of, § 27; Lilly v. Lilly, Bogardus & Co., 39 Wash. 337, 81 Pac. 852; Gaisell v. Johnston, 68 Wash. 470, 123 Pac. 783; Hewson v. Peterman Mfg. Co., 76 Wash. 600, 136 Pac. 1158, *Ann. Cas.* 1915D, 346, 51 *L. R. A. (N. S.)* 398.

See, also, Benner v. Billings, 107 Wash. 1, 181 Pac. 19; Coleman v. St. Paul &

Tacoma Lbr. Co., 110 Wash. 259, 188 Pac. 532.

A contract for the sale of stock of a corporation upon which a partial payment is made is a sale of goods, wares, and merchandise, and it not void as within section 5825, *supra*, relating to oral contracts that are not to be performed within one year, although deferred payments extend beyond that time: Benner v. Billings, 107 Wash. 1, 181 Pac. 19.

A written contract satisfying the statute of frauds is shown by correspondence where the seller of wheat wrote confirming a sale of ten thousand bushels of blue stem wheat at \$2.44 f. o. b. Eureka Flat points, the buyer to send check of \$1,000 as margin, and the buyer, while at first failing to directly acknowledge the contract, wrote about sixty days later that he would take the wheat "bought from you last August if you will give me time," and fixing date for first shipment subject to sight draft: Jones-Scott Co. v. Ellensburg Milling Co., 108 Wash. 73, 183 Pac. 113.

OPERATION AND EFFECT OF STATUTE—Validity and Enforcement of Contracts in General: See Remington's Digest, Frds., St. of, § 41; Sayward v. Gardner, 5 Wash. 247, 31 Pac. 761, 33 Pac. 389; Anderson v. Schneider, 22 Wash. 363, 60 Pac. 1125; Cushing v. Monarch Timber Co., 75 Wash. 678, 135 Pac. 660, *Ann. Cas.* 1914C, 1239; Parkes' Estate, In re, 101 Wash. 59, 172 Pac. 908.

Parol evidence is admissible for the purpose of showing that the actual consideration for a sale of logs is different from that expressed in a bill of sale: Don Yook v. Washington Mill Co., 16 Wash. 459, 47 Pac. 965.

An absolute acceptance of an engine and hay baler is shown, sufficient to take

an oral sale thereof out of the operation of this section 5826, requiring a note or memorandum thereof, in writing, etc., unless the purchaser shall accept and receive part of the goods etc.), where it appears that the agent, authorized to purchase the same, received the engine and baler early in June and hauled them to the purchaser's ranch, where they remained, long prior to the commencement of the action, the purchaser knowing that the seller claimed an absolute sale, delivery and acceptance, the purchaser making no demand for a test thereof as provided for in the contract: *Adams County Mercantile Co. v. Walla Walla Livestock Co.*, 64 Wash. 285, 116 Pac. 669.

This section requiring a note or memorandum of a sale of goods exceeding fifty dollars to be "signed by the party to be charged thereby" is satisfied where it is signed by and may be enforced against the seller, although not signed by the purchaser: *Wright v. Seattle Grocery Co.*, 105 Wash. 383, 177 Pac. 818.

A memorandum showing the date, name and address of the purchaser and the statement of goods sold with the agreed price, is a sufficient compliance with the statute of frauds, although all the details are not stated and the complaint alleges an agreement partly oral and partly written: *Wright v. Seattle Grocery Co.*, 105 Wash. 383, 177 Pac. 818.

A memorandum of a sale of flour setting forth the purchaser and seller, the quantity and character of the goods, the price therefor and the date of sale, shows a complete contract and satisfies the statute of frauds, although time and place of delivery were not given: *Wright v. Seattle Grocery Co.*, 105 Wash. 383, 177 Pac. 818.

Part Performance in General: See *Remington's Digest, Frds., St. of, § 42*; *Horr v. Hollis*, 20 Wash. 424, 55 Pac. 565; *Browder v. Phinney*, 37 Wash. 70, 79 Pac. 598; *Jomslund v. Wallace*, 39 Wash. 487, 81 Pac. 1094; *Federal Iron & Brass Bed Co. v. Hock*, 42 Wash. 668, 85 Pac. 418; *Peterson v. Hicks*, 43 Wash. 412, 86 Pac. 634; *Johnson v. Upper*, 38 Wash. 693, 80 Pac. 801; *National Laundry Co. v. Mayer*, 79 Wash. 212, 140 Pac. 393; *Hughes v. Eastern R. & Lumber Co.*, 93 Wash. 558, 161 Pac. 343; *Woolen v. Sloan*, 94 Wash. 551, 162 Pac. 985.

The evidence of the contract and of a substantial part performance thereof must be clear and convincing in order to enforce an oral agreement, which under the statute of frauds should be in writing: *Anderson v. Schneider*, 22 Wash. 363, 60 Pac. 1125.

When an oral contract for the sale of standing timber to be cut immediately is executed, it cannot be attacked as affecting an interest in lands, within the

statute of frauds; since, if not valid as a sale of personal property, it is valid as a license to enter and sever the timber: *Bay View Land Co. v. Ferguson*, 53 Wash. 323, 101 Pac. 1093.

Performance does not take a contract out of the operation of the statute of frauds: *Cushing v. Monarch Timber Co.*, 75 Wash. 678, 135 Pac. 660, Ann. Cas. 1914C, 1239.

See, also, *Peterson v. Nichols*, 110 Wash. 288, 188 Pac. 498.

The payment of expenses in exploring property is not the giving of something in earnest, within the meaning of the statute of frauds, since it was not anything of value given to the other party: *Coleman v. Saint Paul & Tacoma Lumber Co.*, 110 Wash. 259, 188 Pac. 532.

There was no such part performance of an oral contract for the exchange of lands for a stock of goods as to materially change the situation of the parties and take it out of the operation of the statute of frauds, though the owner of the store took possession and contracted for goods, depositing the proceeds pending consummation of the deal, where there was no showing that the obligations incurred could not be satisfied from the funds deposited, or collected from the owner of the goods on his refusal to carry out the contract: *Peterson v. Nichols*, 110 Wash. 288, 188 Pac. 498.

Contracts in Part Within Statute: See *Remington's Digest, Frds., St. of, § 43*; *Swash v. Sharpstein*, 14 Wash. 426, 44 Pac. 862, 32 L. R. A. 796.

An entire contract for a trade of real estate for a stock of goods is governed by section 10550, requiring all conveyances to be by deed, and not by this section, relating to the sale of goods, wares and merchandise; and the part relating to the sale of land being in parol, the whole contract is void: *Peterson v. Nichols*, 110 Wash. 288, 188 Pac. 498.

Modification of Contract: See *Remington's Digest, Frds., St. of, § 44*; *Tingley v. Fairhaven Land Co.*, 9 Wash. 34, 36 Pac. 1098; *Sedro Veneer Co. v. Kwapil*, 62 Wash. 385, 113 Pac. 1100; *Oregon & Washington R. Co. v. Elliott Bay Mill & Lumber Co.*, 70 Wash. 148, 126 Pac. 406; *Gerard-Fillio Co. v. McNair*, 68 Wash. 321, 123 Pac. 462; *Schulze v. Buckeye Lumber Co.*, 94 Wash. 520, 162 Pac. 588; *Woolen v. Sloan*, 94 Wash. 551, 162 Pac. 985.

See, also, *Clements v. Cook*, 112 Wash. 217, 191 Pac. 874.

A written offer to sell mining stock was not accepted so as to bring it within the statute of frauds, where, upon a conference, it appeared that there were liens against the stock, and that the seller orally agreed to modify the agreement so as to permit the amount of the liens to be withheld; since the contract

would be partly in writing and partly in parol, and a modification by parol would nullify the rule of the statute: *Coleman v. St. Paul & Tacoma Lumber Co.*, 110 Wash. 259, 188 Pac. 532.

Contracts Performed Only as to Part not Within Statute—Agreements not to be Performed Within One Year: See *Remington's Digest*, Frds., St. of, § 45; *Borrow v. Borrow*, 34 Wash. 684, 76 Pac. 305.

Contracts as Ground for Equitable Relief: See *Remington's Digest*, Frds., St. of, § 52; *O'Connor v. Jackson*, 23 Wash. 224, 62 Pac. 761; *Mead v. White*, 53 Wash. 638, 102 Pac. 753, 132 Am. St. Rep. 1092, 23 L. R. A. (N. S.) 1197.

Persons to Whom Statute is Available: See *Remington's Digest*, Frds., St. of, § 53; *Carmack v. Drum*, 32 Wash. 236, 73 Pac. 377, 785; *Backus v. Feeks*, 71 Wash. 508, 129 Pac. 86, Ann. Cas. 1914C, 553; *Trimble v. Donahey*, 96 Wash. 677, 165 Pac. 1051.

Acceptance and delivery of goods to satisfy statute of frauds. 49 Am. Dec. 325; 37 Am. Rep. 16; 96 Am. St. Rep. 215.

Buyer's act in selling or offering to sell goods as sufficient acceptance within statute of frauds. Ann. Cas. 1913B, 275.

Time when goods must be accepted to take contract of sale out of statute. 11 Ann. Cas. 518.

Application of statute of frauds to contract involving transfer of chattel and doing of work and labor. 19 Ann. Cas. 1292; Ann. Cas. 1914C, 584.

Contracts relating to corporate stock as within provisions of statute of frauds dealing with sales of goods. 14 A. L. R. 394.

Distinction between sales and contracts for work and labor. 14 L. R. A. 230; 30 L. R. A. (N. S.) 319; 43 L. R. A. (N. S.) 97.

Enforcement of contracts because of part performance, and acts which may constitute part performance. 32 Ann. Cas. 129; 53 Am. Dec. 539.

§ 5827. [5291.] Bill of Sale Void, When.

No bill of sale for the transfer of personal property shall be valid, as against existing creditors or innocent purchasers, where the property is left in the possession of the vendor, unless the said bill of sale be recorded in the auditor's office of the county in which the property is situated, within ten days after such sale shall be made. [L. '54, p. 404. § 4: L. '63, p. 413, § 4; Cd. '81, § 2327; 1 H. C., § 1454.]

See supra, § 3790, conditional bill of sale to be filed.

Cited in 6 Wash. 89, 91, 616; 14 Wash. 180; 36 Wash. 681; 41 Wash. 489; 48 Wash. 361; 58 Wash. 620; 73 Wash. 498; 90 Wash. 530, 696; 104 Wash. 314, 558; 113 Wash. 532.

Filing, Recording and Registration: See *Remington's Digest*, Sales, § 64; *Sayward*

v. Nunan, 6 Wash. 87, 32 Pac. 1022; *Whiting Mfg. Co. v. Gephart*, 6 Wash. 615, 34 Pac. 161; *Greenwood v. Corbin*, 48 Wash. 357, 93 Pac. 433.

See, also, *Degginger v. Seattle Brew. etc. Co.*, 41 Wash. 385, 83 Pac. 898, 4 L. R. A. (N. S.) 626; *Barbour v. Hodge*, 99 Wash. 578, 170 Pac. 115.

§ 5828. [5292.] Burden of Proof in Transactions Between Husband and Wife.

In every case where any question arises as to the good faith of any transaction between husband and wife whether a transaction between them directly or by intervention of a third person or persons, the burden of proof shall be upon the party asserting the good faith. [Cd. '81, § 2397; 1 H. C., § 1455.]

See infra, § 6893, community property.

See infra, § 10572, conveyances between husband and wife.

Cited in 8 Wash. 208; 16 Wash. 7, 73; 28 Wash. 456; 34 Wash. 318; 50 Wash. 503; 52 Wash. 3; 53 Wash. 562; 68 Wash. 683; 70 Wash. 105; 75 Wash. 463; 78 Wash. 477; 82 Wash. 392; 86 Wash.

535; 89 Wash. 121; 90 Wash. 523; 100 Wash. 610; 103 Wash. 336; 109 Wash. 212.

Solvency of Grantor: See *Remington's Digest*, Fraud. Conv., § 20; *Klosterman v.*

Harrington, 11 Wash. 138, 39 Pac. 376; Carkeek v. Boston Nat. Bank, 16 Wash. 399, 47 Pac. 884; Ruuth v. Morse Hardware Co., 74 Wash. 361, 133 Pac. 587; Petrovitsky v. Smith, 86 Wash. 151, 149 Pac. 641; Peterson v. Badger State Land Co., 86 Wash. 530, 150 Pac. 1187.

Burden of Proof: See Remington's Digest, Fraud. Conv., § 83; Shoemake v. Stimson, 16 Wash. 1, 47 Pac. 218; Kalinowski v. McNeny, 68 Wash. 681, 123 Pac. 1074; Dill v. Carver, 70 Wash. 103, 126 Pac. 86; Patterson v. Bowes, 78 Wash. 476, 139 Pac. 225; Peterson v. Badger State Land Co., 86 Wash. 530, 150 Pac. 1187; Crandall v. Lee, 89 Wash. 115, 154 Pac. 190; Browitt v. Fiegle, 103 Wash. 334, 174 Pac. 444.

Weight of Evidence: See Remington's Digest, Fraud Conv., § 93; Liebenthal v. Price, 8 Wash. 206, 35 Pac. 1078; Kemp v. Folsom, 14 Wash. 16, 43 Pac. 1100; Allen v. Chambers, 18 Wash. 341, 51 Pac. 478; Bates v. Drake, 28 Wash. 447, 68 Pac. 961; Budlong v. Budlong, 32 Wash. 672, 73 Pac. 783; Canedy v. Skinner, 50 Wash. 501, 97 Pac. 497; Adams v. Wingard, 53 Wash. 560, 102

Pac. 426; Smith v. Weed, 75 Wash. 452, 134 Pac. 1070; Benham v. Hawkins, 82 Wash. 390, 144 Pac. 532.

See, also, Smith v. Weed, 75 Wash. 452, 134 Pac. 1070; Peterson v. Badger State Land Co., 86 Wash. 530, 150 Pac. 1187; Truitt v. Truitt, 100 Wash. 608, 171 Pac. 532; Union Sav. & Trust Co. v. Manney, 101 Wash. 274, 172 Pac. 251.

The transfer by a husband to a wife of corporate stock in pursuance of a pre-nuptial agreement is supported by a sufficient consideration and will not be held fraudulent as to community property creditors where there were no facts or circumstances to overcome the positive oral evidence as to the bona fides: Burgess v. Conforth, 109 Wash. 150, 186 Pac. 263.

Burden of proof as to fraud against creditors in transfer from husband to wife. 56 L. R. A. 823.

Effect on rights of parties of purchase by husband and conveyance to wife in fraud of creditors. Ann. Cas. 1915C, 1091; Ann. Cas. 1917B, 225.

§ 5829. [5293.] Contracts of Minors, Liability.

A minor is bound, not only by contracts for necessities, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money and property received by him by virtue of the contract, and remaining within his control at any time after his attaining his majority. [L. '66, p. 92, § 2; 1 H. C., § 2433.]

Cited in 34 Wash. 550.

Ratification: Johnston v. Gerry, 34 Wash. 524, 76 Pac. 503.

What constitutes reasonable time for disaffirmance of contract by infant after majority. Ann. Cas. 1917D, 413.

Necessity of returning consideration in order to disaffirm infant's contract. 26 Am. Dec. 734; 46 Am. Rep. 317; 26 L. R. A. 177.

Right of infant to disaffirm contract or conveyance before majority. 51 L. R. A. (N. S.) 28.

§ 5830. [5294.] Disaffirmance of Contracts Prohibited, When.

No contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reasons to believe the minor capable of contracting. [L. '66, p. 93, § 3; 1 H. C., § 2434.]

A minor, before coming of age, may repudiate his contract with attorneys to prosecute an action for personal injuries, and his application for the appointment of a general guardian and the making of an independent settlement sufficiently indicates his intention to repudiate the contract: Plummer v. Northern Pac. R. Co., 98 Wash. 67, 167 Pac. 73.

Such contract cannot be sustained on

the theory that it was for necessities, as the minor is liable only for the reasonable value of necessities furnished: Plummer v. Northern Pac. R. Co., 98 Wash. 67, 167 Pac. 73.

The disaffirmance of such a contract by a minor makes it void ab initio, and avoids assignments of rights thereunder: Plummer v. Northern Pac. R. Co., 98 Wash. 67, 167 Pac. 73.

§ 5831. [5295.] Satisfaction of Contracts With Minor.

When a contract for the personal service of a minor has been made with him alone, and those services are afterward performed, payment made therefor to such minor in accordance with the terms of the contract is a full satisfaction for those services, and the parents or guardian cannot recover therefor. [L. '66, p. 93, § 4; 1 H. C., § 2435.]

CHAPTER II.**BULK SALES LAW.****§ 5832. [5296.] Vendee must Require Affidavit as to Creditors and Indebtedness.**

It shall be the duty of every person who shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, before paying to the vendor, or his agent, or representative, or delivering to the vendor, or his agent, any part of the purchase price thereof, or any promissory note, or other evidence therefor, to demand of and receive from such vendor, or agent, or if the vendor or agent be a corporation, then from the president, vice-president, secretary or managing agent of such corporation, a written statement, sworn to substantially as hereinafter provided, of the names and addresses of all the creditors of said vendor, to whom said vendor may be indebted, together with the amount of the indebtedness due or owing, and to become due or owing, by said vendor to each of such creditors; and it shall be the duty of said vendor, or agent, to furnish such statement, which shall be verified by an oath to the following effect:

State of Washington, }
County of —, } ss.

Before me personally appeared — (vendor, or agent, as the case may be), who being by me first duly sworn upon his oath doth depose and say that the foregoing statement contains the names of all of the creditors of — (the name of the vendor) together with their addresses, and that the amount set opposite each of said respective names is the amount now due and owing, and which shall become due and owing by — (vendor) to such creditors, and that there are no creditors holding claims due, or which shall become due for or on account of goods, wares or merchandise purchased upon credit or on account of money borrowed to carry on the business of which said goods are a part, other than as set forth in said statement, and in his affidavit, are within the personal knowledge of affiant.

Subscribed and sworn to before me this — day of —, 190—.

(Title of officer taking oath.)

[L. '01, p. 222, § 1.]

Cited in 63 Wash. 215; 72 Wash. 339; 74 Wash. 403; 79 Wash. 129; 85 Wash. 456; 86 Wash. 418; 87 Wash. 330, 332, 449; 90 Wash. 392; 100 Wash. 19; 104 Wash. 322, 324; 110 Wash. 681.

Sales of Stock in Bulk: See Remington's Digest, Fraud. Conv., § 14; McDaniels v. Connelly Shoe Co., 30 Wash. 549, 71 Pac. 37, 94 Am. St. Rep. 89, 60

L. R. A. 947; Fitz Henry v. Munter, 33 Wash. 629, 74 Pac. 1003; Seattle Brewing etc. Co. v. Donofrio, 34 Wash. 18, 74 Pac. 823; Plass v. Morgan, 36 Wash. 160, 78 Pac. 784; Elklund v. Hopkins, 36 Wash. 179, 78 Pac. 787; Albrecht v. Cudihee, 37 Wash. 206, 79 Pac. 628; Olwell v. Gordon & Co., 40 Wash. 185, 82 Pac. 180; Everett Produce Co. v.

Smith Bros., 40 Wash. 566, 82 Pac. 905, 111 Am. St. Rep. 979, 5 Ann. Cas. 798, 2 L. R. A. (N. S.) 331; Maskell v. Spokane Cycle & Auto Supply Co., 100 Wash. 16, 170 Pac. 350, L. R. A. 1918C, 920; McAvoy v. Jennings, 44 Wash. 79, 87 Pac. 53; Mooney v. Mooney Co., 71 Wash. 258, 128 Pac. 225; Stewart & Holmes Drug Co. v. Reed, 74 Wash. 401, 133 Pac. 577; Continental Distributing Co. v. Swanson, 79 Wash. 128, 139 Pac. 865; Globe Electric Co. v. Montgomery, 85 Wash. 452, 148 Pac. 596; Daniels v. Pacific Brewing & Malting Co., 86 Wash. 416, 150 Pac. 609; Kasper v. Spokane Merchants' Assn., 87 Wash. 447, 151 Pac. 800; Kohn v. Fishbach, 36 Wash. 69, 78 Pac. 199, 104 Am. St. Rep. 941; Friedman v. Branner, 72 Wash. 338, 130 Pac. 360; Friend v. Rosenfeld-Rovig Co., 87 Wash. 329, 151 Pac. 776.

Under the trust fund doctrine, a creditor of an insolvent corporation who in good faith purchases all the assets, assuming all debts under misrepresentations, is liable to the trustee in bankruptcy although not liable under the bankruptcy act; and is not protected by compliance with this section: Williams v. Davidson, 104 Wash. 315, 176 Pac. 334, 181 Pac. 874.

In such case, the liability on securing the preference is limited to the pro rata share which excluded creditors would have been entitled to upon a ratable distribution of the assets: Williams v. Davidson, Id.

Where the purchaser of a stock of goods in bulk took possession and paid most of the purchase price before he demanded or received the list and affidavit of creditors provided by this and the next section, the transfer is fraud-

ulent as to creditors and void: Gregg v. Reisinger, 110 Wash. 680, 188 Pac. 765.

A creditor who took a note secured by mortgage on real estate is a creditor within the meaning of the sales-in-bulk act: Gregg v. Reisinger, 110 Wash. 680, 188 Pac. 765.

Constitutionality of statute prohibiting sales of merchandise in bulk. 1 Ann. Cas. 557; 8 Ann. Cas. 452; 9 Ann. Cas. 234, 252; Ann. Cas. 1912C, 706; Ann. Cas. 1914C, 713; Ann. Cas. 1915C, 414; Ann. Cas. 1917B, 275; Ann. Cas. 1918A, 271; 2 L. R. A. (N. S.) 331; L. R. A. 1915E, 917.

Meaning of term "goods, wares, and merchandise" within bulk sales law. 5 Ann. Cas. 800.

Remedies of creditors for violation of bulk sales law. Ann. Cas. 1916C, 928; 39 L. R. A. (N. S.) 374; L. R. A. 1916B, 974.

Conveyance to creditor in payment of debt as sale under statute prohibiting sales of merchandise in bulk. 9 Ann. Cas. 332; 12 L. R. A. (N. S.) 174.

Applicability of bulk sales law to chattel mortgages and sales thereunder: 12 Ann. Cas. 345; 9 A. L. R. 473; 14 A. L. R. 753.

Applicability of bulk sales law to sales by farmer. 4 A. L. R. 132.

Applicability of Bulk Sales Act to hotel, restaurant, boarding-house, saloon, pool-hall, or livery-stable. 7 A. L. R. 1587.

Rights between parties to sale in violation of bulk sales law. 5 A. L. R. 1517.

§ 5833. [5297.] Failure to Require Affidavit or Protect Creditors Invalidates Sale.

Whenever any person shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, and shall pay any part of the purchase price, or execute or deliver to the vendor, thereof, or to his order, or to any person for his use, any promissory note, or other evidence of indebtedness for said purchase price, or any part thereof, without first having demanded and received from said vendor, or from his agent, the statement provided for in section 5832 and verified as there provided, and without paying, or seeing to it that the purchase money of the said property is applied to the payment of the bona fide claim of the creditors of the vendor as shown upon such verified statement, share and share alike, such sale, or transfer shall be fraudulent and void. [L. '01, p. 223, § 2.]

Cited in 87 Wash. 332, 450; 90 Wash. 392; 100 Wash. 19; 110 Wash. 682.

§ 5834. [5298.] False Affidavit, Perjury—Penalty.

Any vendor of any stock of goods, wares or merchandise in bulk, or any person who is acting for, or on behalf of any vendor, who shall knowingly or willfully make or deliver, or cause to be made or delivered a statement as provided for in section 5832 which shall not include the names of all creditors of such vendor with the correct amount due, and to become due to each of them or which shall contain any false or untrue statement, shall be deemed guilty of perjury, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years, or shall be fined in any sum not exceeding one thousand dollars. [L. '01, p. 224, § 3.]

Cited in 77 Wash. 390; 83 Wash. 423; 87 Wash. 332.

§ 5835. [5299.] Bulk Sale Defined—Waiver by Creditors.

Any sale or transfer of a stock of goods, wares or merchandise, or all or substantially all, of the fixtures and equipment used in and about the business of the vendor, out of the usual or ordinary course of business or trade of the vendor, or whenever substantially the entire business or trade theretofore conducted by the vendor, shall be sold or conveyed or whenever an interest in or to the business or trade of the vendor is sold or conveyed, or attempted to be sold or conveyed, shall be deemed a sale and transfer in bulk in contemplation of this act: Provided, however, that if such vendor produces and delivers a written waiver of the provisions of this act from his creditors as shown by such verified statements then and in that case the provisions of this section shall not apply. [L. '13, p. 610, § 4. Cf. L. '01, p. 224, § 4.]

Cited in 87 Wash. 450.

§ 5836. [5300.] Act not to Apply to Executors, etc.

Nothing in this chapter contained shall apply to executors, administrators, receivers, or any public officer acting under judicial process. [L. '01, p. 224, § 5.]

CHAPTER III.**TRADING STAMPS.****§ 5837. [5301.] Redeemable Cash Value to be Printed on Face.**

No person shall sell or issue any stamps, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in cents. [L. '07, p. 742, § 1.]

Constitutionality of laws prohibiting
trading stamps. 1 *Ann. Cas.* 48;

Ann. Cas. 1918D, 713; 2 *L. R. A.*
(*N. S.*) 588; *L. R. A.* 1918B, 383.

§ 5838. [5302.] Must Redeem at Cash Value.

Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount

stamp, check, ticket, coupon, or other similar device which will entitle the holder thereof, on presentation thereof either singly or in definite number, to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, shall upon presentation, redeem the same either in goods, wares or merchandise, or in cash, good and lawful money of the United States, at the option of the holder thereof, and any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [L. '07, p. 742, § 2.]

§ 5839. [5303.] Distributor Liable.

Any person engaged in any trade, business or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the person issuing or selling the same, as set forth in section 5838, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same, as set forth in section 5838, be liable to the holder thereof for the face value thereof, and shall upon presentation redeem the same, either in goods, wares or merchandise, or in cash, good and lawful money of the United States of America, at the option of the holder thereof, and in such case any number of such stamps, trading stamps cash discount stamps, checks, tickets, coupons or other similar devices, shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [L. '07, p. 743, § 3.]

§ 5840. [5304.] Penalty.

Any person, firm or corporation who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. [L. '07, p. 743, § 4.]

CHAPTER IV.

MISCELLANEOUS FRAUDS.

§ 5841. [5305.] Charges in Excess of Published Rates to be Refunded.

Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be pub-

lished, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharged, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight per cent per annum until paid. [L. '07, p. 407, § 1.]

§ 5842. [5306.] Newspaper Mailed Without Authority is Gift.

Whenever any person, company, or corporation owning or controlling any newspaper or periodical of any kind, or whenever any editor or proprietor of any such newspaper or periodical shall mail or send any such newspaper or periodical to any person or persons in this state without first receiving an order for said newspaper or periodical from such person or persons to whom said newspaper or periodical is mailed or sent, shall be deemed to be a gift, and no debt or obligation shall accrue against such person or persons, whether said newspaper or periodical is received by the person or persons to whom it is sent or not. [L. '90, p. 460, § 1; 1 H. C., § 2882.]

§ 5843. [5307.] Tolls for Grinding Grain.

The owners or occupiers of all mills in this state, moved by water or other power, shall be entitled to one-eighth part of all wheat, rye, or other grain ground and bolted, or ground and not bolted, and no more: Provided, however, said owner or occupier shall not be permitted to grind his own grain to the exclusion of other grists, when said mill is used and occupied as a grist-mill. [L. '54, p. 398, § 1; L. '63, p. 493, § 1; Cd. '81, § 2532; 1 H. C., § 2598.]

§ 5844. [5308.] Duty and Liability of Miller.

The owner or occupier of any grist-mill shall well and sufficiently grind the grain brought to his mill for that purpose in due time and in the order in which it shall be received, and shall be accountable for the safekeeping of all grain received in such mill for the purpose of being ground therein, and shall deliver it, when ground, or ground and bolted, as the case may be, with the bag or cask in which it was brought, when demanded, but every owner or occupier of a mill may grind his own grain at any time; and nothing in this section contained shall be construed to compel the owners or occupants of mills to grind for sale or merchant work. [L. '54, p. 398, § 2; L. '63, p. 493, § 2; Cd. '81, § 2533; 1 H. C., § 2599.]

§ 5845. [5309.] No Liability in Certain Cases.

Nothing contained in the preceding section shall be so construed as to charge the owner or occupant of any mill for the loss of any grain, bag, or cask, which shall happen by robbery, fire, or inevitable accident, without the fault of such owner or occupants, his agents or servants. [L. '54, p. 398, § 3; L. '63, p. 493, § 3; Cd. '81, § 2534; 1 H. C., § 2600.]

§ 5846. [5310.] Penalties and Liability.

Every miller, or owner or occupant of a grist-mill, who shall not well and sufficiently grind any grain as aforesaid, or not in due turn as the

same shall be brought, or who shall exact or take more toll than is herein allowed, shall in every such case be liable to a fine of not less than three nor more than twenty dollars, and shall also be liable to the party injured in double the actual damages sustained by him. [L. '54, p. 398, § 4; L. '63, p. 494, § 4; Cd. '81, § 2535; 1 H. C., § 2601.]

§ 5847. [5311.] Assistance in Carrying Grist.

Every owner or occupier of such grist-mill shall assist in carrying grists in and out of said mill, when the owner of such grist is unable to do the same. [L. '54, p. 398, § 5; L. '63, p. 494, § 4; Cd. '81, § 2536; 1 H. C., § 2602.]

CHAPTER V.

AUCTIONEERS.

§ 5848. [5312.] Auctioneers must Keep What Record.

Auctioneers are hereby required in all cases where property is offered them to be sold at auction, and when there is doubt or uncertainty on the part of the auctioneer as to the rightful ownership of such property, to keep in a book provided for the same a record or inventory of the property so offered for sale, together with any marks or brands found on such property; also a minute description and record of the person or persons offering such property for sale. [L. '90, p. 458, § 1; 1 H. C., § 2372.]

See *infra*, § 8341, *hawkers and peddlers*.

§ 5849. [5313.] Must Keep Records Open to Inspection, and Give Information.

The records required to be kept in the last preceding section shall be open at all times to inspection by anyone who may be interested in property which may have been stolen or unlawfully acquired, and auctioneers are hereby required in any case to give all information they may have of property received and sold, or offered for sale by them. [L. '90, p. 458, § 2; 1 H. C., § 2373.]

§ 5850. [5314.] Violation of Provisions—Penalty for.

Any person or persons violating any of the provisions of this chapter shall, upon conviction thereof, be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, or be imprisoned in the county jail not to exceed one year, or both fine and imprisonment, at the discretion of the court. [L. '90, p. 458, § 3; 1 H. C., § 2374.]

CHAPTER VI.

GAMBLING LOSSES AND CONTRACTS.

§ 5851. [5315.] Recovery of Money Lost at Gaming.

All persons losing money or anything of value at or on any of said games shall have a cause of action to recover from the dealer or player winning the same, or proprietor for whose benefit such game was played or dealt, or such money or things of value won, the amount of the money

or the value of the thing so lost. [L. '79, p. 98, § 3; Cd. '81, § 1255; 2 H. C., § 142.]

This chapter is part of the old Penal Code not repealed by the act of 1909. See § 2697, *supra*.

"Said games," refers to the gambling games described in Rem. & Bal. Code, § 2924.

Cited in 5 Wash. 223.

GAMBLING CONTRACTS AND TRANSACTIONS.—These provisions are fairly embraced within the title of the act, which reads "an act to prevent and punish gaming," and is valid: *Maling v. Crummey*, 5 Wash. 222, 31 Pac. 600.

Loans for Gambling Purposes: See *Remington's Digest*, Gaming, §§ 2, 3; *Catton v. Catton*, 69 Wash. 130, 124 Pac. 387; *Ash v. Clark*, 32 Wash. 390, 73 Pac. 351.

RIGHTS AND REMEDIES OF PARTIES: See *Remington's Digest*, Gaming, §§ 4—8; *McDonald v. Lund*, 13 Wash. 412, 43 Pac. 348; *Crowley v. Taylor*, 49 Wash. 511, 95 Pac. 1016; *Ash v. Clark*, 32 Wash. 390, 73 Pac. 351; *Way v. Territory*, 1 Wash. 415, 25 Pac. 461.

From whom recovery may be had of money lost in gaming. *Ann. Cas.* 1918E, 138.

Wife's right to recover money lost by husband in gambling. *Ann. Cas.* 1914C, 1081.

Joint liability to loser of persons winning bet. 8 *Ann. Cas.* 189.

Liability of one party to an arrangement to share profits from gambling for money lost by a third person to the other party. 23 *L. R. A. (N. S.)* 522.

Right of owner to recover his money gambled away by another without authority. 2 *A. L. R.* 345.

Right to recover money which the plaintiff placed in the hands of an agent to be used for gambling purposes. 3 *A. L. R.* 1635.

§ 5852. [5316.] Lease for Gambling Premises, How Terminated.

It shall be lawful for any person letting or renting any house, room, or shop, or other building whatsoever, or any boat, booth, garden, or other place, which shall, at any time, be used by the lessee or occupant thereof, or any other person with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid and terminate such lease or contract of occupancy, and to recover immediate possession of said boat, building, or other place above mentioned by an action at law for that purpose, to be brought before any justice of the peace of the county in which such use shall be permitted. [L. '79, p. 98, § 5; Cd. '81, § 1257; 2 H. P. C., § 143.]

See notes to last section.

The last part of this section, extending jurisdiction to justices of the peace, is invalid under Const., Art. IV, §§ 6, 10.

§ 5853. [5317.] Note, etc., for Gambling Debt Void—Exception.

All notes, bills, bonds, mortgages, or other securities, or other conveyances, the consideration for which shall be money, or other things of value, won by playing at any unlawful game, shall be void and of no effect as between the parties to the same and all other persons, except holders in good faith without notice of the illegality of such contract or conveyance. [Cf. L. '79, p. 98, § 2; Cd. '81, § 1254; L. '91, p. 125, § 21; 2 H. P. C., § 148.]

Cited in 32 Wash. 395.

Effect of Negotiable Instruments Act on statute invalidating instrument given for gambling consideration. 8 *L. R. A.* 314; 11 *A. L. R.* 211.

Defenses to notes and other obligations given for gambling debts. 119 *Am. St. Rep.* 172.

Fugitives. See §§ 2241—2256.

Gambling. See "Frauds," § 5851.

GAME.

TITLE XXXVIII.

GAME.

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CHAPTER I.

STATE GAME-WARDEN AND DEPUTIES.

§ 5854. [5319.] Powers and Duties—Deputies.

The state game-warden shall have full control and supervision over all county game-wardens appointed in pursuance to any statute now existing on the statute books of this state, and may have the power to appoint said county game-wardens special deputy fish commissioners for the county in which said county game-wardens may reside and shall have general supervision over the enforcement and execution of all laws of this state for the protection of game animals, game birds, song birds and game fish, and shall have all the authority and powers as a peace officer conferred on county game-wardens by any law of this state. [L. '99, p. 276, § 2.]

See infra, § 10874, duties devolve upon director of fisheries and game.

See infra, § 10893, state game warden abolished.

County wardens: See note to § 5858, infra.

Meaning of "game" as used in game laws. 20 Ann. Cas. 621.

§ 5855. [5320.] Annual Report to Governor.

The said state game-warden in connection with his report as said fish commissioner, shall annually, on December 1st, report to the governor of this state a full account of his actions as said state game-warden; also the operation and result of all laws pertaining to the protection of game animals, game birds and game fish. [L. '99, p. 276, § 3.]

See note to § 5854.

§ 5856. [5321.] Payment of Expenses of Deputy Fish Commissioners.

The expenses of the county game-wardens may be paid in the discretion of the state game-warden and state fish commissioner for all services performed by them as deputy fish commissioners, upon the request or direction of said state game-warden and said state fish commissioner, and said expenses when so audited and allowed are made payable out of the fish commissioner's traveling and incidental expense fund. [L. '99, p. 276, § 4.]

§ 5857. [5322.] Chief Deputy—Appointment—Salary and Duties of.

The duties of the chief deputy game-warden shall be to enforce all the provisions of law in reference to the protection of game and to prosecute all violations of law in reference thereto, to direct and supervise all acts of county and special deputy game-wardens, and to use all lawful ways and means to protect game and to encourage and secure the propagation thereof. [L. '05, p. 349, § 1.]

See infra, § 5898, penalty for violating this section.

See infra, § 10874, duties devolve upon director of fisheries and game.

See infra, § 10893, chief deputy game-warden abolished, and the first part of this section omitted as superseded.

Cited in 91 Wash. 55.

County game-wardens are state and not county officers and the act for their appointment is constitutional: State ex rel. Lopas v. Shagren, 91 Wash. 48, 157 Pac. 31.

The county commissioners, in the allowance of claims against the county

game fund, cannot determine the salary or the propriety of the expenditures, but act in an administrative or ministerial capacity with the right only to reject illegal claims: State ex rel. Beach v. Olson, 91 Wash. 56, 157 Pac. 34.

§ 5858. [5324.] County Wardens Ex-officio Deputy State Wardens — Oath.

All county game-wardens shall be ex-officio deputy state game-wardens, and shall have the same powers in the enforcement of the game laws of the state as the chief deputy state game-warden, and shall be under the direction and supervision of the chief deputy state game-warden. County game-wardens shall have power to appoint special game-wardens for his county, such special game-warden shall receive no salary but shall have same authority as other game-wardens; county game-wardens before entering upon their duties shall take and file with the county auditor of his county the oath of office as prescribed for other county officers, and shall be held responsible for neglect, or non-performance of his duties, and the county commissioners of any county may remove the county game-warden at any time for neglect or non-performance of duty. [L. '05, p. 350, § 3.]

See *infra*, § 5898, penalty for violating this section.

§ 5859. [5325.] Duty of Game-warden—Certain Officers Ex-officio Game-wardens—Prosecutions.

It is hereby made the duty of every game-warden so appointed, and every sheriff, deputy sheriff, constable, city marshal and police officer, within their respective jurisdictions in the state of Washington, to enforce all the provisions of this act, and all laws for the protection of game birds and animals, fish and song birds, and such sheriffs, deputy sheriffs, constables, city marshals, police officers, or any forest rangers appointed by the United States government, and each of them, by virtue of their election and appointment, are hereby created and constituted ex-officio game-wardens for their respective jurisdictions, and they and each of them, and each and every game-warden so appointed, under the provisions of section 5323 of Remington & Ballinger's Code, shall have authority, and it shall be their duty to inspect all depots, warehouses, cold-storage rooms, store-rooms, hotels, restaurants, markets and all packages or boxes, held either for storage or shipment, which they shall have reason to believe contain evidence of the infraction of any of the provisions of this act. And if, upon inquiry said officer discovers evidence sufficient in his judgment to secure a conviction of the offender, or shall have good cause to believe that sufficient evidence exists to justify the same, he shall at once institute proceedings to punish the alleged offenders. [L. '97, p. 87, § 20; L. '01, p. 281, § 7.]

"This act" covers more than this chapter.

§ 5860. [5326.] Authority of Warden and Other Officers to Make Arrests.

Any game-warden appointed under the provisions of this chapter, any sheriff, deputy sheriff, city marshal, constable or police officer, forest ranger, may, without warrant, arrest any person by him found violating any of the provisions of this chapter, or any other act or acts hereafter enacted and enforced, at any time for the protection of game, fish and song birds, and take such person or persons before a justice of the peace or municipal judge having jurisdiction, who shall proceed

without delay to hear, try and determine the matter, and give and enter judgment according to the allegations and proof. All such actions shall be brought in the name of the state of Washington and shall be prosecuted by the prosecuting attorney of the respective counties. [L. '97, p. 88, § 22; L. '01, p. 282, § 8.]

Liability of game-warden. **L. R. A.**
1918A, 839.

Game-warden as exempt from statute against carrying weapons.
Ann. Cas. 1914A, 256.

§ 5861. [5326-1.] Authority to Search—Prima Facie Evidence.

Any game-wardens, any sheriff, deputy sheriff, constable or police officer, shall have power to search without warrant any person and examine any conveyance, vehicle, game bag, game basket, game coat or other receptacle for game or game fish, and all cold-storage rooms, warehouses, markets, taverns, boarding-houses, restaurants, clubs, eating-houses, saloons and other places where game or game fish may be kept or sold, and to search and examine all packages or boxes, which he has reason to believe contain evidence of the infraction of the laws of this state, for the protection of wild fowl, trout or other game fish, game, game birds and song birds, and if upon diligent inquiry he can discover evidence sufficient in his judgment to secure the conviction of the alleged offenders or shall have cause to believe that sufficient evidence exists to justify the same he shall at once institute proceedings to punish the alleged offenders, and hindrance or interference with such search and examination shall be prima facie evidence of the violation of the laws by the party or parties who hinder or interfere with such search or examination. Any of the persons above mentioned may at any time seize and take possession of any and all game, wild fowl, game fish, game birds, song birds, or trout which has been caught, taken or killed at any time, in any manner, or for any purpose, or had in possession or under control or which have been shipped, contrary to the laws of the state. The search and seizure provided for in this act may be made without warrants. [L. '11, p. 396, § 2.]

Penalty for violating this section, see § 5906.

CHAPTER II.

GAME PRESERVES, ISLANDS, ETC.

§ 5862. [5330.] Establishment of County Game Preserve, Petition for.

The board of county commissioners of any county within this state may establish game reserves on any island within the borders of their respective counties, upon petition of two-thirds of the freeholders of any such island and upon the presentation of a petition signed by two-thirds of the resident freeholders of any island to the board of county commissioners of the county in which said island is situated. It shall be the duty of such board of county commissioners to designate a day upon which said petition shall be heard and to post notices to this effect in at least three conspicuous places on such island; said notices shall be posted at least ten days prior to such hearing. It may be the privilege of any resident on such island to appear at such hearing, and defend or oppose the granting of said petition. It shall be the duty

of the board of county commissioners to pass upon such petition within ten days after the said hearing and if it appears to them that the said petition is the wish of two-thirds of the freeholders of the said island it shall be their duty to make an order and have same entered in the official records of the board establishing said island as a game reserve. [L. '05, p. 247, § 1.]

See *infra*, § 5864, penalty for violating this section.

The evidence is insufficient to show that the game commission of S. county acted arbitrarily in setting aside as a game preserve the lands owned or leased by a gun club, influenced thereto, as alleged, by the fact that members of the gun club had refused to comply with an order of the commission to desist from "feeding" their grounds prior to the opening of the season, which order was without authority and was rescinded,

where every member of the commission testified that he was not influenced by the matter of "feeding," and it clearly appears that this land was selected only after a thorough investigation, and many testified that it was better adapted for a refuge, nesting and breeding place for birds than any other tract in the county, and that many varieties breed and nest there: *Cawsey v. Brickey*, 82 Wash. 653, 144 Pac. 938.

§ 5863. [5331.] Publication of Board's Order—Hunting on Reserve Prohibited.

A copy of the order of the board of county commissioners establishing any island as a game reserve shall immediately after such order is made be published three times in at least two newspapers of general circulation in the county and every person thereafter who shall injure, take, kill or destroy or have in his possession except for breeding purposes, sell or offer for sale any deer, blue grouse, ruffed grouse, sharp-tailed grouse, American pheasants, Mongolian pheasants, golden pheasants, bobwhite quail, or California quail taken from said reserve shall be guilty of a misdemeanor. [L. '05, p. 247, § 2.]

See *infra*, § 5864, penalty for violating this section.

§ 5864. [5332.] Penalty for Violating Preserve.

Every person convicted of a violation of any of the provisions of this chapter shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100) and in default of payment of fine imposed shall be imprisoned in the county jail of the county wherein the offense was committed until such fine shall have been paid at the rate of one day for each two dollars (\$2) of fine imposed. [L. '05, p. 248, § 3.]

§ 5865. [5334.] Deer on Islands—Hunting and Dogs Prohibited.

Every person who shall at any time pursue, take, kill or injure any deer, or shall knowingly permit any dog or dogs owned by him or under his control to chase, injure or destroy any of said animals, on any of the islands, in the state of Washington, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25) or more than one hundred dollars. [L. '05, p. 351, § 5.]

See, also, *infra*, § 5953.

This section is superseded in part by the next section.

See *infra*, § 5898, penalty for violating this section.

See *infra*, § 5953, a later enactment.

§ 5866. [5335.] Same—Open Season on Island in October.

It shall be lawful during the month of October of each year to hunt for, take and kill deer on any island of the state of Washington: Provided, it shall be unlawful to hunt for or kill any deer on said islands with dog or dogs, and any person knowingly permitting any dog or dogs owned by him to pursue deer on said islands shall be guilty of a misdemeanor and punished by fine of not less than twenty-five dollars or more than one hundred dollars: Provided, further, that this section shall not apply to any islands where game preserves have been established. [L. '07, p. 515, § 2.]

As to Mercer Island, Lake Washington, see *infra*, §§ 5868, 5869.

See *infra*, §§ 5903, 5964, later enactments as to deer, etc.

§ 5867. [5336.] Hunting on Certain Islands Prohibited.

Every person who shall, on any island in the state of Washington located in any fresh water lake, surrounded by navigable fresh water, and having an area exceeding five hundred acres, injure, take, kill, or destroy, or have in their possession except for breeding purposes, sell or offer for sale, any elk, deer, black, gray, or fox squirrels, blue grouse, ruffed grouse, sharp-tailed grouse, wild pigeons, prairie chickens, American pheasants, Mongolian pheasants, golden pheasants, bob-white quail, California quail, or woodcock, shall be guilty of a misdemeanor. [L. '95, p. 332, § 1.]

See *infra*, § 5868, penalty for violating this section.

This section is understood to apply only to Mercer's Island, in Lake Washington; See § 5869, *infra*.

§ 5868. [5338.] Penalty for Violating Last Section.

Every person convicted of a violation of any of the provisions of the last preceding section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, and in default of payment of fine imposed shall be imprisoned in the county jail of the county wherein the offense was committed until such fine shall have been paid at the rate of one day for each two dollars of fine imposed. All money collected from fines for the violation of the provisions of the last two preceding sections shall be paid into the general fund of the county for the benefit of the public schools in said county. [L. '95, p. 333, § 3.]

§ 5869. [5339.] Lake Washington Game Preserve.

It shall be unlawful to fire any gun or to kill, shoot, entrap, ensnare, maim, or destroy any wild birds at any season of the year upon the waters of Lake Washington, or within one mile of its shores, and any person who shall kill, shoot, entrap, ensnare, destroy, or maim any wild birds at any season of the year upon the waters of Lake Washington, or within one mile of the shores of said lake, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished as hereinafter provided. [L. '09, p. 98, § 1.]

Penalty: See next section.

Exceptions for scientific purposes. See § 5871.

§ 5870. [5340.] Penalty for Violating Preserve.

Any person violating any of the provisions of the preceding section shall, upon conviction thereof, be subject to a fine of not less than ten dollars nor more than one hundred dollars, together with the costs of prosecution, or imprisonment in the county jail where the offense is committed for not less than five days nor more than thirty days, or by such fine and imprisonment in the discretion of the court. [L. '09, p. 98, § 2.]

§ 5871. [5341.] Scientists With Certificates Excepted.

The last two preceding sections shall not apply to any person holding a certificate giving the right to take birds, their nests, or eggs, for scientific purposes, as now provided by law. [L. '09, p. 98, § 3.]

§ 5872. [5341-1.] Game Preserve in Pierce County.

Any person who shall hunt, take, kill, trap, snare, maim, destroy or molest any game bird, water fowls, shore birds or deer at any season of the year in that part of Pierce county, Washington, bounded by the waters of Puget Sound and Commencement Bay, and a line beginning where the line between townships 19 and 20 north intersects the easterly shore of Puget Sound, and running thence east to the corner common to sections 3 and 4, township 19 north, range 3 east and sections 33 and 34, township 20 north, range 3 east; thence due north to the shore of Commencement Bay, or upon the waters of Steilacoom Lake, Gravelly Lake, American Lake, Sequelitchew Lake or the islands therein, or within one mile of the shores of any of said lakes, or upon any part of sections 1, 2, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27 and 28, township 19 north, range 2 east, sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29 and 30, township 19 north, range 3 east, and section 34 and the south half of section 27, township 20 north, range 3 east, shall be guilty of a misdemeanor: Provided, that this act shall not apply to persons holding certificates giving the right to take birds, their nests or eggs, for scientific purposes, as now provided by law. [L. '11, p. 384, § 1; L. '13, p. 382, § 1.]

§ 5873. [5341-2.] Discharging Gun a Crime.

Any person who shall discharge any rifle within the above-described territory shall be guilty of a misdemeanor: Provided, that this section shall not apply to peace officers, officers or enlisted men in the United States army, and the officers and enlisted men in the National Guard of Washington, or any other state, while engaged in the performance of their respective duties as such officers or enlisted men: And provided further, that this section shall not apply to public or private shooting galleries or rifle ranges. [L. '11, p. 385, § 2; L. '13, p. 383, § 2.]

§ 5874. [5341-3.] Disposition of Fines.

All fines collected under the provisions of this act shall be turned over to the county treasurer and by him placed in the game protection fund. [L. '13, p. 383, § 3.]

§ 5875. Okanogan County Game Preserve.

Every person who shall, within that part of Okanogan county bounded and described as follows: "Beginning at Monument 95 on the international boundary between the United States of America and the Dominion of Canada, thence approximately south one mile to the head of Cathedral Creek, thence southerly along said creek to its juncture with Chewach River in approximately unsurveyed section 25, township 40 north, range 21 east, W. M., thence easterly along Chewach River to its juncture with Horseshoe Creek in approximately unsurveyed section 34, township 40 north, range 22 east, W. M., thence northeast up Horseshoe Creek approximately three and one-half miles, thence north approximately two and three-fourths miles to Monument 101 on the international boundary, thence west along said boundary to Monument 95, the place of beginning, containing approximately 27,280 acres," injure, take, kill or destroy, or have in possession, sell or offer for sale, at any season, any mountain goat or mountain sheep, shall be guilty of a gross misdemeanor. [L. '17, p. 331, § 1.]

CHAPTER III.**GAME FARMS FOR PROPAGATION AND SALE.****§ 5876. Licenses for Propagating—Fees.**

For the purpose of encouraging game farming and the domestication and propagation of game, a game farmer's license, which shall authorize the licensee to engage in the business of breeding and selling moose, caribou, elk, deer, beaver, otter, marten, mink and other wild animals or wild birds or game birds, as limited herein, shall be issued, subject to the provisions of this act, by the state game-warden to any responsible resident person duly applying therefor, such licenses to expire on March 31st following the date of its issuance. The fee for such license shall be ten dollars (\$10). After such license has been issued, it shall be valid as long as said licensee pays the state game-warden, for the benefit of the game fund, an annual fee of five dollars (\$5), unless otherwise determined under the provisions of this act: Provided, however, that this act shall not be construed to require the granting of licenses to public parks. [L. '19, p. 146, § 1.]

Under the game laws of the state as they existed from 1901 to 1911, inclusive, regulating the hunting of game, taking the word "possess" in connection with its context, wherein it is prohibited to "hunt, pursue, take, kill, injure, destroy or possess" any of the protected animals during the closed season prescribed in the act, it must have been the intention of the legislature to prohibit the taking of "possession" only

during the closed season; and there is nothing in any of the acts sufficiently broad to cover the possession of deer and game fowls which were reclaimed from their wild state and kept in an inclosure: *Graves v. Dunlap*, 87 Wash. 648, 152 Pac. 532, Ann. Cas. 1917B, 944, L. R. A. 1916C, 338.

Property right in wild animals. Ann. Cas. 1917B, 949.

§ 5877. Authority to Propagate and Sale.

Any responsible resident person of good character who is the holder of such license may bring within the state and have the custody of, for the purpose of domestication, propagation or selling, as in this act

provided, any game animals, or game birds. Any such game animals or game birds brought within the state or reared in captivity within the state may be sold or transported for propagation purposes or for food or other purposes if tagged as herein provided. [L. '19, p. 147, § 2.]

Regulation of sale or transportation
of game raised in captivity. 10
L. R. A. (N. S.) 1155.

Right of state to regulate the sale
of game raised in captivity. 12
Ann. Cas. 386.

§ 5878. Sale Regulations.

Any such licensee may possess, transport or sell any such wild animals or birds so brought into this state or raised in captivity within this state as hereinafter set forth. The flesh, horns, skins or carcasses of any such animals and the carcasses or plumage of such game birds may be possessed, transported or sold at any time, but only if tagged as directed by the state game-warden with an indestructible tag or seal to be approved by the state game-warden to the licensee upon payment of the actual cost thereof. When such game is used for food, such tags or seals shall remain attached to the carcass or parts thereof as aforesaid until the same has been consumed. In other cases, such tags or seals shall remain attached to such game or parts thereof until received by the purchaser thereof. [L. '19, p. 147, § 3.]

§ 5879. Sale Licenses for Hotels, etc.

The keeper of a hotel, restaurant, boarding-house or club, or any retail dealer in meats, may sell any such carcass or parts thereof, tagged and sealed as aforesaid, to any patron or consumer for actual consumption, after securing a license for such purposes from the state game-warden, which license shall cost five dollars (\$5) per annum. [L. '19, p. 147, § 4.]

§ 5880. Transportation by Common Carriers.

Any common carrier may at any time transport any such carcass or part thereof if tagged or sealed as aforesaid, but to every such package containing such tagged or sealed carcass or parts thereof, shall be affixed an additional tag or label upon which shall be plainly printed or written the name of the licensee, the name of the consignee, the name of the person by whom the same was tagged or sealed, and the number of carcasses or parts thereof contained therein. [L. '19, p. 147, § 5.]

§ 5881. Reports by Licensees.

Said licensee shall make quarterly reports on the first day of July, October, January and April to the state game-warden on blanks to be furnished by the state game-warden. Such report shall give a correct statement of the total number of such wild animals or birds owned, killed, transported or sold during said period under the provisions of this act, the names of the persons to whom the same were transported or sold, the names of the persons by whom the same were tagged and sealed, the increase of all classes of game, and such other data as the state game-warden may deem necessary for the proper protection of the public. Each such report shall be verified by the affidavit of the licensee. [L. '19, p. 148, § 6.]

§ 5882. Sources of Acquisition.

After first having obtained a permit from the state or county game-warden, it shall be lawful for any such licensee to obtain any number of wild animals or birds from the state game farms or from city park boards from another state or county, or from another licensee as herein provided. [L. '19, p. 148, § 7.]

§ 5883. Disposal of Eggs of Game Birds—Transfers Between Licensees.

After obtaining a permit from the state game-warden any such licensee may sell, give away or dispose of the eggs of any of the game birds lawfully in his possession, for propagation purposes only, and after said game animals or game birds have been taken or secured under the provisions of this act they may, with the consent of the game-warden be transferred from one licensee to another. [L. '19, p. 148, § 8.]

§ 5884. Game Farms.

Game birds or game animals maintained upon land inclosed, upon which notice has been posted that the same is a game farm, as provided in the preceding section, shall be the exclusive property of the licensed holder. [L. '19, p. 149, § 9.]

§ 5885. Inspection by Game-wardens.

The state game-warden or his deputies may, at any time enter upon the game farm of said licensee for the purpose of inspection thereof, or for the purpose of enforcing this act. [L. '19, p. 149, § 10.]

§ 5886. Penalty.

Any person willfully violating any of the provisions of this act shall be guilty of a misdemeanor and punished as provided by law. [L. '19, p. 149, § 11.]

CHAPTER IV.**OTHER THAN GAME BIRDS PROTECTED.****§ 5887. [5342.] Killing Seagulls.**

It shall be unlawful for any person in this state, or upon or about any of the waters or shores of this state, to take, injure, or kill, or endeavor to take, injure, or kill, any seagull of any kind or species. [L. '91, p. 29, § 1; 2 H. P. C., § 169.]

This and the next section seem to be covered by § 5890, *infra*.

§ 5888. [5343.] Penalty for Violating Last Section.

Any person violating any of the provisions of the last section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not less than five nor more than twenty-five dollars, and in default of payment of the fine imposed shall be imprisoned in the county jail for the period of one day for each two dollars of the fine so imposed. [L. '91, p. 29, § 2; 2 H. P. C., § 170.]

§ 5889. [5344.] Jurisdiction of Justices' and Other Courts.

Police justices or other magistrates of incorporated cities or towns, and justices of the peace (not excluding the jurisdiction of other courts), shall have jurisdiction over all proceedings under the last two sections. [L. '91, p. 29, § 3; 2 H. P. C., § 171.]

§ 5890. [5345.] Possession or Sale of Birds Prohibited—Game Birds Enumerated.

No person shall, within the state of Washington, kill or catch or have in his or her possession, living or dead, any wild bird other than a game bird, or purchase, offer or expose for sale, transport or ship within or without the state, any such wild bird after it has been killed or caught, except as permitted by this act. No part of the skin, plumage or body of any wild bird protected by this section shall be sold or had in possession for sale. For the purposes of this act the following only shall be considered game birds: The anatidae, commonly known as swans, geese, brant, and river and sea ducks; the rallidae, commonly known as rails, coots, mud hens and gallinules; the limicolae, commonly known as shore birds, plovers, surf birds, snipe, sand-pipers, tattlers and curlews; the gallinae, commonly known as grouse, prairie chickens, pheasants, partridges and quail. [L. '03, p. 256, § 1. Cf. L. '97, p. 86, § 16; Bal. Code, § 7360.]

See *infra*, § 5995, a later enactment.

Constitutionality of laws protecting
game. 42 *Am. St. Rep.* 138.
Constitutionality of game laws as

affected by the fact that game
protected is destructive of private
property. *L. R. A.* 1918C, 404.

§ 5891. [5346.] Destruction of Nests and Eggs Prohibited.

No person shall, within the state of Washington, take or needlessly destroy the nest or the eggs of any wild birds other than a game bird, or have such nest or eggs in his or her possession, except as permitted by this act. [L. '03, p. 257, § 2. Cf. L. '97, p. 86, § 17; Bal. Code, § 7361.]

See *infra*, § 5952, a later enactment.

§ 5892. [5348.] Exceptions as to Scientific Purposes.

The two preceding sections shall not apply to any person holding a certificate giving the right to take birds, their nests or eggs for scientific purposes, as provided for in the next section. [L. '03, p. 257, § 4.]

§ 5893. [5349.] Certificates for Scientific Purposes—Procedure to Obtain.

The chief game-wardens are authorized and empowered to issue permits for the collection of birds, their nests and eggs for scientific purposes only. Before any such permit shall issue the applicant therefor shall file an application in writing stating his name, age, place of residence, which application shall be accompanied by a certificate signed by the president or the curator of the museum of either the University of Washington or [or] the State College of Washington, certifying that the applicant is a person of good moral character and is possessed of sufficient scientific knowledge of ornithology to warrant the issuance of

such permit and the applicant shall file a bond running to the state of Washington with good and sufficient surety to be approved by the state game-warden in the penal sum of one thousand dollars, and conditioned for the faithful compliance with all of the provisions of this section: Provided, however, that the state game-wardens may issue permits to any accredited representative of any museum or institute of natural history of the United States or of any state presenting credentials under the seal of such museum or institute. All permits issued as hereinabove provided shall be valid for a period of one year from the first day of April in the year in which they are issued. It shall be unlawful for any person having a permit issued under the provisions of this section to sell or offer for sale any specimens collected but the holder of any such permit may exchange such specimen with any state university or any museum or institute of natural history of the United States or any state or with any individual holding a similar permit from the authorities of another state.

Every person violating any of the provisions of this section shall forfeit his permit and the bond required for the issuance of the same and shall be prohibited from being issued a similar permit for the period of five years. [L. '15, p. 429, § 6. Cf. L. '03, p. 257, § 5.]

§ 5894. [5350.] Term of Certificates.

The certificates authorized by this act shall be in force one year only from the date of issue, and shall not be transferable. [L. '03, p. 258, § 6.]

CHAPTER V.

PROHIBITED PURPOSES, APPLIANCES AND METHODS OF HUNTING.

§ 5895. [5352.] Killing Deer, Elk, etc., for Hides Prohibited.

Every person who shall, within the state of Washington, at any time, take, kill or destroy any deer, moose, elk, caribou, antelope, mountain sheep or goat for the skin, hide or horns of such animal, or who shall kill any of said animals unless the carcass thereof is used or preserved for food, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [L. '97, p. 83, § 6.]

See *infra*, § 5901, penalty for violating this section.

§ 5896. [5353.] Not to Fire-hunt, Trap, nor Ensnare Deer, Elk, etc.

Every person who shall, within the state of Washington, fire-hunt for deer, moose, elk, antelope, caribou, mountain sheep or goat, or trap, ensnare or set up any traps, swivel, pivot or spring-guns, pitfalls, or other devices for the purpose of trapping, ensnaring or killing deer, elk, moose, caribou, antelope, mountain sheep or goat, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [L. '97, p. 83, § 5.]

See *infra*, § 5954, a later enactment.

See *infra*, § 5901, penalty for violating this section.

See *infra*, § 5973, artificial lights.

§ 5897. [5355.] Exceptions.

The provisions of sections 5895, 5896 and 5899—5901 inclusive shall not apply to persons engaged in prospecting for mines of precious minerals upon the public domain to the extent of the personal need only of such prospector. [L. '97, p. 88, § 23.]

For the most part, this section is now superseded by the present laws governing the closed season.

The sections are substituted for Bal. Code, §§ 7345—7366.

§ 5898. [5356½.] Penalty.

Anyone violating any of the provisions of this act for which a penalty is not hereinbefore provided, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50) or imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment. [L. '05, p. 353, § 13.]

"Act" refers to §§ 5857—5858, 5865, 5898, 5902, 5904, 5911 and 5912.

§ 5899. [5357.] Nest-robbing Prohibited.

Every person who shall, within the state of Washington, at any time, destroy or remove from the nest the egg or eggs of any wild duck, geese, or other water fowl; or the egg or eggs of any Mongolian or native pheasant, grouse, ptarmigan, prairie chicken, sage hen, partridge, quail or bobwhite, or of any other wild fowl, or have in his possession, sell or offer for sale, any such egg or eggs, or willfully destroy the nest of any such wild fowl, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [L. '97, p. 84, § 11.]

See *infra*, § 5952, a later enactment.

See *infra*, § 5901, penalty for violating this section.

§ 5900. [5358.] Use of Sink-boxes, Sneak Boats, etc., Prohibited.

Every person who shall use any sink-box or sink boat or sneak boat for the purpose of shooting wild ducks, geese, swan or other water fowl, or who shall use any battery, swivel or pivot gun, or any gun other than one to be held in the hands and fired from the shoulder, at any time, for the purpose of shooting wild ducks, geese, swan, brant or other water fowl; or who shall build any structure in any of the waters of this state for the purpose of shooting therefrom wild ducks, geese, swan, or other water fowl; or who shall at any time between one-half hour after sunset and one-half hour before sunrise fire off any gun or build any fire or flash any light, or burn any powder or other inflammable substance upon the shores of any feeding grounds frequented by wild ducks, geese, swan or other water fowl, with intent thereby to shoot, kill, injure, destroy or disturb any of such water fowl, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided.

The term "sneak boat" as used in this act shall be deemed to mean any boat, skiff, steam or gasoline launch, or floating battery, except

an ordinary open rowboat or canoe propelled by hand with side oars, such oars to be not less than five (5) feet in length and one oar to be used on each side of the boat or canoe. All occupants of such boat or canoe to be in an upright position so that at all times they shall be visible from the waist up while in pursuit of such ducks, geese, brant or other water fowl. [L. '13, p. 90, § 1. Cf. L. '97, p. 84, § 10.]

See *infra*, § 5901, penalty for violating this section.

See *infra*, § 5954, prohibited devices, a later enactment.

See *infra*, § 5971, shooting restrictions.

§ 5901. [5358½.] Penalty, Defined—Possession Prima Facie Evidence.

Every person convicted of any of the misdemeanors defined in the foregoing sections 5895, 5896, 5899 and 5900 inclusive shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, together with the cost of the prosecution in such action, and in default of the payment of said fine, shall be imprisoned in the county jail one day for each two dollars of such fine; and upon the trial of any person, agent or employee of a company or corporation, proof of the possession of the wild animals, birds, or song birds, when it is unlawful to take, kill or have same, shall be prima facie evidence that the said wild game animal, game bird, or song bird, was unlawfully taken or killed by the person having possession of same. [L. '97, p. 86, § 18.]

Sections substituted for Bal. Code, §§ 7345—7361.

§ 5902. [5359.] Blinds Allowed

It shall be lawful within the time herein when any goose, duck or brant may be killed, to hunt or pursue them from any blind or obstruction: Provided, that this shall not be construed to include sneak boats. [L. '05, p. 353, § 12.]

CHAPTER VI.

OPEN SEASON, BAG LIMIT, PROHIBITED PLACES, POSSESSION, SALES, ETC.

For former game laws, see the following:

Closed season for deer, etc., see L. '97, p. 82, §§ 2, 4; L. '99, p. 277, § 1; L. '01, p. 279, § 2; L. '03, p. 94, § 1.

Closed season for moose, caribou, elk, mountain sheep, etc., see L. '97, p. 82, § 1; L. '01, p. 297, §§ 1, 2; L. '03, p. 95, § 2.

Quail—Closed season for, see L. '03, p. 96, § 7. Okanogan county—Quail protected until 1912, see L. '07, p. 515, § 3.

Closed season for grouse, partridges, prairie chicken, sage hen, pheasant, etc., see L. '97, p. 83, § 7; L. '97 p. 85, § 15; L. '01, p. 233, § 1; L. '01, p. 280, § 3; L. '03, p. 95, § 3.

Closed season for all male pheasants in Western Washington, see L. '05, p. 352, § 10.

Mongolian or imported pheasants—Closed season, see L. '07, p. 514, § 1.

Pheasants protected in Skagit and Snohomish counties until 1911—Penalty, see L. '09, p. 632, §§ 1, 2.

Partridge, quail and pheasants, protected until 1912, see L. '09, p. 388, § 1.

Limit—Prairie chickens, grouse, pheasants, etc., see L. '03, p. 96, § 4.

Limit—Ducks, geese, snipe, brant—No shooting from launch, see L. '03, p. 96, § 6.

Rail, plover—Closed season—Bag limit, see L. '97, p. 83, § 8; L. '99, p. 7, § 1; L. '01, p. 280, § 4.

Closed season—Wild geese and brant, see L. '05, p. 353, § 11.

Unlawful to hunt water fowl in certain counties, see L. '05, p. 352, § 8.

Ducks, geese, etc.—Closed season for, see L. '03, p. 96, § 5.

§ 5903. [5360.] Deer, Mountain Sheep and Caribou—Open Season—Limit—Killing in Water.

Every person who shall, within the state of Washington at any time between the first day of November and the first day of September of the following year, hunt, pursue, take, kill, injure, destroy or possess any deer, mountain goat, mountain sheep or caribou shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. Every person who shall, within the state of Washington, during the season when it is lawful to kill same, take or kill more than two deer, or shall kill any female deer or spotted fawn, shall be guilty of a gross misdemeanor, and, upon conviction thereof, shall be punished as hereinafter provided. Every person who shall at any time shoot or kill in any manner a deer when such deer is in any river or lake, or body of salt water, or shall hunt or chase deer with dogs, shall be deemed guilty of a gross misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [L. '11, p. 395, § 1. Cf. L. '09, Ex. Sess., p. 42, § 1.]

Penalty for violating this section, see § 5906.

See infra, § 5910, penalty.

See infra, § 5965, a later enactment.

Cited in 87 Wash. 656.

§ 5904. [5363½.] Geese and Water Fowl on the Columbia and Snake Rivers.

It shall be unlawful to hunt, pursue, catch, or kill any of the geese, brant, or other water fowl upon the Columbia or Snake rivers within this state or within one-fourth mile of the shores throughout the following named counties: Klickitat, Walla Walla, Franklin, Yakima, Kittitas, Douglas, Columbia, Garfield, Benton, Grant and Whitman counties. [L. '15, p. 429, § 5. Cf. L. '05, p. 352, § 8.]

See supra, § 5898, penalty for violating this section.

See infra, § 5957, ducks, geese and migratory birds, a later enactment.

§ 5905. [5364-1.] Notice of Liberation of Imported Birds.

Whenever any species of game birds shall have been liberated in any county of this state by the county game commissions, such commissions may, with the consent of the owners of the land, close all or any portion of the county by giving notice thereof by publication for three successive weeks in a newspaper published in the county and thereafter it shall be unlawful to hunt, take, kill or molest any such species of birds within such designated area for not to exceed three (3) years after the date of the first publication of such notice. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '15, p. 429, § 4. Cf. L. '11, p. 397, § 5.]

Penalty for violating this section, see § 5906.

§ 5906. [5364-2.] Penalty.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor. [L. '11, p. 397, § 6.]

"Act" in this section refers to sections 5903, 5905, 5907 and 5925.

§ 5907. [5365-1.] Sale of Birds.

It shall be unlawful for any person at any time to sell or offer for sale any of the song birds, game birds or game animals protected by the laws of the state of Washington. [L. '11, p. 397, § 3.]

Penalty for violating this section, see § 5906.

See *infra*, § 5960, a later enactment.

§ 5908. [5366.] Each Killing Separate Offense.

The killing of any bird or single animal protected by the laws of the state shall constitute an offense, and each bird or animal so killed shall constitute a separate offense. [L. '09, Ex. Sess., p. 46, § 7.]

See *infra*, § 5910, penalty.

§ 5909. [5368.] Fines—Disposition—Share to Informer.

Every person other than a regular salaried game-warden or peace officer entering a complaint that any of the provisions of this act are violated and a conviction is secured thereon, shall be entitled to one-half of the fine imposed and collected by the court in such action: Provided, that said reward to the informer shall never exceed the sum of twenty-five dollars. [L. '09, Ex. Sess., p. 46, § 9. Cf. L. '97, p. 87, § 21; Bal. Code, § 7365; L. '03, p. 98, § 13.]

§ 5910. [5369.] Penalty—Misdemeanor.

Every person violating any of the provisions of this act shall be deemed guilty of a misdemeanor. [L. '09, Ex. Sess., p. 46, § 10.]

"This act" refers to the preceding sections of this chapter, except § 5904.

§ 5911. [5370.] Elk Protected Until 1915—Closed Season After 1915.

After the passage of this act and until October 1, 1915, it shall be unlawful to hunt, pursue, capture or kill any of the elk (*cervus alces*, or *cervus canadensis*) within the state of Washington. After 1915 it shall be unlawful to hunt, pursue, capture or kill any of the elk (*cervus alces*, or *cervus canadensis*) within the state of Washington between the first day of November of any year and the fifteenth day of September of the following year. No person shall within the state of Washington during the season when it is lawful to kill the same, kill more than one of the male elk (*cervus alces* or *cervus canadensis*). Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100), or more than five hundred (\$500), or be imprisoned in the county jail not less than thirty days nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. [L. '05, p. 351, § 7.]

"This act" refers to Laws of 1905.

Penalty: See § 5898, *supra*.

See *infra*, § 5964, a later enactment.

§ 5912. [5373.] Nonresidents Permitted to Remove Game—Affidavit.

Every nonresident or nonresident alien who shall have procured a license to hunt in this state, shall be entitled to take from the state all

game animals killed by him, not to exceed the number of each of said game animals as is allowed by law to be killed in any one year, and game birds killed by him not to exceed the number allowed by law to be killed by any person in any one day; but before any person shall be entitled to take any such game out of this state he shall make an affidavit before a notary public or other officer having a seal, stating that the game to be so removed from the state was killed by him in a lawful manner, and that the said game is not being exported for the purpose of sale. Such affidavit shall describe said animals or birds and shall be attached to said animals or birds while in transit from the state. [L. '05, p. 350, § 4.]

See supra, § 5898, penalty for violating this section.

§ 5913. [5374.] Shipments of Quail and Pheasants Prohibited from San Juan and Island Counties.

Any person, persons or corporation who shall take away, ship or transport from the islands comprised within the limits of the boundaries of either San Juan or Island counties in the state of Washington, any quail or bobwhite, or any Chinese, English, golden, Reeves, Mongolian, silver, black-neck, or Japanese pheasants shall be guilty of a misdemeanor, and upon conviction of any violation of the provisions of this act, shall be punished by a fine of not less than ten dollars (\$10) or more than one hundred dollars (\$100) for each offense, or imprisonment in the county jail for a period of not less than thirty days, nor more than six months, or by both fine and imprisonment in the discretion of the court. [L. '09, p. 644, § 1.]

"Act" refers to §§ 5913—5916.

§ 5914. [5375.] Each Bird Shipped a Separate Offense.

Each bird so shipped, taken away, or transported from said islands as aforesaid shall constitute a separate offense under this act. [L. '09, p. 644, § 2.]

See note to § 5913.

§ 5915. [5376.] Act Does not Apply to Breeders.

The provisions of this act shall not apply to any person, or persons or corporation who may be engaged, or shall hereafter be engaged in the business of propagation, raising or breeding of any aforesaid described birds; or to any of said birds which may have been propagated, bred and raised in captivity for commercial or domestic purposes. [L. '09, p. 644, § 3.]

See note to § 5913.

§ 5916. [5377.] Act Applies to Game Birds Only.

This act only applies and is intended to apply to wild game birds, such as have been described herein. [L. '09, p. 645, § 4.]

See note to § 5913.

§ 5917. [5378.] Sales of Propagated Game Permitted.

It shall be lawful for the owner of any game bird, game fish or game animal who has propagated the same or purchased the same from persons

who have propagated them to sell or dispose of by gift for propagation purposes only, and to ship the same at any season of the year. [L. '09, p. 702, § 1.]

CHAPTER VII.

GAME FISH.

§ 5918. [5381.] Trout to be Taken Only with Hook and Line.

Every person who shall, within the state of Washington, take, catch, or destroy, with any seine, net, weir, trap, or other device, other than hook and line, any mountain trout, brook trout, bull trout, or salmon trout, in any of the waters of the state of Washington, shall be guilty of a misdemeanor. [Cf. L. '88, p. 98, § 9; L. '91, p. 179, § 2; 2 H. P. C., § 269.]

See *infra*, § 5920, penalty.

See *infra*, § 5963, method of fishing, a later enactment.

See *infra*, § 5981, size of trout.

§ 5919. [5382.] Possession Presumption of Unlawful Taking.

Every person who shall, within the state of Washington, have in his possession any of the fish mentioned in section 5380, [of Rem. & Bal. Code,] at any time when by any of said section it is made unlawful to take or kill the same, shall be guilty of a misdemeanor; and proof of the possession by any person of any of the aforesaid fish, when it is unlawful to take or kill the same, shall be prima facie evidence that the fish were unlawfully taken or killed by the person having possession of the same, within the county wherein the same may be found. [Cf. L. '88, p. 98, § 10; L. '91, p. 132, § 43; 2 H. P. C., § 270.]

This section is superseded in part by the last chapter, and is retained as applicable to fish only. Rem. & Bal. Code, § 5380, was repealed by L. '13, p. 380, § 53.

See *infra*, § 5962, a later enactment.

§ 5920. [5383.] Penalty for Violation of Certain Preceding Sections.

Every person who shall, within the state of Washington, be convicted of a violation of any of the provisions of sections 5380 [of Rem. & Bal. Code]; and 5918, of this code, shall be punished by a fine of not less than ten dollars and not more than three hundred dollars, together with the costs of prosecution, or imprisonment in the county jail where the offense is committed not less than five days nor more than three months, or both such fine and imprisonment. One-half of all moneys collected from such fines for a violation of any of the provisions of said sections shall be paid to the informer, and one-half to the county in which the case is prosecuted. [L. '88, p. 99, § 14; 2 H. P., § 273.]

This section is superseded in part by the last chapter, and is retained as applicable to fish only. Rem. & Bal. Code, § 5380, was repealed by L. '13, p. 380, § 53.

§ 5921. [5387.] Fish Commissioner may Take Game Fish Within Mile of Hatcheries.

It shall be lawful at all times for the state fish commissioner, the general superintendent of state fish hatcheries, and assistants, to take trout and other game fish by means of hook and line or nets at any place

within one mile of any state fish hatchery operated for the propagation of salmon: And provided, that the provisions of this section shall also apply to superintendents of salmon hatcheries operated by the United States bureau of fisheries in this state. [L. '09, p. 646, § 3.]

§ 5922. [5388.] Closed Season — Trout, Bass, Pickerel, Pike — Eastern Washington.

It shall be unlawful for any person in the state of Washington in any of the counties lying east of the western boundary of the counties of Okanogan, Chelan, Kittitas, Yakima, and Klickitat, to take, capture, catch or kill in any of the lakes or streams therein, or have in their possession after the same has been so unlawfully taken, any trout, bass, perch, pickerel, or pike, between the first day of November and the first day of May of the following year. [L. '09, p. 578, § 1.]

See *infra*, §§ 5926, 5927.

See *infra*, § 5963, closed season, a later enactment.

See *infra*, § 5981, size of trout.

§ 5923. [5390.] Limit of Catch.

It shall be unlawful for any person to take, capture, catch or kill more than twenty pounds of trout, bass or perch in any one day and no person shall have in his or her possession at any one time more than thirty pounds of such trout, bass or perch, which may have been caught in the waters above described. [L. '09, p. 579, § 4.]

See note to last section.

See *infra*, § 5963, limit for fish, a later enactment.

§ 5924. [5391.] Penalty.

Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars, together with the costs of prosecution of such action, and in default of the payment of any fine imposed under this act, shall be imprisoned in the county jail one day for each two dollars of such fine. [L. '09, p. 579, § 5.]

"Act" refers to this and the last two preceding sections.

§ 5925. [5391-1.] Notice of Stocked Streams or Lakes.

Whenever the chief game-warden, or the chief deputy or any of the county game commissions of the respective counties of the state shall consider that the protection of the game fishes mentioned in this act shall require it, the chief game-warden or the chief deputy game-warden, anywhere in the state, or the county game commissions, within their respective counties, may close to fishing any stream, river or lake, or portions thereof, for such time and in such manner as they may declare, in the following manner, to wit: They shall post in the office of the county auditor of the county or counties in which the stream or streams or lakes desired to be closed are situated, a notice that on a date set out in said notice, which date shall not be less than thirty (30) days from the date of the notice, said stream or streams, or lakes will be closed to public fishing, and shall cause a like notice to be published weekly, in some

newspaper published in said county or counties, for not less than four (4) successive issues.

Any person fishing in that part or portion of said lake, stream or streams after it shall have been closed, as by this act provided, shall be guilty of a misdemeanor. [L. '15, p. 428, § 3. Cf. L. '11, p. 397, § 4.]

Penalty for violating this section, see § 5906.

§ 5926. [5392.] Garfield and Columbia Counties Excepted.

Provided, that this act shall not apply to Garfield or Columbia counties. [L. '09, p. 579, § 7.]

"Act" refers to §§ 5922—5926.

§ 5927. [5393.] Trout—Closed Season in Chelan County—Lake Chelan.

It shall not be lawful for any person or persons to take, capture, catch or kill from any of the lakes or streams within the county of Chelan, or to have in their possession after the same have been taken, captured, caught or killed, any trout between the first day of April and the tenth day of June in each year: Provided, that it shall be lawful to take with hook and line only, from Lake Chelan in said county, at any time of the year, except between the first day of April and the tenth day of June, trout not exceeding in amount that which shall be actually used as food at home or in camp along the shore of said lake; and provided, further, that it shall be unlawful to waste, sell, salt or pack for future use, any trout taken from any of the waters of said Chelan county; and provided, further, that it shall be unlawful for any persons to fish with spawn, or trout eggs in said lake or in any of the streams emptying into it; and that it shall be unlawful to fish or to take fish in any way or at any time from any stream tributary to Lake Chelan on which a state hatchery is located. [L. '03, p. 54, § 1; L. '05, p. 83, § 1; L. '07, p. 574, § 1.]

See, also, *supra*, § 5922.

See *infra*, § 5963, limit for fish, a later enactment.

§ 5928. [5393-1.] Black Bass and Perch in Silver Lake, Cowlitz County.

Every person who shall—

(1) Fish for or catch black bass or perch in the waters of Silver Lake, in Cowlitz county, between the fifteenth day of April and the fifteenth day of June in any year, or

(2) Fish for, or catch black bass or perch in the waters of such lake at any time except with hook or line, or

(3) Catch more than twelve black bass or twenty-five perch in the waters of such lake, in any one day,

—Shall be guilty of a misdemeanor. [L. '11, p. 299, § 1.]

See *infra*, § 5963, limit for fish, a later enactment.

§ 5929. [5394.] Penalty.

Any person violating the provisions of section 5927 shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). [L. '03, p. 54, § 2.]

§ 5930. [5395.] Repeal.

All other laws relating to the close season for trout and other game fish shall be inoperative in the said county of Chelan after the passage of this act. [L. '03, p. 54, § 3.]

CHAPTER VIII.

GAME CODES OF 1913 AND 1921.

§ 5931. [5395-1.] County Game Commission.

A county game commission is hereby created, the said game commission to consist of three residents of each county, and there shall be a county game commission for each county in this state. [L. '13, p. 356, § 1.]

Cited in 82 Wash. 655; 87 Wash. 654; 91 Wash. 49.

The determination of what acts shall be prohibited is within the purview of the title of this act: State v. Allen, 80 Wash. 83, 141 Pac. 292.

A game law, extending to but five counties of the territory, does not contravene the organic law of the territory, which forbids the territorial legislature

from granting special privileges: Hayes v. Territory, 2 W. T. 286, 5 Pac. 927.

The determination of what acts shall be prohibited as detrimental to the protection of game fish, and making the use of nets in fresh waters a nuisance, is within the purview of the title of this act defined, in part, as an act for the protection of game fish: State v. Allen, 80 Wash. 83, 141 Pac. 292.

§ 5932. Regulation of Propagation, Protection, etc.

The director of fisheries and game through and by means of the division of game and game fish, shall have the management and authority to regulate the propagation and preservation of all game animals, game birds, game fish, and harmless birds and animals, and the collection of game fish spawn and the distribution of the same; also the distribution of fry and adult fish in any of the rivers, lakes and streams of the state, and the right to import such spawn and fry and adult fish as may be deemed advisable; and when so propagated, taken or imported, to distribute the same to the various counties as necessities and adaptabilities may require; also the right to purchase, sell, lease or exchange real or personal property; also the right at any season of the year to take any specimen or specimens of game animals, game birds or game fish, or migratory birds for informative, scientific or research purposes.

The county game commission shall be appointed on the recommendation of the board of county commissioners of each county, but in case the county commissioners fail to recommend such county game commissioners for appointment upon the request of the supervisor of game and game fish within ten days after written notice so to do, then and in that event the supervisor of game and game fish may appoint such commissioners.

The game commissioners for each county shall appoint a county warden. Each county warden shall receive a salary to be fixed by the game commission of each county which salary shall be paid out of the county game fund, and no salary shall be fixed by said commission in excess of the available funds.

The director of fisheries and game, through and by means of the supervisor of game and game fish, shall have general supervision and

control of the county game-wardens and county deputy wardens, and may transfer them on official business from one county to another whenever in his judgment it is advisable so to do. The expenses of such transfer are to be borne from the game fund of the county to which the transfer is made.

The director of fisheries and game shall classify such fish as game fish which are so identified by science, and which are not specifically so classified by statute. He shall give notice of such classification by publication in a newspaper of general circulation, published at the state capital, and from and after the date specified in said notice the fish so classified shall only be taken in accordance with the provisions of this act governing the taking of game fish.

The director of fisheries and game, through and by means of the supervisor of game and game fish, shall have the power to authorize the importation of game birds, animals and fish, and authority to regulate and license the sale and transportation thereof within the state of Washington. The license fee for an importer shall be twenty-five dollars (\$25) per annum. The license fee for the keeper of a hotel, restaurant, boarding-house, club or any retail dealer shall be five dollars (\$5) per annum, and each carcass shall be separately tagged as provided by sections 5876 to 5886. [L. '21, p. 120, § 1.]

§ 5933. Annual Report by County Wardens.

It shall be the duty of each county warden to make a report annually on March 1st each year to the director of fisheries and game, which report shall be made on blanks to be provided by the director of fisheries and game, and shall contain such information as he may deem advisable, and the director of fisheries and game shall biennially, as of March 1st, make a report to the governor of the state, which said report shall contain all the information concerning the acts of the county game-wardens; also report on such game and game fish as may have been propagated and distributed under his direction, and all such other acts connected with the enforcement of the game laws as may come to his notice.

The director of fisheries, through and by means of the supervisor of game and game fish, the various game commissions, and the county wardens shall have jurisdiction to enforce all of the laws of the state relating to game birds, game animals, game fish and fur-bearing animals.

The county game commission shall be provided with a furnished office in the courthouse in each county, at the county seat. [L. '21, p. 122, § 2.]

§ 5934. County Game Commission—Powers.

Said county game commission shall enforce the laws of the state within their respective counties involving the protection, propagation and disposition of all game birds, game animals, game fish, fur-bearing animals, and harmless birds and animals. Said county game commission shall have charge of the regulation, disposition, and distribution of:

(1) The classification, propagaion [propagation] and preservation of such varieties of game, game fish and fur-bearing animals as it shall deem to be of public value.

(2) The collection and diffusion of such statistics and information as shall be germane to the purpose of this act.

(3) The construction, control and management of all county game and game fish hatcheries, including the control of grounds owned or leased for such purposes; also the right to purchase, sell, lease or exchange real or personal property: Provided, that whenever any county game commission desires to establish a game fish hatchery it shall be the duty of the director of fisheries and game, through and by means of the supervisor of game and game fish, to supervise the erection of such hatchery and the planting of any fish fry or spawn taken from such hatchery: And provided further, that no person in the state of Washington shall plant any game fish, game fish fry or spawn in any of the bodies of water in the state of Washington without the written consent of the director of fisheries and game, or the supervisor of game and game fish.

(4) The receiving from the United States fish commissioner or other source, and the gathering, purchase and distribution to the waters of this state of all game fish, spawn or fry.

(5) The taking of game and game fish in the state of Washington and the propagation and distribution of same.

(6) The seizure and disposition of all game birds, game animals, fur-bearing animals, game fish or parts thereof either taken, killed, transported or possessed contrary to law, and of all dogs, guns, seines, nets, boats and lights unlawfully used or held with intent to use in pursuing, taking, attempting to take, concealing or disposing of the same.

The superior courts of the respective counties shall, upon petition of the game commission, fix the time, manner and notice of sale of such property as may be abandoned, forfeited or confiscated, and described in the petition, the proceeds of such sale to be placed to the credit of the county game fund.

(7) The county game commission in their respective counties shall have the power and authority to set aside any of the state, school or granted lands, all waters lying below extreme low tide, all waters of meandered streams, rivers and lakes lying beyond the outer harbor area, and such other lands as the individual owners thereof from time to time give their consent and approval in writing, also such of the National Forest Reserve areas as the chief forester of the National Forest Service of the United States shall consent in writing to be set aside as game preserves wherein no game bird, game animal, or fur-bearing animal or any one or more of them, can be hunted, pursued, trapped, caught or killed within the boundaries thereof, for such time and so long as they may see fit and proper; to acquire in class A counties by gift, purchase, lease or condemnation, such lands, water supply and rights of way therefor, as may be deemed necessary for the use of said commission for hatchery sites, trap sites and sanctuaries, and to acquire the rights of way to the nearest public highway; said rights to be exercised in the same manner and by the same procedure as provided by the laws of this state for municipal corporations.

(8) The county game commissioner shall be paid out of the county game fund for actual traveling expenses when actually engaged in the transaction of their official duties, and may expend from the county game fund of their respective counties a sum not to exceed twenty dollars (\$20) as annual dues to the State Association of County Game Com-

missioners and Game-wardens, the purpose of which organization is the protection, propagation and distribution of game animals, game birds, and game fish, and for the prosecution of violations of the laws of this state relating thereto. All payments made under the provisions of this act shall be made by county or state warrants respectively and all claims against the said county game fund shall be audited by the county game commission in their respective counties, and all claims against the state game funds shall be audited by the supervisor of game and game fish, who shall have authority when occasion demands, to appoint deputy state game-wardens and assign them to such places in the state as in his judgment may be necessary. Such special deputies may be employed for such length of time and at such salaries together with their necessary traveling expenses, as may be fixed by the supervisor of game and game fish. Such salaries and traveling expenses for the special deputy game-wardens shall be paid from the state game fund.

The State Association of County Game Commissioners and Game-wardens shall meet at least once each year on dates and at places to be fixed by themselves.

The expenses of the game commissioners and game-wardens in attending an annual meeting of said association shall be paid from the game fund of the respective counties.

At each annual meeting there shall be selected from the membership of the county game commissioners of said association an advisory committee of five (5) members, which committee shall serve until the next annual meeting of the association. Said advisory committee shall sit with the director of fisheries and game in the apportioning of any moneys which may be appropriated from the state game fund, for the assistance of those counties which the director of fisheries and game, and said committee shall deem to be in need of financial assistance for the proper carrying on of the work of said county game commission, and each member of said advisory committee shall have an equal voice with the director of fisheries and game in the apportioning of said fund.

The director of fisheries and game through and by means of the supervisor of game and game fish shall have authority to call the advisory committee into consultation at any time and place he so desires, relative to the conduct, management, propagation and distribution of game birds, game animals and game fish.

All traveling expenses of the advisory committee in attending all meetings shall be paid from the state game fund.

(9) Upon written application by the full membership of any county game commission to the director of fisheries and game, permission may be granted by the director of fisheries and game through and by means of the supervisor of game and game fish to entirely close or to shorten to such time as they deem expedient, the open season fixed by statute, or after the season has been closed or shortened as aforesaid, to reopen the same for all or any portion of the time fixed by statute, which they may deem expedient, or [for] any of the game birds, fur-bearing or game animals and game fish of the state, in their respective counties; and shall have authority to fix the daily, weekly or season bag limit on all game birds, game fish and game animals. All applications to open, close

or shorten the season shall be made at least thirty (30) days prior to the date proposed for the opening of the season. The county game commission shall cause to be published a notice of the closing or shortening of the open season or of the reopening of the season closed as aforesaid, and the number fixed as the bag limit shall be given by publication in a newspaper published and of general circulation in the county affected, not less than three weeks prior to the opening of the season so fixed, which notice shall also be posted in the office of the auditor of such county, and the respective game commissions are hereby authorized to give any other notice thereof as they may deem advisable: Provided, however, that the provisions of this paragraph shall not apply to migratory birds as mentioned in section 5963 [5957] of this act: Provided, that no deer or upland game birds shall be removed from Island or San Juan counties without first having obtained from the county game-warden or deputy county game-warden a permit for such removal. Paying a fee therefor as follows:

For permit to remove 1 deer\$10.00

For permit to remove grouse or pheasant20c each

For permit to remove quail05c each

Provided, further, that any person violating any of the rules and regulations of the county game commission when approved by the director of fisheries and game thru the supervisor of game and game fish shall be guilty of a misdemeanor. [L. '21, p. 123, § 3. Cf. L. '17, p. 758, § 1; L. '15, p. 431, § 8; L. '13, p. 358, § 4.]

Cited in 82 Wash. 655, 656, 663; 111 Wash. 526.

Under Law 1917, p. 760, § 1, subdiv. 9, it was not the intention to grant the power to "open" a season where no sea-

sonal regulation is provided for, or to lengthen any season created by the act: State v. Thompson, 111 Wash. 525, 191 Pac. 620.

§ 5935. Official Bonds.

All appointees of the county game commission shall give bonds in amounts to be approved by the county game commission, and said bonds filed in the office of the county auditor, conditioned for the faithful discharge of the their respective duties, and to account for all funds and property coming into their hands. [L. '21, p. 128, § 4. Cf. L. 13, p. 360, § 8.]

§ 5936. [5395-5.] Fiscal Report to County Auditor.

Said county game commission shall, on or before December 1st of each year, submit to the county auditor a detailed report of their actions, including the amount of money received from all sources, an inventory of all game, fish, guns, dogs, seines, nets, and other property seized and sold or destroyed, with the names of the purchasers and the amount received, and an itemized statement of their disbursements. The books and vouchers of said county game commission shall be subject to examination by the public examiner at all times. [L. '13, p. 359, § 5.]

§ 5937. [5395-6.] Employees.

The county game commission may appoint and employ a sufficient number of deputy game-wardens and office assistants as may be neces-

sary to carry out the purposes of this chapter, and fix their periods of service and compensation. [L. '13, p. 360, § 6.]

§ 5938. [5395-7.] Execution of Writs.

The state game-wardens, the county game commission and county game-warden, and all deputy game-wardens appointed by them, shall have full power and authority to serve and execute all warrants and process of the law issued by the courts in enforcing the provisions of this act, or any other law of this state, relating to preservation and propagation of game and game fish, in the same manner as any constable or sheriff may serve and execute the same; and for the purpose of enforcing any game laws of this state they may call to their aid any sheriff, deputy sheriff, constable or police officer, or any other person, and it shall be the duty of all sheriffs, deputy sheriffs, constables or police officers and other persons, when so called upon, to enforce and aid in enforcing any game laws of this state. The state game-wardens, the county game commission, the county game-warden and deputy game-warden shall have the power to arrest without a warrant any person or persons found in the act of violating any law enacted for the purpose of protecting or propagating game or game fish. [L. '13, p. 360, § 7.]

See notes to § 5854.

§ 5939. [5395-9.] Terms Defined—Agency No Excuse.

The words "sell" and "sale" as used shall be construed as meaning a sale or offer to sell or having in possession with the intent to sell, use or dispose of the same contrary to law. The word "person" shall be deemed to include partnerships, associations and corporations, and no violation of any of the provisions of the game law shall be excused for the reason that the prohibited act was done as the agent or employee of another, or that it was committed by or through an agent or employee of the person charged. The word "possession" shall be deemed to include both actual and constructive possession as well as control of the article referred to. The terms "waters of the state" shall be held to include all the boundary waters of the state, and the laws of this state shall be deemed to extend and be in force and effect over, upon and in all waters thereof. The terms "any part thereof" or "the parts thereof" whenever used shall be deemed to include the hides, horns, and hoofs of any animal so referred to, and the plumage and skin and every other part of any bird so referred to. The term "fur-bearing animals" shall not be deemed to include deer, elk, moose, caribou, mountain goat, mountain sheep, or gray squirrel. [L. '13, p. 361, § 9.]

See notes to § 5854.

§ 5940. [5395-10.] Inspection of Hotels, etc.

The state game-wardens or any member of the county game commission, the county game-warden or any deputy game-warden may, at his discretion, from time to time inspect hotels, restaurants, cold-storage houses or plants and ice-houses commonly used in storing meats, game or fish for private parties, including all buildings used for a like pur-

pose, for the purpose of determining whether game or game fish are kept therein in violation of the laws of this state. Any person in possession or control, or in charge of any hotel, restaurant, storage plant or building referred to, or any part thereof, who refuses or fails to permit the state game-wardens, the county game-warden or any deputy game-wardens to enter any such building, or any part thereof, or any receptacle therein, for the purpose of making such inspection, is guilty of a gross misdemeanor. [L. '13, p. 361, § 10.]

See notes to § 5854.

§ 5941. [5395-11.] Contraband Game, Seizure and Search.

Any game bird, game animal, game fish or any part thereof, caught, killed, shipped or had in possession or under control, contrary to any of the laws of this state, is hereby declared to be contraband. The state game-wardens, the county game commission, the county game-warden or any deputy game-warden, sheriffs and their deputies, constables and police officers, shall seize and take possession of any and all game birds, game animals or game fish, or any parts thereof, which have been caught, taken or had in possession or under control or shipped contrary to any of the laws of this state. Any court having jurisdiction shall, upon complaint showing probable cause for believing that any game bird, game animal, game fish, or any part thereof, caught, taken, killed or had in possession, or under control by any person, or shipped or transported contrary to the laws of the state, is concealed or illegally kept in any building, car or receptacle, issue a search-warrant and cause a search to be made in any such place for any game birds, game animals, game fish or any part thereof, and may cause any building, inclosure or car to be entered and any apartment, chest, box, locker, crate, basket, package, or any other receptacle, whatsoever kind or description, to be broken, opened and the contents thereof examined. All such officers taking or seizing any such game birds, game animals, game fish, or any part thereof, shall at once report all the facts attending the same to the county game commission. [L. '13, p. 362, § 11.]

§ 5942. [5395-12.] Contraband Device.

All nets, seines, lanterns, snares, devices, contrivances and materials while in use, or had and maintained for the purpose of catching, taking, or killing, or attracting, or deceiving any game bird, game animal, or game fish, contrary to any of the laws of this state, within this state, or upon or within the boundary thereof, including fish-houses, inclosures or other sheltering structures or appliances erected or maintained in any waters, or on the shores of any lake, pond or stream is hereby declared to be a public nuisance. The state game-wardens, the county game commission and their deputies, sheriffs and their deputies, constables and police officers, shall, without warrant or process, take, seize, abate or destroy any and all of the same while being used, had or maintained for such purpose, and no liability shall be incurred therefor to any person. [L. '13, p. 362, § 12.]

§ 5943. [5395-13.] Witnesses.

In any prosecution under the laws of this state a participant in the violation thereof may testify as a witness against any other persons violating the same, without incriminating himself in so doing. The evidence so given shall not be used in any criminal proceedings against such witness. [L. '13, p. 363, § 13.]

§ 5944. [5395-14.] Exchange Specimens.

The state game-wardens or the county commission may secure by purchase or otherwise, or by exchange, specimens of game birds, game animals, or game fish, with the game commission or game-wardens of other counties and states for propagating purposes and not otherwise, and may also grant permission under the seal of said commission to any accredited representative of any incorporated society of natural history to collect for scientific purposes only, nets, eggs, game birds, game animals or game fish protected by the laws of this state. Such specimens shall not be sold or transferred. [L. '13, p. 363, § 14.]

See notes to § 5854.

§ 5945. [5395-15.] Disposition of Fines.

All fines collected and bonds forfeited under any of the game laws of this state shall be paid into the county treasury of the county wherein the conviction was had and placed to the credit of the county game fund to be used only for the protection and propagation of game birds, game animals and game fish. [L. '13, p. 363, § 15.]

§ 5946. [5395-16.] Disposition of Other Moneys.

All moneys collected by the county game commission upon licenses issued by it, including moneys received for fines and other sources, shall be paid into the county treasury and credited to the game fund, and be used for the purpose of propagating and enforcing the game laws of this state within their respective counties. [L. '13, p. 364, § 16.]

§ 5947. [5395-17.] Rewards.

Every person, other than a regular salaried game-warden or peace officer, entering a complaint that any of the provisions of this act are violated and a conviction thereon is secured shall be entitled to one-half of the fine imposed and collected by the court in such action: Provided, that said reward to the informer shall not exceed the sum of twenty-five dollars (\$25). [L. '13, p. 364, § 17.]

§ 5948. [5395-18.] Obstructing Commission.

No person shall obstruct the state game-warden, the county game commission, or any county game-warden or deputy game-warden, while engaged in gathering game fish spawn; nor shall any person place in any stream or river any logs or other debris at any time when said state game-wardens, county game commission and their employees are gathering spawn, or about to gather spawn or catch fish for that purpose, in any such stream or river or body of water: Provided, this does

not apply to log or shingle-bolts for commercial purposes. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. The state game-wardens, or the county game commission may institute a civil action in the name of the state of Washington to recover from any person or persons obstructing them in the performance of their duties, or who shall place such debris in such stream to the damages resulting therefrom, in addition thereto may in such action enjoin such party or parties from doing the acts prohibited. [L. '13, p. 364, § 18.]

See notes to § 5854.

§ 5949. [5395-19.] Oath.

The state game-wardens, the county game commission, county game-warden and any deputy game-warden is hereby authorized to administer oaths, and may require any statement to them or him in applications for licenses, or in any report submitted to them or him in any manner connected with the discharge of their duties, to be made under oath. Any person failing or refusing to make any such statement under oath or falsely making an oath shall be guilty of a misdemeanor. [L. '13, p. 364, § 19.]

See notes to § 5854.

§ 5950. [5395-20.] Penalty for Resisting Commission and Wardens.

Any person who shall resist or obstruct the state game-wardens, the county game commission, county game-warden or deputy game-wardens, or other peace officers of this state, in the discharge of their duties while enforcing the game laws, shall be guilty of a gross misdemeanor. [L. '13, p. 365, § 20.]

§ 5951. [5395-21.] Game Property of State.

No person shall at any time or in any manner acquire any property in, or subject to his dominion or control, any of the game birds, game animals, or game fish, or any parts thereof, of the game birds, game animals or game fish herein mentioned, but they shall always and under all circumstances be and remain the property of the state; except, that by killing, catching or taking the same in the manner and for the purposes herein authorized, and during the periods when the killing is not herein prohibited, the same may be used by any person at the time, in the manner and for the purposes herein expressly authorized; and whenever any person kills, catches, injures, takes, ships, or has in his possession or under control, any of the game birds, game animals, or game fish, or any parts thereof, mentioned in this chapter, at a time or in a manner prohibited by this chapter, such person shall thereby forfeit and lose all right to the use and possession of such game bird, game animals, or game fish, or any parts thereof, and the state shall be entitled to the sole possession thereof: Provided, that the state wardens, or the game commission of each county shall grant permission to persons to have in their possession and allow the sale and shipping of game birds or game animals for propagation only. Any person violating

any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 365, § 21.]

"This chapter," refers to the act of 1913.

There being no private right in the citizen to take game, the title being in the state, the state's right to control or prohibit the taking of game is an inherent incident of the police power; and this section, to the above effect, is but declaratory of the common law, and therefore does not deprive anyone of property rights or vested privileges: *Cawsey v. Brickey*, 82 Wash. 653, 144 Pac. 938.

This section and 5962 providing that no person shall "have in possession or

under control" certain wild animals should not be given a retroactive effect, when to do so would violate the due process clauses of the state and federal constitutions protecting the qualified right of property in animals *ferae naturae* that had been reclaimed from their wild state before the passage of the act: *Graves v. Dunlap*, 87 Wash. 648, 152 Pac. 532, Ann. Cas. 1917B, 944, L. R. A. 1916C, 338.

State ownership of fish and game. Ann. Cas. 1917B, 949, 978, 980.

§ 5952. [5395-22.] Nest and Eggs.

No person shall at any time take or have in his possession or under control, break or destroy or in any manner interfere with any nest, or the eggs of the kinds of birds the killing of which is at any or all times prohibited. Any person guilty of violating this section shall be guilty of a misdemeanor. [L. '13, p. 366, § 22.]

See, also, *supra*, § 5899.

§ 5953. [5395-23.] Hunting Deer With Dogs.

Any person who shall at any time shoot or kill in any manner a deer when such deer is in any river or lake, or body of salt water, or shall hunt or chase deer with dogs, shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished as hereinafter provided. [L. '13, p. 366, § 23.]

See *supra*, § 5865, hunting with dogs.

Cited in 80 Wash. 93.

The words "as hereinafter provided" may be treated as surplusage, and resort should be had to the general statute, section 2267, providing that every person convicted of a gross misdemeanor for which no punishment is prescribed

at the time of the conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000, or by both: *State v. Deer*, 80 Wash. 92, 141 Pac. 321.

§ 5954. [5395-24.*] Prohibited Devices—Trapping—Licenses—Protection of Squirrels.

It shall be unlawful at any time for any person to set, lay, prepare, or have in his possession, any trap, snare, artificial light, net, bird lime, swivel-gun or set-gun, or any contrivances whatever for the purpose of catching, taking or killing any of the game animals, or game birds in this state, except that decoys and blinds may be used in hunting wild ducks, geese or brant: Provided, that it shall be lawful at any time or in any place to hunt, take, shoot, kill or destroy any cougar, coyote, coon, wildcat, civet-cat, lynx, skunk, mink, muskrat or weasel or other predatory animals on which a bounty is offered or paid: Provided, further, that nothing in this act shall be construed to prevent any person from trapping any of the fur-bearing animals which are not protected under the laws of the state of Washington upon his paying to the auditor of the respective county the sum of five dollars (\$5) as a license fee therefor: Pro-

vided, further, that it shall be unlawful for any person in the state of Washington to use a steel trap of a larger size than what is commonly known and called a number four (4) trap: Provided, further, that every person who sets out a trap of any kind larger than a No. 4 shall post a notice above said trap in plain sight, stating such fact, which notice shall be in English, and on a placard at least 6x10 inches in size: Provided, further, that this section shall not apply to the trapping of coyotes, muskrat, mink, skunk, marten, civet-cats and weasels: Provided, further, that it shall be unlawful to hunt, take, or kill game squirrels commonly known as either gray squirrels, fox squirrels or black squirrels at any time in the state of Washington. Any person violating any of the provisions of this act shall be guilty of a misdemeanor. [L. '17, p. 761, § 2. Cf. L. '15, p. 433, § 9; L. '13, p. 366, § 24.]

See, also, *supra*, §§ 5896, 5900.

§ 5955. Game Birds—Penalty for Taking—Nests and Eggs.

Every person who shall within the state of Washington hunt, pursue, take, kill, injure, destroy or possess any ruffed grouse, Hungarian partridge, prairie chicken, sage-hen, Chinese, English, golden, Mongolian, silver, blackneck or Japanese pheasant, blue grouse, Franklin grouse, wild turkey, scaley partridge, Reeves pheasant, or any species of quail or any species of upland game birds, except as herein provided, shall be guilty of a misdemeanor: Provided, that it shall be lawful to hunt, pursue, take, kill or possess the above-named game birds between the first day of September and the first day of December, both dates inclusive of the same year, unless such season be shortened or closed by the unanimous action of the director of fisheries and game through and by means of the supervisor of game and game fish and the county game commission of the respective counties.

No person shall, within the state of Washington take or needlessly destroy the nest or the eggs of any game bird or any wild bird other than a game bird, or have such nest or eggs in his possession, except as permitted by this act. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor. [L. '21, p. 128, § 5. Cf. L. '17, p. 762, § 3; L. '15, p. 433, § 10; L. '13, p. 366, § 25.]

§ 5956. [5395-26.*] Bag Limit for Upland Birds.

Every person who shall, during the season when it is lawful to hunt the same, kill, or have in possession, more than five (5) prairie chickens, grouse, partridge, Hungarian partridge, native pheasant, Chinese, English, golden, Mongolian, silver, blackneck or Japanese pheasant, or more than ten (10) quail or any or all kinds in any one day, shall be guilty of a misdemeanor: Provided, that no person shall in any one day kill, or have in possession, more than five (5) of the game birds mentioned in this section, it being the intention thereof to limit the bags of one day to five (5) birds, no matter how many varieties of these protected upland birds are included in the bag: Provided, further, that ten (10) quail may be killed, or had in possession, in one day during the season when it is lawful to hunt the same, but the limit of upland game birds, if quail are included in the same for one day, shall never exceed ten (10) upland birds, but in

no event more than five (5) of the above-named birds other than quail, and the limit of the bag for one week shall never exceed twenty-five (25) upland birds: Provided, that in Kittitas county, but two (2) male Chinese or English pheasants can be taken in one day in a bag limit of five (5) upland birds. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '17, p. 764, § 4. Cf. L. '15, p. 435, § 11; L. '13, p. 368, § 26.]

§ 5957. Ducks, Geese, Brant and Migratory Birds.

Every person who shall between the sixteenth day of January and the thirtieth day of September, both dates inclusive of the same year, hunt, pursue, take, kill, injure, destroy or possess any species of migratory birds commonly known as wild goose, brant, wild duck, coot, rail, plover, snipe, sand piper, curlews, avocets, stilts, turnstone, oyster-catcher, phalaropes, or other species of birds, black-breasted and golden plover, jack-snipe or Wilson snipe, or greater or lesser yellow-legs, or who shall hunt, pursue, take or kill any of the birds above mentioned in this section after sunset or one-half hour before sunrise, shall be guilty of a misdemeanor. [L. '21, p. 129, § 6; L. '17, p. 764, § 5; L. '15, p. 436, § 12. Cf. L. '13, p. 369, § 27.]

§ 5958. [5395-28.] Bag Limit.

Every person who shall, in the state of Washington, during the season when it is lawful to hunt the same, kill more than twenty (20) ducks, geese or brant, any golden plover, jack or Wilson snipe, greater or lesser yellow-legs, in any one week, or have in possession or under control more than thirty (30) ducks, geese, or brant at any time, shall be guilty of a misdemeanor, it being the intention hereof to limit bags in any one week to twenty (20) of the above-mentioned birds, no matter how many varieties of those birds are included in said bag; and for the purposes of this act the week shall be deemed to begin at midnight on Saturday night, and any person violating the provisions of this act shall be guilty of a misdemeanor. [L. '15, p. 436, § 13. Cf. L. '13, p. 369, § 28.]

§ 5959. [5395-29.] Possession Limited—Sales.

Every person, company, club, partnership, firm or corporation, boarding-house keeper, hotel-keeper, restaurant-keeper, market keeper or cold-storage plant, their owners, proprietors, officers, managers, agents or servants, who shall offer for sale or for market, or barter for, or exchange or keep in their possession any time of the year, any deer, moose, caribou, antelope, mountain sheep or mountain goat of any kind, or the various kinds of quail or the various kinds of Chinese, English or Mongolian pheasants, grouse, native pheasants, ptarmigan, partridge, Hungarian partridge, prairie chicken, sage hen or any kind of wild duck, goose, brant, rail, plover or game shore birds, or any portion of the meats of said animals or birds, shall be guilty of a misdemeanor. Possession by the above-named persons or corporations of any of the animals or game birds mentioned or named herein or any of the meats of the same shall be presumptive evidence that said animals or birds or the meats of the same was unlawfully taken by the person having possession of the same, and

upon conviction thereof shall be punished as hereinafter provided: Provided, that any person may have in his possession, or in cold storage, for his own use only the number and kind of animals and birds permitted to be taken by this act, during the time when the same may be taken, provided the same were taken by the person, so having them in his possession or obtained by gift for his use only, or otherwise taken as provided in the previous section of this act. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 369, § 29.]

See *supra*, § 5890, an earlier enactment.

§ 5960. [5395-30.] Sale of Game.

It shall be unlawful for any person at any time to sell or offer for sale any of the game birds, game animals or song birds protected by the laws of the state of Washington. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 370, § 30.]

See *supra*, § 5907, an earlier enactment.

See *supra*, § 5917, sale of propagated game.

See *infra*, § 5977, sales prohibited.

§ 5961. [5395-31.] Other States—Game Unlawful.

Every person who shall at any time have in his possession or under control within this state any game birds, game animals or game fish, or any parts thereof, which have been caught, taken or killed outside of this state at a time when it is unlawful to have in possession or under control such game birds, game animals or game fish, or parts thereof, if caught, taken or killed in this state, or which have been unlawfully taken or killed outside of this state, or unlawfully shipped therefrom into this state, shall be guilty of a misdemeanor: Provided, however, that nothing in this act shall prevent the bringing into this state, by a resident of the state of Washington, any elk, mountain goat, mountain sheep, caribou or deer when the same have been lawfully killed in any state, territory, or Canada, if accompanied by an affidavit that the same was lawfully killed, and is not transported for sale or profit, together with the shipping receipt from the originating point. [L. '15, p. 437, § 14. Cf. L. '13, p. 370, § 31.]

Validity of statute prohibiting possession of imported game. 2 *Ann. Cas.* 229; 6 *Ann. Cas.* 356, 935.

§ 5962. [5395-32.] Possession Unlawful.

It shall be unlawful to have in possession or under control by any person, any game birds, game animals or game fish or any parts thereof, the killing of which is at any time prohibited; the same shall be prima facie evidence that it was the property of this state at the time it was caught, taken or killed, and that it was caught, taken or killed in this state when the killing, taking or possession thereof is by this chapter declared to be unlawful, that such taking or killing occurred during the closed season. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. [L. '13, p. 371, § 32.]

See also, *supra*, § 5919.

Validity of statute forbidding possession of game during closed season. 3 *L. R. A. (N. S.)* 163.

§ 5963. Limit for Fish—Closed Season—Method of Fishing.

No person shall, between the first day of January and the thirty-first day of December of the same year, catch, take, kill or have in his possession more than fifty game fish in any one day, nor more than twenty pounds and one game fish in any one day, nor more than thirty pounds and one game fish in any one calendar week, nor in any other manner than by angling for them with hook and line held in the hand or attached to a rod so held, and no person shall have in his possession any game fish caught, taken or killed in any of the waters of this state, except as provided in this chapter. No person shall fish in any stream or lake above any natural barrier or waterfall, where salmon do not run, with fresh salmon eggs used as a decoy or bait. Any person violating this section shall be guilty of a misdemeanor. [L. '21, p. 129, § 7.]

See, also, *supra*, § 5918.

See *supra*, § 5923, limit of catch, an earlier enactment.

§ 5964. Deer, Elk, Moose, Mountain Goat and Mountain Sheep.

No person shall, within the state of Washington, hunt, catch, take, kill, ship, convey or cause to be shipped or transported by common or private carrier to any person either within or without the state, purchase, expose for sale, have in possession with intent to sell, sell to any person or have in possession or under control at any time, any elk, moose, caribou, deer, fawn, mountain sheep or mountain goat, or any part thereof, including the hides, horns or hoofs except as herein provided: Provided, that one buck deer only may be killed in the counties lying east of the eastern boundaries of Whatcom, Skagit, Snohomish, King, Pierce, Lewis and Skamania counties between October 1st and November 15th of the same year: Provided, that in the above-described section of the state, it shall be unlawful at any time for any person to have in his possession, dead or alive, any female deer: And provided further, that no person may kill more than two deer from October 1st up to and including November 1st of the same year in the counties lying west of the eastern boundaries of Whatcom, Skagit, Snohomish, King, Pierce, Lewis and Skamania counties, and any deer lawfully killed or any part thereof may be had in possession by any person during the said time. No person shall kill or have in his possession during said time more than two deer or parts thereof: Provided, that only one buck deer may be killed in the counties of Whatcom, Skagit, Clallam and Snohomish, and that in said counties of Whatcom, Skagit, Clallam and Snohomish it shall be unlawful at any time for any person to have in his possession, dead or alive, any female deer: And provided further, that any person who is lawfully in possession of any deer or any parts thereof, may ship or cause to be shipped, any such deer, or any part thereof, from place to place within the state: And provided further, that after the year 1925 male antlered moose and elk may be killed between October 1st and 15th of the same year, and such male elk or moose, or part thereof, may be had in possession by any person during the time aforesaid, but no person shall kill or have in possession during said time more than one male antlered elk or moose, or part thereof: And provided further, that any person desiring to retain any game bird, game animal or game fish, or any part thereof, for human

consumption or ornamental purposes, after the close of the season when the same was lawfully taken, may do so by furnishing the county game commission of the county wherein he desires to retain the same, a true and correct description thereof, giving the number, kind or kinds, and designating the place where the same is stored with reasonable certainty. The game commission or game warden shall have authority to tag or stamp the same for the purpose of identification, without materially damaging the same. [L. '21, p. 129, § 8. Cf. L. '17, p. 765, § 6; L. '15, p. 437, § 15; L. '13, p. 371, § 33.]

See supra, § 5903, an earlier enactment.

See note to § 5951.

Cited in 87 Wash. 654, 655.

§ 5965. [5395-34.] State Game Fund—County Funds.

There is hereby established a fund to be known as the state game fund which shall consist of eighty per cent (80%) of all moneys received for state hunting and game fish licenses, and all such other sums as the legislature may from time to time appropriate and set aside for the purposes provided for in this act, said state game fund shall also consist of ten per cent (10%) of all moneys received by the county officers for county hunting and game fish licenses, and from fines which shall be paid into the state treasury, and constitute a part of said state game fund, said payments to be made quarterly on the last day of each quarter of the year, beginning on the first day of March. Such state game fund shall be used for the payment of the salaries and expenses of the state game-wardens provided for by this act, and their necessary traveling and office expenses, and for propagation, protection, introduction, purchase and distribution of any game animals, birds or fishes and for such other purposes for which the legislature may appropriate the same. Ninety per cent of all moneys received in any county from the sale of county hunting and game fish licenses, and from fines and costs, and twenty per cent (20%) of all money received from the sale of state hunting and game fish licenses, shall be expended in the said county from which the same are collected, and shall be so spent in the payment of salaries and expenses of the county game-wardens or special deputies appointed in said county by the county game commission and for the protection, introduction, propagation and purchase of animals, birds and game fishes in said county, and in the enforcement of the game and game fish laws within said county from which said moneys are received. All payments made under the provisions of this act shall be made by warrant in the usual manner and shall be audited by the state and county officers in the same manner as other claims against the state of Washington and the various counties are audited. [L. '15, p. 438, § 16. Cf. L. '13, p. 372, § 34.]

Cited in 91 Wash. 57, 58.

Claims for the salary of county game wardens must be presented to the county

commissioners, under this section: State ex rel. Beach v. Olsen, 91 Wash. 56, 157 Pac. 34.

§ 5966. [5395-34b.] Act Controls in Case of Conflict With Food Fish Laws.

The provisions of this act shall apply exclusively to game and game fish and the same shall be enforced regardless of any conflicting pro-

visions of any food fish laws of the state of Washington now in existence or hereafter passed, and no act done under the provisions of this act shall be deemed unlawful in the event that such act conflicts with any provisions of such food fish laws. [L. '15, p. 440, § 18.]

"Act" in this section refers to the act of 1915.

§ 5967. Licenses for Hunting and Fishing—Nonresidents—Aliens.

It shall be unlawful for any person to hunt, pursue, catch, kill or take any of the game or fur-bearing animals, game birds or game fish protected by the laws of this state during the season when it is lawful to hunt, pursue, take or kill the same without such person having procured before the time of such hunting, pursuing, catching or killing, a hunting, fishing or trapping license therefor duly issued to him by the county auditor.

The licenses provided for in this act shall be issued by the county auditors of the respective counties, and shall be as follows:

(a) A resident citizen of this state may obtain a hunting and fishing license by paying the county auditor the sum of one dollar and fifty cents (\$1.50), which shall entitle the holder thereof to hunt or fish within the county where such license is issued until the first day of March next following the date of its issuance, at any time when it is otherwise lawful to hunt or fish. Any county auditor shall issue a hunting and fishing license for any one or more counties of the state and shall transmit the fees to the auditors of the counties for which the licenses were issued at the close of each month's business, together with the record thereof.

(b) Any person who is a resident citizen of this state may obtain from any county auditor a state hunting and fishing license by the payment of seven dollars and fifty cents (\$7.50) which license shall entitle the holder thereof to hunt and fish in any part of the state until the first day of March next following the date of its issuance, when it would otherwise be lawful to hunt or fish within said state.

(c) A citizen nonresident of the state of Washington may obtain a hunting and fishing license by paying to the county auditor the sum of ten dollars (\$10) which shall entitle the holder thereof to hunt and fish in any county in the state up to and including the first day of March next following the date of its issuance, when it would otherwise be lawful to hunt or fish in said county.

(d) Provided, however, that a county fishing license shall entitle the holder thereof to fish on either side of any stream or river, when the said stream or river shall constitute the boundary between two counties.

(e) Any alien may obtain a hunting and game fishing license by paying to the county auditor the sum of ten dollars (\$10) which shall entitle the holder thereof to hunt and catch game fish in any county in the state up to and including the first day of March next following the date of its issuance, when it would otherwise be lawful to hunt or fish in said county: Provided, such alien is authorized to carry firearms under the laws of this state, which permit shall be exhibited to the county auditor at the time of applying for such license.

(f) The county auditor shall, upon application and the payment of two dollars and fifty cents (\$2.50) issue to any citizen nonresident of this state a license to take, catch, or kill any game fish in any lawful manner within the county where the license is issued, whenever it is lawful to take, kill or catch any game fish.

(g) Licenses issued under the provisions of this act shall be non-transferable, and any person hunting or fishing shall, upon demand of any warden, or deputy warden, exhibit his license, and a failure or refusal to exhibit such license shall be prima facie evidence that such person has no license.

(h) Any person hunting or fishing without having obtained the license or not having same in his possession as herein provided for, or doing any other act which by this act is declared to be unlawful, in cases where no other specific penalty is provided, shall be guilty of a misdemeanor.

(i) Provided, however, that nothing in this act shall prevent any woman, or minor under the age of sixteen (16) years, who is an actual resident of this state, from fishing at any time when it is otherwise lawful to fish. [L. '21, p. 131, § 9. Cf. L. '17, p. 767, § 7; L. '13, p. 373, § 35.]

Validity of statute requiring license
to hunt game. *Ann. Cas.* 1916C,
134; *Ann. Cas.* 1918A, 145.

What discrimination as to persons
under game laws is permissible.
26 *L. R. A. (N. S.)* 794.

§ 5968. Application for License.

In applying for any license under this act the applicant shall make a written application which shall describe the applicant as to citizenship, age, weight, height and complexion, and the license issued shall contain the said description as contained in said application, and in all cases other than that of a nonresident the application shall be accompanied by a statement to the effect that he is an alien or a resident citizen of the state of Washington, giving his place of residence, and any person who falsely states that he is a resident of the state of Washington when he is not such, shall be guilty of a misdemeanor. [L. '21, p. 133, § 10. Cf. L. '13, p. 375, § 36.]

§ 5969. Bear—Open Season.

It shall be unlawful to hunt, take, kill or trap, snare or destroy any black, brown, or cinnamon bear between the first day of May and the first day of September of any year, except when such bear becomes predatory, or destructive of domestic animals: Provided, that it shall be lawful to sell or otherwise dispose of the carcass and pelt, and to trap bear as other fur-bearing animals are trapped. [L. '21, p. 133, § 11. Cf. L. '17, p. 767, § 7.]

§ 5970. Predatory and Destructive Animals.

The English or European hawk-sparrow, jays, magpies, kingfishers, crows and such hawks, falcons and owls as are destructive of domestic fowls and game birds, are not included among the birds protected by this act. Provided, that the game commissions of the respective counties may, acting through those authorized by them, destroy game birds and

game or fur-bearing animals, when same become predatory and destructive of property. [L. '21, p. 134, § 12.]

§ 5971. Shooting Restrictions.

It shall be unlawful at any time to shoot from any air craft or from, across or along any public highway or railway, or while in any motor or steam-driven or horse-drawn vehicle or railroad speeder propelled by motor or man power, at any game bird or game animal within the state of Washington, and in any prosecution it shall not be necessary to prove that the defendant in so shooting actually killed a game bird or game animal: Provided, that it shall be lawful to kill predatory animals and predatory birds at any time, in any place and in any manner. Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '21, p. 134, § 13.]

See supra, § 5900, sink boxes, sneak boats, etc.

§ 5972. Dogs in Wooded Sections.

It shall be unlawful for any person to have with him either loose or in leash any dog in any wooded section of any county of the state during the time in each year when it is lawful to hunt deer in such county, without having first obtained and being in force a written permit so to do, issued by the unanimous vote or action of the game commissioners of such county. Provided, that this section shall not apply to the counties lying east of the eastern boundaries of Whatcom, Skagit, Snohomish, King, Pierce, Lewis and Skamania counties. [L. '21, p. 134, § 14.]

§ 5973. Artificial Light.

Any person who hunts for any of the protected game animals, game birds or game fishes with a jack-light or other artificial light of any class, kind or description, or is found after sunset in any wooded section or other place where deer may reasonably be expected, with any torch, lamp, lantern, electric, acetylene, gas or any other artificial light in his possession shall be guilty of a misdemeanor: Provided, that the defendant shows to the satisfaction of the court that he was not hunting deer by himself or in company with another, and was using such artificial light for a lawful purpose, he shall be discharged. [L. '21, p. 135, § 15.]

§ 5974. Trapping Fur-bearing Animals.

No person over the age of sixteen (16) years shall trap any fur-bearing animal at any time, without first having paid to the county auditor in each county in which he is trapping, the sum of five dollars (\$5) and procured a license therefor, which license shall expire on the twenty-eighth day of February following its issue; Provided, that land owners and leaseholders trapping upon their own premises shall be exempt; Provided further, that musk-rats and moles may be trapped or killed in any manner at any time when injuring any field, garden, dike, ditch, dam, embankment or public highway, by applying to the county game warden for a written permit so to do; Provided further, that all sums paid to the county auditor for trapper's licenses shall be placed to the credit of the county game fund. [L. '21, p. 135, § 16.]

§ 5975. Shooting at Migratory Birds.

It shall be unlawful for any person to shoot at any migratory bird with a rifle, while such bird is in any lake, river or stream, or while such bird is upon any island or bar in any river or lake. Any person violating any of the provisions of this act shall be guilty of a misdemeanor. [L. '21, p. 135, § 17.]

§ 5976. Penalty for Violations.

Any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten nor more than one hundred dollars, together with the costs of prosecution, or by imprisonment for not exceeding thirty days in the county jail or both at the discretion of the court, for each offense. The killing of every single bird, animal or fish, protected by the laws of this state, shall constitute a separate offense. All fines collected under the provisions of this act shall be turned over to the treasurer of the county in which such action is brought, and by him placed in the county game fund. [L. '21, p. 136, § 18.]

"Act" refers to the act of 1921, included in this chapter.

§ 5977. [5395-37.] Sale Prohibited.

Any person who takes or kills or has in his possession with intent to sell, sells, offers or exposes for sale, ships by common carrier, conveys or causes to be conveyed, has in his possession with intent to ship, or to convey in any manner to any point within or without the state, any game animals, game birds or game fish, or any part thereof, including the hides and horns, or any person who buys any such game animals, game birds or game fishes or part thereof in violation of any of the provisions of this chapter or any common carrier or agent thereof, who ships or aids or abets in shipping any such game animals, game birds or game fish or any part thereof, or have possession of same with intent to ship or transport or convey to any point either within or without the state, shall be guilty of a gross misdemeanor. [L. '13, p. 375, § 37.]

"This chapter" refers to the act of 1913.

See supra, § 5907, sale of game.

See supra, § 5960, sale of game a later enactment.

§ 5978. [5395-39.] Export or Import.

Every steamboat company, railroad company, express company or common carrier, their officers, agents and servants and every other person who shall transfer or carry from one point to another within the state or take out of the state, or who shall receive for the purpose of transferring from this state any of the wild game birds, game animals, game or game fish enumerated in this act shall be guilty of a misdemeanor: Provided, that nothing in this section shall be construed to prevent any steamboat company, express company, railroad or other common carrier, their officers, agents and servants from receiving any of the game birds, game animals or game fishes enumerated in this act from transferring them from one point to another point within this state

when said game birds, game animals or game fish are accompanied by an affidavit in duplicate by the shipper, that the same is not shipped for sale or profit; said affidavit may be furnished if necessary at destination. Such affidavit shall describe said game animals, game birds and game fish and shall be attached to said shipment while in transit from one point to another or furnished at its destination and the duplicate must be sent to the game commission or game-warden of said county. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 375, § 39.]

§ 5979. [5395-40.*] Beavers.

No person shall in any manner hunt for, trap, take, catch or kill any beaver in this state or have in his possession alive or dead any beaver or any part thereof which has been caught or killed in this state. Nothing in this section, however, shall be construed to prevent any person residing in this state from having in his possession or from buying, selling or handling skins of beaver lawfully caught or killed outside of this state. Provided further, that when any beaver skins are shipped into this state the consignee shall notify the state game-warden of the place where said skins are stored, and said game-warden shall inspect said skins and satisfy himself that they were not killed in the state of Washington and being so satisfied he shall stamp said skins with the words "Killed outside of the State of Washington." Upon said skins being so stamped they may be offered for sale. Any person who violates the provisions of this section shall be guilty of a misdemeanor. [L. '19, p. 155, § 1. Cf. L. '13, p. 376, § 40.]

§ 5980. [5395-43.] Private Fish Hatcheries.

No person shall have in his possession for sale or with intent to sell, expose or offer for sale or sell to any person, any trout or other game fish at any time, or ship or cause to be shipped or have in possession with intent to ship to any person either within or without the state any such game fish, or have any such game fish in his possession during the season for taking the same: Provided, that nothing in this act shall be construed to be in conflict with the provisions of sections 5171—5182 inclusive of Remington & Ballinger's Annotated Codes and Statutes of Washington. Any person violating this section shall be guilty of a misdemeanor. [L. '13, p. 377, § 43.]

Sections 5171—5182 repealed.

§ 5981. [5395-44.] Size of Trout.

No person shall at any time catch, take, kill, or have in his possession or under his control any trout or bass of any variety whatever which are less than six inches in length. Any person catching such game fish shall at once return the same to the water from whence they are taken with as little injury as possible. Any person violating the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 377, § 44.]

§ 5982. [5395-45.] Nonresident, Possession of.

No person shall ship, have in his possession with intent to ship or cause to be shipped beyond the borders of this state any fish of the

kind mentioned in this chapter: Provided further, that any nonresident of this state who is desirous of taking any fish beyond its boundaries for his personal use may carry with him on the same train or conveyance not to exceed fifty fish nor more than twenty pounds and one fish caught by him: Provided further, that all boxes, bags or packages of any description used in shipping or taking game fish out of the state shall be plainly marked with the name and address of the consignor and consignee, with the description and contents of the package. Any person who violates this section shall be guilty of a misdemeanor. [L. '13, p. 377, § 45.]

§ 5983. [5395-46.] Devices—Public Nuisances.

Nets of any description being used in any of the fresh waters of this state above tide water are hereby declared and are a public nuisance, and it shall be the duty of all county game commissioners, game-wardens and their deputies, police officers and constables without warrant or process, to take, seize, abet and destroy any and all of the same. And any person using same shall be guilty of a misdemeanor. The game-wardens and their deputies, sheriffs and their deputies, police officers, and constables shall seize any and all nets and seines when illegally used and all game fish taken therewith and at once report the seizure to the county game commission or game-warden. Every person using, aiding or abetting the use of any such nets or other devices contrary to the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 378, § 46.]

Cited in 80 Wash. 84—86; 82 Wash. 686. Nets not set above tide water do not violate this section: State v. Vosgien, 82 Wash. 685, 144 Pac. 947.
The legislature had power to pass this section: State v. Allen, 80 Wash. 183, 141 Pac. 292.

§ 5984. [5395-47.] Fishways and Dams.

No person shall catch, take or kill in any stream within four hundred feet of any fishway or dam or have in his possession or under his control any game fish so caught, taken or killed. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 378, § 47.]

§ 5985. [5395-48.] Explosives, etc.

No person shall lay, set, use or prepare any drug, poison, lime, medicated bait, nets, fish-berries, dynamite or other explosive or any other deleterious substance whatever, or lay, stretch or place any tip-up, snare or net or trout line, or any wire string, rope or cable of any kind, class or description in any of the waters of this state with intent thereby to catch, take or kill any game fish. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 378, § 48.]

§ 5986. [5395-49.] Providing Fishways.

Any person owning, erecting, managing or controlling any dam or other obstruction across the river, creek or stream within the state or forming the boundary lines of this state, shall construct in connection with such dam, durable fishways, in such manner and in such shape and size that the free passage of all game fish inhabiting such waters shall not be obstructed. Such fishways shall be maintained in good condition and kept

in good repair by the person so owning, controlling, managing, operating, or using such dam or obstruction. If any person fails to construct or keep in good repair, durable and efficient fishways, as herein provided for within the period of ten days after notice, the county game commission may construct or repair the same and the cost thereof may be recovered from the owner or any person managing or being in control thereof in a civil action brought in the name of the state of Washington. Any moneys so received shall be credited to the game protection fund. All fishways heretofore or hereafter erected in any dam or obstruction across any of the streams of this state shall at all times be under the supervision of the county game commission. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 379, § 49.]

§ 5987. [5395-50.] Casting Sawdust in Rivers or Streams.

Every person who shall cast or discharge or permit to be cast or discharged into any waters of this state any sawdust, planer shavings, or other lumber waste, shall be guilty of a misdemeanor. [L. '13, p. 379, § 50.]

Statutory prohibition of pollution of water to protect fishery. 34 L. B. A. (N. S.) 286.

§ 5988. [5395-51.] Defining Offense.

The killing of every single bird, animal or fish protected by the laws of this state shall constitute a separate offense. [L. '13, p. 379, § 51.]

§ 5989. [5395-52.] Attempt Violations.

Any attempt to violate any of the provisions of any section of this chapter shall be deemed a violation of such provision and any person attempting to violate any of the provisions of this chapter shall be guilty of a misdemeanor, unless otherwise designated as a gross misdemeanor. [L. '13, p. 380, § 52.]

Cited in 80 Wash. 93.

§ 5990. [5395-53.] Saving Clause.

If any section of this act should be declared unconstitutional it shall not affect any other section or part of section thereof. [L. '13, p. 380, § 53.]

§ 5991. [5395-54.] Catching of Fish in Clarke County—Appliances.

Every person, firm or corporation who shall fish for or catch fish excepting carp with any net, seine, trap, set-net or similar appliance in Lake River or any of the sloughs of the Columbia River in Clarke county, Washington, shall be guilty of a misdemeanor. [L. '13, p. 385, § 1.]

§ 5992. [5395-55.] Limit of Catch.

Every person who shall with hook and line, commonly called angling, catch more than twelve black bass or more than fifty croppies in any one day in any of the waters described in section 5991, shall be guilty of a misdemeanor. [L. '13, p. 385, § 2.]

Garnishment. See §§ 680—706.

In Justice's court, see §§ 1807—1846.

TITLE XXXIX. GEOLOGICAL SURVEY.

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| <p>5993. Board of geological survey — Of whom composed—State geologists.</p> <p>5994. Objects of survey.</p> <p>5995. Report of legislature.</p> <p>5996. Printing and distribution of reports.</p> <p>5997. Materials collected, distribution of among schools.</p> | <p>5998. Organization — Meetings—Co-operation with United States Geological Survey.</p> <p>5999. Survey to complete map and investigate water supply.</p> <p>6000. Entry on lands.</p> |
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§ 5993. [5396.] Board of Geological Survey—Of Whom Composed—State Geologists.

There is hereby established a state geological survey of the state of Washington, which shall be under the direction of the board of geological survey of the state of Washington, which . . . said board shall have general charge of the survey, and shall appoint as superintendent of the survey a geologist of established reputation, to be known as the state geologist, and upon his nomination such assistants and employees as the said board may deem necessary and the said board shall also determine the compensation of all persons employed by the survey, and may remove them at will. [L. '01, p. 334, § 1.]

Former laws on this subject: See Bal. Code, §§ 172—183 (L. '90, p. 647), and §§ 3145—3150 (L. '90, p. 249).

See *infra*, § 10827, duties of state geologist devolve upon director of conservation and development.

See *infra*, § 10893, state geologist and board of geological survey abolished.

§ 5994. [5397.] Objects of Survey.

The said survey shall have for its object:

(1) An examination of the economic products of the state, viz.: the gold, silver, copper, lead and iron ores, as well as building stones, clays, coal and all mineral substances of value. (2) An examination and classification of the soils, and the study of their adaptability to particular crops. (3) The investigation and report upon the water supplies, artesian wells, the water power of the state, gauging the streams, etc., with reference to their application for irrigation and other purposes. (4) An examination and report upon the occurrence of different road building material. (5) An examination of the physical features of the state with reference to their practical bearing upon the occupations of the people. (6) The preparation of special geological and economic maps to illustrate the resources of the state. (7) The preparation of special reports with necessary illustrations and maps, which shall embrace both the general and detailed description of the geology and natural resources of the state. (8) The consideration of such other kindred scientific and economic questions as in the judgment of the board shall be deemed of value to the people of the state. [L. '01, p. 334, § 2.]

See *infra*, § 6852, survey for road building material.

See note to § 5993.

§ 5995. [5398.] Report to Legislature.

The board shall cause to be prepared a report to the legislature before each regular meeting of the same, showing the progress and condition of the survey, together with such other information as they may deem necessary and useful or as the legislature may require. [L. '01, p. 335, § 3.]

See note to § 5993.

§ 5996. [5399.] Printing and Distribution of Reports.

The regular and special reports of the survey with proper illustrations and maps, shall be printed as the board may direct, and the reports shall be distributed or sold by the said board as the interests of the state and of science demands; and all money obtained by the sale of reports shall be paid into the state treasury. [L. '01, p. 335, § 4.]

See note to § 5993.

§ 5997. [5400.] Materials Collected, Distribution of Among Schools.

All materials collected after having served the purpose of the survey shall be distributed by the board to the University of Washington, the Washington Agricultural College and School of Science, the normal schools, and the leading high schools of the state in such a manner as to be of the greatest advantage to the educational interests of the state. [L. '01, p. 335, § 5.]

§ 5998. [5401.] Organization — Meetings — Co-operation With United States Geological Survey.

The board of geological survey shall meet for organization within thirty days after the passage of this act. The regular meetings of the board shall be on the first Wednesday in April and the first Wednesday in November of each year. The said board of geological survey is hereby authorized to make provisions for topographic geologic and hydrographic surveys of the state of Washington in co-operation with the United States geological survey in such manner as in the opinion of the said board will be of the greatest benefit to the agricultural, industrial and geological requirements of the state of Washington: Provided, that the director of the United States geological survey shall agree to expend on the part of the United States upon said surveys a sum equal to that expended by the said board. [L. '01, p. 336, § 6; L. '03, p. 331, § 1.]

See note to § 5993.

"Act" refers to the preceding sections of this Title.

§ 5999. [5402.] Survey to Complete Map and Investigate Water Supply.

In order to complete the topographic map of the state of Washington, and for the purpose of making more extensive stream measurements, and otherwise investigating and determining the water supply of the state, . . . the board of geological survey is hereby authorized and directed to enter into such agreements with the director of the United States geological survey as will insure that the said surveys and investigations be carried on in the most economical manner, and that the maps

and data be available for the use of the public as quickly as possible. [L. '09, p. 885, § 1.]

Part of this section is omitted, relating only to appropriations.
See note to § 5993.

§ 6000. [5403.] Entry on Lands.

In order to carry out the purposes of this act, all persons employed hereunder are authorized to enter and cross all lands within the state: Provided, that in so doing no damage is done to private property. [L. '09, p. 885, § 3.]

Governor. See "State Officers," § 10982.

Grade Crossings. See § 10511.

Grain. See "Inspection," § 6978.

Toll for grinding, see "Frauds," § 5843.

Grand Jury. See §§ 89—111, 2025—2049.

Granted Lands. See "Lands of the State."

Guardianship. See §§ 1565—1588.

Habeas Corpus. See §§ 1063—1085.

Habitual Drunkards. See §§ 1708—1715.

Harbor Lines and Areas. See "Lands of the State," § 7994.

Harbors. See "Navigation."

Hawkers. See "Licenses," § 8341.

Hay. See "Inspection," § 6978.

HEALTH.

TITLE XL. HEALTH.

Of factory employees: See "Labor Law," § 7658.
Of female and child employees: See "Labor Laws," § 7615.

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CHAPTER I.

STATE BOARD OF HEALTH AND SANITARY PROVISIONS.

See *infra*, § 6047 et seq., county boards of health.

See *infra*, § 6086, city boards of health.

§ 6001. [5406.] Board—Powers—Duty of Local Officers.

The state board of health shall have supervision of all matters relating to the preservation of the life and health of the people of the state. The board shall have supreme authority in matters of quarantine, and may declare and enforce it when none exists, may modify, relax or abolish it when it has been established. The board may have special or standing orders or regulations for the prevention of the spread of contagious or infectious diseases, and for governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by universal rule. It may also make and enforce orders in local matters, when in the opinion of the state board of health, an emergency exists and the local board of health has neglected or refused to act with sufficient promptness or efficiency, or when no such local board has been established, and all expenses so incurred shall be paid by the county in which such services are rendered out of the general fund of said county. It shall be the duty of all local boards of health, health authorities and officials, officers of the state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city or township thereof, to enforce such quarantine and sanitary rules and regulations as may be adopted by the state board of health, and in the event of failure or refusal on the part of any member of said boards or other officials, or persons in this section mentioned to so act, he or they shall be subject to a fine of not less than fifty dollars, upon first conviction, and upon conviction of second offense of not less than one hundred dollars. The board shall make careful inquiry as to the cause of disease especially when contagious, infectious, epidemic or endemic, and take prompt action to control and suppress it. It shall respond promptly, when called upon by the state or local government and municipal or township boards of health, to investigate and report upon the water supply, sewerage, disposal of excreta, heating, plumbing, or ventilation of any place or public building. [L. '01, p. 236, § 1. Cf. L. '91, p. 189, § 2; 1 H. C., § 2607.]

See *infra*, § 10814, constitution of state board of health.

See *infra*, § 10816, duties devolve upon new state board of health.

See *infra*, § 10893, state board of health abolished.

Cited in 103 Wash. 414.

Power to Make Regulations: See Remington's Digest, Health, § 5; *Ah Lim v. Territory*, 1 Wash. 156, 24 Pac. 588, 9 L. R. A. 395; *State v. Carey*, 4 Wash. 424, 30 Pac. 729; *Hathaway v. McDonald*, 27 Wash. 659, 68 Pac. 376, 91 Am. St. Rep. 889; *State v. Sharpless*, 31 Wash. 191, 71 Pac. 737, 96 Am. St. Rep. 893; *State ex rel. McBride v. Su-*

perior Court, 103 Wash. 409, 174 Pac. 973.

Power and Duty as to Contagious and Infectious Diseases: See Remington's Digest, Health, § 6; *Lynch v. North Yakima*, 37 Wash. 657, 80 Pac. 79, 12 L. R. A. (N. S.) 261; *State ex rel. McBride v. Superior Court*, 103 Wash. 409, 174 Pac. 973.

§ 6002. [5407.] Contagious Diseases—Report to State Board—Measures.

It shall be the duty of the local board of health, health authorities or officials, and of physicians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit; Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. And when any contagious or infectious disease shall, in the opinion of the state board of health, become or threaten to become epidemic in any city, village or county, and the local authorities shall neglect or refuse to enforce measures which, in the opinion of the state board of health, are efficient for its prevention, the state board of health, or its executive officers, on the order of the president of said board, may appoint a medical or sanitary officer, and such assistants as he may require, and authorize him to enforce such orders or regulations as said board or its executive officers may deem necessary, the expense thereof to be paid by that county in which such services are rendered out of its general fund. [L. '01, p. 237, § 2.]

See note to § 6001.

"Act" refers to §§ 6004 and 6006.

§ 6003. [5409.] Expenses of Board—Salary of Secretary.

The president of the board shall quarterly certify the amount due the secretary as salary, and all other accounts due, and on presentation of his certificate, with the proper vouchers, the auditor of the state shall draw his warrant on the treasurer for the amount. [L. '03, p. 86, § 1. Cf. L. '91, p. 191, § 10; 1 H. C., § 2615; L. '97, p. 283, § 1.]

Superseded in part, see note to § 6001.

See next section, state commissioner to be secretary of board.

Salary payable monthly: See last section and § 10965.

§ 6004. [5410.] Duties—Deputies—Vital Statistics—Law Enforcement.

The state commissioner of health shall be state registrar of vital statistics and secretary of the state board of health and executive officer of said board. He shall be the custodian of all property and records of the state board of health and shall have charge of the office and all laboratories of said board. He is authorized to appoint deputy commissioners of health and such scientific, clerical and other assistants as may be necessary to properly carry on the work of the board. He shall

devote his time to the investigation of sanitary conditions and the prevalence of disease in the state and to such other duties as the state board of health may direct or this act or any other act may require. It shall be his duty to strictly enforce all laws passed for the protection of the public health and improvement of sanitary conditions of the state and to enforce all rules, regulations and orders of the state board of health. He shall investigate all epidemics of disease that may occur in the state and advise the local health officers as to the best measures to be taken to prevent and control such disease and he shall supervise all measures taken by local health officers for the suppression and control of disease. He shall have the same authority to quarantine and disinfect any person, article of household goods or merchandise, building or vessel that is conferred by law upon any local county or city health officers or commissioner: Provided, he shall not exercise such authority to quarantine and disinfect unless the local health officer or commissioner refuses or neglects to do so or when in an emergency the safety of the public health demands it. He is authorized to release any quarantine whether ordered by himself or any local health officer when in his opinion it is no longer necessary. [L. '09, p. 719, § 2.]

See infra, § 10817, duties devolve upon director of health.

See infra, § 10893, state commissioner of health abolished.

§ 6005. [5410-1.] Annual Convention of County Health Officers.

It shall be the duty of the state commissioner of health to hold annually a convention of county health officers, at such place as he shall deem convenient, for the discussion of questions pertaining to public health and sanitation. Said convention shall continue in session for such time not exceeding three days as the said commissioner of health shall deem necessary. It shall be the duty of the health officer of each county to attend said convention during its entire session, and such officer shall receive his actual and necessary traveling expenses, to be paid by said county: Provided, that no claim for such compensation or expenses shall be allowed or paid unless it be accompanied by a certificate from the state commissioner of health attesting the attendance of such health officer at said convention. [L. '15, p. 249, § 1.]

See note to § 6004.

§ 6006. [5411.] Assisting Local Authorities—Sanitation.

The commissioners of any county or the mayor of any city may call upon the state commissioner of health for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the state commissioner of health shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his advice thereon to the county or city making such request. [L. '09, p. 720, § 3.]

§ 6007. [5412.] Annual Report of Board, What to Contain.

It shall be the duty of the board of health to make an annual report, through their secretary or otherwise, in writing, to the governor of the

state on or before the first of January of each year, and such report shall include so much of the proceedings of the board and such information concerning vital statistics, such knowledge respecting diseases, and such instructions on the subject as may be thought useful by the board for the dissemination among the people, with suggestions as to legislative action as they may deem necessary. [L. '91, p. 191, § 11; 1. H. C., § 2616.]

See note to § 6001.

§ 6008. [5413.] Books and Certificates, How Furnished.

The secretary of state shall furnish to each county auditor the necessary books for record, and blank certificates in book form, which certificates the county auditor shall furnish to each physician practicing in his county. [L. '91, p. 191, § 12; 1 H. C., § 2617.]

§ 6009. [5414.] Rooms to be Provided by Secretary of State.

The secretary of the state shall provide room suitable for the meetings of the board and office for the secretary. [L. '91, p. 191, § 14; 1 H. C., § 2618.]

§ 6010. [5415.] Cognizance of Fatal Diseases Among Animals.

The state board of health shall take cognizance of any fatal diseases which may be prevalent among the domestic animals of the state, and ascertain the nature and causes of such disease, and shall, from time to time, publish the results of their investigations, with suggestions for the proper treatment of such animals as may be affected, and the remedy or remedies therefor. [L. '91, p. 191, § 15; 1 H. C., § 2619.]

See note to § 6001.

CHAPTER II.

VITAL STATISTICS.

§ 6011. [5416.] Registration of Births and Deaths.

The board of health shall have supervision of the state system of registration of births and deaths as hereinafter provided. They shall recommend such forms and such legislation as shall be necessary for the thorough registration of vital and mortuary statistics throughout the state. The secretary of the board shall be the superintendent of such registration, and shall keep well-bound record books, in which, shall be tabulated the reports made to the state board by the county auditor as hereinafter provided. He shall keep an accurate account of all moneys received for certificates issued, for fines and all other sources. He shall pay at the end of each month all money on hand to the state treasurer for the credit of the state board of health. [L. '91, p. 189, § 3; 1 H. C., § 2608.]

To what extent this and the next six sections are superseded by § 6018 et seq., may be questioned, there being no repealing clause in that act and no absolute conflict between any of the provisions of these sections; however, they are probably superseded.

See *infra*, § 10815, appointment of registrar of vital statistics.

See *infra*, § 10817, duties devolve upon director of health.

Validity and construction of statute
requiring registration of births and

deaths. *Ann. Cas.* 1912C, 686; 39
L. R. A. (N. S.) 1015.

§ 6012. [5417.] Physicians, Accoucheurs, and Midwives must Register.

It shall be the duty of all physicians in this state to register their names and postoffice address with the county auditor of the county where they reside; and every physician shall, under penalty of ten dollars, to be recovered in any court of competent jurisdiction in the state, at suit of any member of the state or local board of health, report to the county auditor on or before the fifteenth day of every month, all births and deaths which may come under his or her supervision during the previous calendar month, with a certificate of the cause of death, and such correlative facts as the board may require, in the blank forms to be provided and furnished by the county auditor. [L. '90, p. 41, § 1; L. '91, p. 189, § 4; 1 H. C., § 2609; L. '95, p. 41, § 1.]

See note to §§ 6011, 6018.

Who is a physician or surgeon within meaning of statute in relation to vital statistics. 8 A. L. B. 1070.

§ 6013. [5418.] Report of Birth or Death, Where No Physician in Attendance.

Where any birth or death shall take place, no physician, accoucheur, or midwife being in attendance, the same shall be reported to the county auditor within thirty days from the date of their occurrence, with the supposed cause of death, by the parent, or if none, by the nearest of kin not a minor, or if none, by the resident householder where the death shall occur, under penalty as provided in the preceding section of this chapter. [L. '91, p. 189, § 5; 1 H. C., § 2610.]

See note to §§ 6011, 6018.

§ 6014. [5419.] Coroners must Report Death to Auditor.

The coroners of the several counties shall be required to report to the county auditor all cases of deaths which may come under their supervision, with the cause and mode of death, etc., as per forms to be provided and furnished by the county auditor, under penalty as provided in section 6012. [L. '91, p. 190, § 6; 1 H. C., § 2611.]

See note to §§ 6011, 6018.

§ 6015. [5420.] Prosecutions — Procedure — Disposition of Fines Collected.

All prosecutions and proceedings instituted by the state board of health, for the violations of any of the provisions of this act, or any other laws to be enforced by this board, for the violation of any of the orders or regulations of the state board of health, shall be instituted by its proper officer on the order of the board; and all laws prescribing the modes of procedure, courts, practice and penalties for judgments applicable to local boards of health, shall apply to the state board of health, and the violation of its laws or orders; and all fines or judgments collected or received, shall be paid over to the state treasurer, and credited to the funds created for the support of the state board of health. [L. '01, p. 238, § 3.]

See note to §§ 6011, 6018.

"This act" refers to the first seven sections of this chapter.

§ 6016. [5421.] Moneys Recovered for Penalties, Appropriation of.

All moneys recovered under the penalties herein provided shall be appropriated to a special fund for the carrying out of the objects of this law. [L. '91, p. 190, § 7; 1 H. C., § 2612.]

See note to §§ 6011, 6018.

§ 6017. [5422.] Records—What must be Kept by Auditors, and How.

The county auditor of the several counties in this state shall be required to keep a record book for the registration of the names and post-office addresses of physicians, accoucheurs, and midwives, to be known as a register of physicians and accoucheurs. Shall also keep a book for registering all births, to be known as a birth register, and also shall keep a book to register all deaths, to be known as a death register, and all the births and deaths so registered shall be transcribed quarterly, in alphabetical order, into books to be known as the permanent record of births and the permanent record of deaths. He shall also keep a book, to be known as the marriage statistic record, in which shall be recorded all the statistical information prescribed by the state board. Said books shall always be open for inspection, and said county auditor shall be required to render a full and complete report of all marriage statistics, births, and deaths to the secretary of the board of health quarterly, and at such other times as the secretary of the board may direct. [L. '91, p. 190, § 8; 1 H. C., § 2613.]

See note to §§ 6011, 6018.

§ 6018. [5423.] Registration of Births and Deaths—State Registrar.

It shall be the duty of the state board of health to have charge of the state system of registration of births and deaths and to prepare the necessary rules, forms and blanks for obtaining records and to insure the faithful registration of the same. The secretary of the state board of health shall be ex-officio state registrar and shall have general supervision over the system of vital statistics hereby authorized and shall be charged with the uniform and thorough enforcement of this law throughout the state, and shall, from time to time, recommend any additional forms and amendments that may be necessary. [The state board of health is authorized to appoint, when necessary, an assistant state registrar, who shall be assistant secretary of the state board of health, and to employ the necessary clerical assistants to properly record, index and classify the returns of vital statistics herein provided for.] [L. '07, p. 145, § 1.]

See notes to § 6011.

See supra, § 6004, state commissioner of health to be secretary and registrar.

The last part of this section in brackets is probably superseded by § 6004, supra.

These sections, being a complete act on this subject, probably impliedly repeal all or most of the seven preceding sections.

§ 6019. [5424.] Registration Districts.

That for the purposes of this act the state shall be divided into registration districts as follows: Each city of the first, second and third class shall constitute a primary registration district, and each county, exclusive of the portion included within cities of the first, second and third class,

shall be subdivided by the state registrar into districts in such manner as may appear necessary for the convenience of the people, and each such district shall constitute a primary registration district, and each primary registration district shall be numbered by the state registrar. [L. '15, p. 636, § 1. Cf. L. '07, p. 145, § 2.]

§ 6020. [5425.] Local Registrars—Duties—Death Certificates and Burial Permits.

The health officer of each city of the first, second and third class shall be the local registrar in and for such primary registration district, and shall perform all the duties of the local registrar as hereinafter provided. The state registrar shall appoint a suitable person in and for each registration district not included in the cities of the first, second or third class, who shall hold such position during the pleasure of the state registrar, and shall perform all of the duties of local registrar, as hereinafter provided. Each local registrar shall appoint in writing a deputy who shall be authorized to act in case of the absence, death, illness or disability of the local registrar, and shall certify the appointment of such deputy to the state registrar. [L. '15, p. 636, § 2. Cf. L. '07, p. 145, § 3.]

§ 6021. [5426.] Burial and Removal Permits—Unlawful Interments.

That it shall be unlawful for any person to inter, deposit in a vault, grave or tomb, cremate or otherwise dispose of, or disinter or remove from one registration district to another or hold for more than seventy-two hours after death, the body or remains of any person whose death occurs in this state or any body which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the body was found, a permit for the burial, disinterment or removal of such body: Provided, that any licensed embalmer of this state may temporarily remove any such body of a person dying in this state from the place where death occurred outside of the corporate limits of any city of the first, second or third class to another registration district for the purpose of preparing the same for burial without having first obtained a removal permit, but in such case the embalmer shall at the time of securing a burial, removal or transit permit for such body, filed with the registrar from whom such permit is secured, upon a blank to be furnished by the state registrar, a certificate in writing of such temporary removal, signed by the embalmer, and it shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave or tomb, or cremate or otherwise dispose of the body or remains of any person whose death occurred outside this state unless such body or remains be accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred or unless a special permit for bringing such body into this state shall be obtained from the state registrar. [L. '15, p. 637, § 3. Cf. L. '07, p. 146, § 4.]

§ 6022. [5427.] Stillborn Children—Registration of.

That stillborn children or those dead at birth shall be registered as births and also as deaths, and a certificate of both the birth and the death

shall be filed with the local registrar, in the usual form and manner, the certificate of birth to contain, in place of the name of the child, the word "stillbirth." The medical certificate of the cause of death shall be signed by the attending physician or midwife, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, and if born prematurely, the period of uterogestation in months, if known; and a burial or removal permit in usual form shall be required: Provided, that a certificate of birth or death shall not be required for a stillborn child that has not advanced beyond the seventh month of uterogestation. [L. '15, p. 638, § 4. Cf. L. '07, p. 147, § 5.]

§ 6023. [5428.] Certificate of Death—Contents.

The certificate of death shall contain the following items: (1) Place of death; including state, county, township or town, village or city. If in a city, the ward, street and house number. If in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name to be given. (2) Full name of decedent. If an unnamed child, the surname preceded by "unnamed." (3) Sex. (4) Color or race; as white, black, (negro or negro descent), Indian, Chinese, Japanese or other. (5) Conjugal condition; as single, married, widowed or divorced. (6) Date of birth, including the year, month and day. (7) Age, in years, months and days. (8) Place of birth, state or foreign country. (9) Name of father. (10) Birthplace of father, state or foreign country. (11) Maiden name of mother. (12) Birthplace of mother, state or foreign country. (13) Occupation. The occupation to be reported of any person who had any remunerative employment, women as well as men. (14) Signature and address of informer. (15) Date of death, including the year, month and day. (16) Statement of medical attendance on decedent, fact and time of death, including the last time seen alive. (17) Cause of death, including the primary and immediate causes and contributory causes or complications, if any, and duration of each. (18) Signature and address of physician or official making the medical certificate. (19) Special information concerning deaths in hospitals and institutions, and of persons dying away from home, including the former or usual residence, length of time, and place of death, and place where the disease was contracted. (20) Place of burial or removal. (21) Date of burial or removal. (22) Signature and address of undertaker. (23) Official signature of registrar, with date when certificate was filed, and registered number.

The personal and statistical particulars (items 1 to 13) shall be authenticated by the signature of the informer, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred. And he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in death, giving the primary and immediate causes, and also the con-

tributory causes, if any, and the duration of each. Indefinite and unsatisfactory terms, indicating only symptoms of disease or conditions resulting from disease, will not be held as sufficient for issuing a burial or removal permit; and any certificate containing only such terms as defined by the state registrar as indefinite and unsatisfactory shall be returned to the physician for correction and definition. Causes of death, which may be the result of either disease or violence, shall be carefully defined; and if from violence, its nature shall be stated, and whether accidental, suicidal or homicidal, and in case of death in hospitals, institutions, or away from home, the physician shall furnish the information required under this head (item 19), and shall state where, in his opinion, the disease was contracted. [L. '07, p. 147, § 6.]

§ 6024. [5429.] Death Without Medical Attendance—Investigation.

That in case of any death occurring without medical attendance, it shall be the duty of the undertaker, or any person acting as such, to notify the local registrar of the registration district where such death occurs, or the coroner, if in a county of the first class, of such death, and the local registrar shall at once investigate the circumstances of the case and make a certificate and return of death noting upon the certificate the fact that such death occurred without medical attendance: Provided, if the local registrar is not a qualified physician and the cause of death is obscure or uncertain, the local registrar shall refer the case to the health officer having jurisdiction over the locality where the death occurred, for certification: And provided, further, that if the circumstances of the case render it probable that the death was caused by unlawful means, the local registrar shall refer the case to the coroner, if the death occurred in a county of the first class, or to the prosecuting attorney, if the death occurred in any county other than a county of the first class, for certification. [L. '15, p. 638, § 5. Cf. L. '07, p. 149, § 7.]

§ 6025. [5430.] Burial Permits, etc.—Procedure.

That it shall be the duty of every undertaker or person acting as undertaker, to obtain a certificate of death and file the same with the local registrar, and secure a burial or removal permit, prior to any permanent disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them, over the signature and address of such person or state over his own signature that after careful inquiry he could not obtain such particulars. In case such deceased be a stranger whose identity cannot be determined it shall be the duty of the undertaker having such body in charge to have a photograph taken of such deceased and a copy of such photograph shall be filed with the secretary of the state board of health. He shall then present the certificate to the attending physician, if any, or in case the death occurred without any medical attendance, to the proper official for certification as hereinabove provided, for the medical certificate of the cause of death and other particulars necessary to complete the record as hereinabove provided. And he shall state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar, for the issu-

ance of a burial or removal permit. The undertaker shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring the body; or shall attach the transit permit containing the local registrar's removal permit, to the box containing the corpse, when shipped by any transportation company, and said permit shall accompany the corpse to its destination, provided that when a body is removed from one registration district in Washington to another for interment, cremation or other permanent disposition not requiring the use of a common carrier or the issuance of a transit permit, the registrar's removal permit from the district where the death occurred may be accepted as authority for burial in the other district. It shall be the duty of every person, firm or corporation selling a casket to keep a record showing the name and postoffice address of the purchaser, the name of the deceased and the date and place of death of the deceased, which record shall be open to inspection of the state registrar at all times, and it shall be the duty of every person, firm, or corporation selling caskets to, on the first day of each month, report to the state registrar each sale for the preceding month, on a blank provided for that purpose: Provided, however, that no person, firm, or corporation selling caskets to dealers or undertakers only shall be required to keep such record. It shall be the duty of every person, firm, or corporation selling a casket at retail, and not having charge of the disposition of the body, to inclose within the casket a notice furnished by the state registrar calling attention to the requirements of the law, a blank certificate of death, and a copy of the rules and regulations of the state board of health concerning the burial or other disposition of dead bodies. [L. '15, p. 639, § 6. Cf. L. '07, p. 149, § 8.]

§ 6026. [5431.] Requisites of Burial Permit.

If the interment, or other disposition of the body, is to be made within the state, the wording of the burial permit may be limited to a statement by the local registrar and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove or otherwise dispose of the deceased; stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar. [L. '07, p. 150, § 9.]

§ 6027. [5432.] Burial Grounds—Duties of Sexton.

It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated or otherwise permanently disposed of, to permit the interment, cremation or other disposition of any body upon such premises unless it is accompanied by a burial, removal or transit permit as hereinabove provided. It shall be the duty of the person in charge of any such premises to, in case of the interment, cremation or other disposition of a body therein, indorse upon the permit the date and character of such disposition, over his signature, to return all permits so indorsed to the local registrar of his district within ten days from the date of such disposition, and to keep a record of all bodies disposed of on the premises under his charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the

undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying a body in a cemetery or burial grounds having no person in charge, to sign the burial, removal or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge," and file the burial, removal or transit permit within ten days with the registrar of the district in which the cemetery is located. [L. '15, p. 640, § 7. Cf. L. '07, p. 150, § 10.]

§ 6028. [5433.] Registration of Births.

All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided. [L. '07, p. 150, § 11.]

§ 6029. [5434.] Certificate of Birth—Filing.

It shall be the duty of the attending physician or midwife to file a certificate of birth, properly and completely filled out, giving all of the particulars required by this act, with the local registrar of the district in which the birth occurred, within ten days after the date of birth. And if there be no attending physician or midwife, then it shall be the duty of the father or mother of the child, householder or owner of the premises, manager or superintendent of public or private institution in which the birth occurred, to notify the local registrar, within ten days after the birth, of the fact of such a birth having occurred. It shall then, in such case, be the duty of the local registrar to secure the necessary information and signature to make a proper certificate of birth. [L. '07, p. 150, § 12.]

§ 6030. [5435.] Contents of Certificate.

The certificate of birth shall contain the following items:

(1) Place of birth, including state, county, township or town, village or city. If in a city, the ward, street, and house number; if in a hospital, or other institution, the name of the same to be given, instead of the street and house number. (2) Full name of the child. If the child dies without a name, before the certificate is filed enter the words "died unnamed." If the living child has not been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided. (3) Sex of child. (4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in a case of plural birth, giving the number of child in order of birth. (5) Whether legitimate or illegitimate. (6) Full name of father. (7) Residence of father. (8) Color or race of father. (9) Birthplace of father. (10) Age of father at last birthday, in years. (11) Occupation of father. (12) Maiden name of mother, in full. (13) Residence of mother. (14) Color or race of mother. (15) Birthplace of mother. (16) Age of mother at last birthday, in years. (17) Occupation of mother. (18) Number of child of this mother, and number of children of this mother now living. [L. '07, p. 151, § 13.]

§ 6031. [5436.] Names of Children Supplied.

It shall be the duty of every local registrar when any certificate of birth of a living child is presented without statement of the given name, to make out and deliver to the parents of such child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the registrar as soon as the child has been named. [L. '15, p. 641, § 8. Cf. L. '07, p. 151, § 14.]

§ 6032. [5437.] Registration of Physicians, Midwives and Undertakers.

Every physician, midwife and undertaker shall without delay, register his or her name, address and occupation with the local registrar of the district in which he or she resides or may hereafter establish a residence; and shall thereupon be supplied by the local registrar with a copy of this act, together with such rules and regulations as may be prepared by the state registrar relative to its enforcement. Within thirty days after October 1st of each year each local registrar shall make a return to the state registrar of all physicians and midwives who have been registered in his district during the whole or any part of the preceding calendar year: Provided, that no fee or other compensation shall be charged by local registrars to physicians, midwives, or undertakers for registering their names under this section or making returns thereof to the state registrar. [L. '07, p. 152, § 15.]

§ 6033. [5438.] Inmates of Hospitals, etc.—Record.

All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions, at the date of approval of this act, that are required in the form of the certificate provided for by this act, as directed by the state registrar; and thereafter such record shall be by them made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of contagious disease, the physician in charge shall specify, for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from the relatives, friends, or other persons acquainted with the facts. [L. '07, p. 152, § 16.]

§ 6034. [5439.] Duties of State Registrar.

That the state registrar shall prepare, print and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purpose of this act; and shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. And no other blanks shall be used

than those supplied by the state registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory, he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory, and shall cause such further information to be attached to and filed with the certificate. He shall furnish, arrange, bind and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered; the cards to show the name of the child or deceased, place and date of birth or death, number of certificate, and the volume in which it is contained. He shall inform all local registrars of the diseases which are to be considered as infectious to the public health, as decided by the state board of health, in order that, when death occurs from such diseases, proper precautions may be taken to prevent the spreading of dangerous diseases. If any cemetery company or association, or any church or historical society or association, or any other company, society, or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such company, society, association, or individual may file such record or a duly authenticated transcript thereof with the state registrar, and it shall be the duty of the state registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the state registrar may prescribe. If any person desires a transcript of any record filed in accordance herewith, the state registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of fifty cents per hour or fraction of an hour necessarily consumed in making such transcript, which fee shall be paid by the applicant. [L. '15, p. 641, § 9. Cf. L. '07, p. 153, § 17.]

See *infra*, § 10817, duties devolve upon director of health.

§ 6035. [5440.] Duties of Local Registrar.

It shall be the duty of the local registrar to supply blank forms of certificates to such persons as require them. And he shall carefully examine each certificate of birth or death when presented for record, to see that it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold issuing the burial or removal permit until they are corrected. If the certificate of death is properly executed and complete, he shall issue a burial or removal permit to the undertaker: Provided, that in case the death occurred from some disease that is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the local registrar, except under such conditions as may be

prescribed by the state and local boards of health. If a certificate of a birth is incomplete, he shall immediately notify the informant, and require him to supply the missing items if they can be obtained. He shall then number consecutively the certificates of birth and death, in two separate series, beginning with "number one" for the first birth and the first death in each calendar year, and sign his name as local registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and death certificate registered by him, upon a form identical with the original certificate, to be filed and permanently preserved in his office as the local record of such death, in such manner as directed by the state registrar. And he shall on or before the fifth day of each month, transmit to the state registrar all original certificates registered by him during the preceding month. And if no births or no deaths occurred in any month, he shall, on the fifth day of the following month, report that fact to the state registrar, on a card provided for this purpose: Provided, that in cities of the first class, original certificates may be retained by the local health authorities, and exact duplicates of the original certificates may be forwarded by the local registrars to the state registrar. [L. '07, p. 153, § 18.]

§ 6036. [5441.] Compensation of Local Registrars.

That each local registrar shall be paid the sum of twenty-five cents for each birth or death certificate properly and completely made out and registered with him and by him returned to the state registrar on or before the tenth day of the following month, which sum shall cover and include the making out of the burial permit and copy of the certificate to be filed and preserved in his office. And in case no births or deaths were registered during any month, the local registrar shall be paid the sum of twenty-five cents for each report to that effect, properly made out in accordance with the directions of the state registrar: Provided, that all local registrars who receive regular compensation as health officers shall not be entitled to the fee of twenty-five cents, above mentioned, but the duties of the local registrar shall be considered as a part of their duty as local health officer. All fees payable to local registrars under the provisions of this act shall be paid by the treasurer of the county, or city, as the case may be, properly chargeable therewith, out of the funds of such county or city, upon warrants drawn by the auditor, or other proper officer of such county or city. No warrant shall be issued to any local registrar except upon a certificate, signed and verified under oath by the state registrar, stating the names and postoffice address respectively of the local registrars entitled to fees from such county or city, and the number of certificates and reports of births or deaths, properly returned to the state registrar, by each such local registrar, during the three preceding calendar months prior to the date of such certificate, and the amount of fees to which each local registrar is entitled, which certificate the state registrar shall file with the proper officers during the months of January, April, July and October of each year. Upon the filing of such certificates, it shall be the duty of the auditor or other proper officer of the

county or city to issue warrants for the amount due each local registrar and mail the same to the local registrars at their respective post-office addresses, as given in such certificate of the state registrar. [L. '15, p. 643, § 10. Cf. L. '07, p. 154, § 19.]

§ 6037. [5442.] Certified Copies of Records and Searches, Fees for.

It shall be the duty of the state registrar to, upon request, furnish any applicant with a certified copy of the record of any birth or death, registered under the provisions of this act, for the making and certification of which he shall be entitled to a fee of fifty cents to be paid by the applicant. For any search of the files and the records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour employed in such search, to be paid by the applicant. But the state registrar and all local registrars shall furnish upon application certificates of the age of children to be used in attending the public schools or in obtaining employment permits without fee or compensation. The state registrar shall keep a true and correct account of all fees received by him under the provisions of this act, and turn the same over to the state treasurer on the first day of January, April, July and October. Local registrars in cities of the first, second and third class shall be entitled to charge for certified copies of records of births and deaths and for searching of records when no certified copy is made, the same fee as hereinabove provided for the state registrar, but such fees, if any collected, shall be paid into the treasury of the city where collected. [L. '15, p. 644, § 11. Cf. L. '07, p. 155, § 20.]

See note to § 6034.

§ 6038. [5443.] Violations of Act—Penalties.

Every person who shall violate or willfully fail, neglect or refuse to comply with any provisions of this act shall be guilty of [a] misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine of not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment, and every person who shall willfully furnish any false information for any certificate required by this act or who shall make any false statement in any such certificate shall be guilty of a gross misdemeanor. [L. '15, p. 644, § 12. Cf. L. '07, p. 156, § 21.]

§ 6039. [5444.] Enforcement of Act—Who Charged With.

The local registrars are hereby charged with the strict and thorough enforcement of the provisions of this act in their districts, under the supervision and direction of the state registrar. And they shall make an immediate report to the state registrar of any violations of this law coming to their notice by observation or upon the complaint of any person, or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and with supervisory power over local registrars, to

the end that all of the requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all local registrars shall aid him, upon request, in such investigation. When he shall deem it necessary he shall report cases of violation of any of the provisions of this act to the prosecuting attorney of the proper county with a statement of the fact and circumstances; and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law. And upon request of the state registrar the attorney general shall likewise assist in the enforcement of the provisions of this act. [L. '07, p. 157, § 22.]

"Act" refers to this chapter, except the first seven sections.

CHAPTER III.

DEAD BODIES AND PUBLIC MORGUES.

§ 6040. Public Morgue—Authority to Provide. |

In counties of the first class of more than two hundred and fifty thousand population, the county commissioners, within three (3) months after the taking effect of this act and in counties which shall hereafter attain a population of more than two hundred and fifty thousand, within one (1) year after attaining such population, may at their discretion provide and equip a public morgue together with suitable morgue wagon for the conveyance, receipt and proper disposition of the bodies of all deceased persons not claimed by relatives, and of all dead bodies which are by law subject to a post mortem or coroner's inquest: Provided, however, that only one public morgue may be established in any county. [L. '17, p. 329, § 1.]

§ 6041. Coroner to Control Morgue.

Such morgue shall be under the control and management of the coroner who shall have power with the advice and consent of the county commissioners, to employ the necessary deputies and employees; and, with the advice and consent of the county commissioners, to fix their salaries and compensation, which, together with the expenses of operating such morgue, shall be paid monthly out of the county treasury. [L. '17, p. 329, § 2.]

§ 6042. Dead Bodies in Coroner's Jurisdiction.

The jurisdiction of the bodies of all deceased persons, not claimed by friends or relatives, or who come to their death by reason of violence or unnatural causes, or where there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, and bodies upon which a post mortem or coroner's inquest is to be held, is hereby vested in the county coroner, which bodies may be placed in the morgue, and it shall be his duty, under such rules as shall be adopted by him with the approval of the county commissioners, to provide how such bodies shall be brought to and cared

for at said morgue and held for the proper identification where the same is necessary. [L. '17, p. 330, § 3.]

§ 6043. Notice to Coroner of Dead Bodies—Penalty.

It shall be the duty of every person who knows of the existence and location of a dead body coming under the jurisdiction of the coroner as set forth in section 6042, to notify the coroner thereof in the most expeditious manner possible, unless such person shall have good reason to believe that such notice has already been given. Any person knowing of the existence of such dead body and not having good reason to believe that the coroner has notice thereof and who shall fail to give notice to the coroner as aforesaid, shall be guilty of a misdemeanor. [L. '17, p. 330, § 4.]

§ 6044. Free Care of Bodies.

No charge shall be made for the removal to or care of any body while in the morgue and upon the request of relatives or friends the body after investigation shall be delivered to the friends at any point in the city without charge. [L. '17, p. 330, § 5.]

§ 6045. Duplicate Lists of Deceased's Personalty.

Duplicate lists of all jewelry, moneys, papers, and other personal property of the deceased shall be made immediately upon finding the same by the coroner or his assistants. The original of such lists shall be kept as a public record at the morgue and the duplicate thereof shall be forthwith duly certified to by the coroner and filed with the county auditor. [L. '17, p. 330, § 6.]

§ 6046. Penalty for Removal or Concealment.

Any person, not authorized by the coroner or his deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, to any undertaking-rooms or elsewhere, or any person who directs, aids or abets such taking, and any person who in any way conceals the body of a deceased person for the purpose of taking the same to any undertaking-rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one (1) year or by both fine and imprisonment in the discretion of the court. [L. '17, p. 331, § 7.]

CHAPTER IV.

QUARANTINES AT SEAPORTS, PESTHOUSES, ETC.

§ 6047. [5497.] County Boards — Duties — Health Officer — Bond and Oath of.

The county commissioners of the several counties of the state of Washington shall be and the same are hereby created and constituted

a board of health for said county, whose duty it shall be to make such regulations respecting the quarantine of ships or vessels, prescribing in what case it shall be performed by vessels arriving at any port in said state as may be just and reasonable, and the same modify or change as in their opinion the public safety requires; and the board of health so constituted shall appoint a health officer, who shall, before entering upon the duties of his office, give bonds, with good and sufficient sureties, to the county commissioners of the county where appointed, in the sum of one thousand dollars, conditioned for the faithful performance of his duties as such health officer, and shall be sworn before such officer qualified to administer oaths to perform the duties of his office to the best of his ability, and which bond and oath shall be filed in the office of the county auditor. [L. '88, p. 46, § 1; 1 H. C., § 2621.]

§ 6048. [5498.] Duties of Health Officer—Vessels to be Disinfected, etc.

The health officer shall reside in the county where appointed, and shall require all vessels having on board any person or persons infected with smallpox, plague, pestilential or malignant fever, or other malignant, infectious, or contagious diseases, or who shall have been so infected during the voyage, or having on board any goods reasonably supposed to have any infections of such disease, to perform quarantine at some safe, suitable, and convenient place selected and designated for the purpose by the board of health, and order the master or other person having charge or control of such vessel to proceed with such vessel and anchor at such designated place, there to remain and be purified and cleansed as he may direct, and a suitable place on shore may be prescribed and properly limited for the landing, care, treatment, and purification of any person or passenger of such vessel. [L. '88, p. 46, § 2; 1. H. C., § 2622.]

Validity of state regulations concerning quarantine. 47 **Am. St. Rep.** 536.

Quarantine regulations by health authorities. 26 **L. R. A.** 484.

Liability of municipality, board of health, or health officer for en-

forcement of quarantine regulations. 9 **Ann. Cas.** 814; 16 **Ann. Cas.** 737; 5 **L. R. A. (N. S.)** 635.

Liability for breaking or permitting another to break quarantine. **Ann. Cas.** 1914B, 413.

§ 6049. [5499.] Purification of Goods from Infected Vessels—Expenses—Fees.

The board of health may, and it shall be their duty to, seize any goods landed from any such infected vessel without the permission of the health officer, and remove and keep the same until they have caused them, the said goods, to be thoroughly cleansed and purified, and which cleansing and purification shall be performed by or under the direction of the health officer, with all possible dispatch, at which time such goods shall be turned over to the care and custody of the person properly claiming the same, upon payment by the person so claiming of the expense of such removal and purification; and upon the failure of the health officer to turn over to such person any such goods, agreeable to the provisions of this section, he shall be liable for all damages that may arise from such failure, and which may be recovered by suit in any court of competent jurisdiction, together with costs of suit; that the

fees of the health officer shall be fixed by the board of health provided for in this act, but shall not exceed the sum of five dollars for each vessel boarded or examined in the daytime, and ten dollars in the nighttime, between the hours of 10 P. M., and 5 A. M., nor the sum of fifteen dollars for fumigating a vessel, which fee shall be paid [by the owner or agent of said] vessel, and shall be a lien on said vessel until paid, and no vessel shall receive a bill of health or clearance until such fee is paid, and the health officer may recover such fee, together with the cost of suit, in any court having jurisdiction. [L. '88, p. 47, § 3; 1 H. C., § 2623.]

Sections 6047—6060, constitute this act.

§ 6050. [5500.] Disobedience of Regulations—Penalty for.

Any owner, master, supercargo, officer, seaman, consignee, or any other person who shall refuse or neglect to obey the orders and regulations of the board of health in regard to such quarantine on the purification and cleansing of such vessel shall be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding three months, or both. [L. '88, p. 47, § 4; 1 H. C., § 2624.]

§ 6051. [5501.] Infected Person Taken Ashore—Expenses of.

Any person sick on board any such vessel may be sent on shore by said health officer, at some place appointed and limited for the purpose, and shall there be maintained, provided, and cleansed by or under the direction of the health officer, at the expense of such sick or infected person, if able, otherwise at the expense of the vessel in which the person or persons may have been brought into any of the ports or waters of the state of Washington, or bordering on said state. [L. '88, p. 47, § 5; 1 H. C., § 2625.]

§ 6052. [5502.] Violation of Quarantine—Penalty.

If any person shall come on shore from any vessel, infected or justly suspected of being so, subjected to or performing quarantine, or shall leave the place appointed for the sick or for purification, being placed there or employed or placed there by the health officer, without permission of such officer, he or she shall be fined not exceeding one thousand dollars, or imprisonment not exceeding three months, or both. [L. '88, p. 47, § 6; 1 H. C., § 2626.]

See supra, § 2539, exposing contagious disease.

§ 6053. [5503.] Penalty for Going on Quarantined Vessel or District.

If any person shall, without permission of the health officer, go on board any vessel ordered for or performing quarantine, or go within the limits appointed by the health officer for the reception of infected persons and property on shore, he or she shall be considered as infected, and shall be held to undergo purification in the same manner and under the same regulations and penalties as those who are performing quarantine, and shall remain there at his or her own expense until discharged by the health officer, and any person coming into any such place having been previously disguised [designated] as a place for infected persons

or property, or on board any vessel ordered to or performing quarantine, and having at the time the lawful flag, as hereinafter described, hoisted to the masthead, without permission of the health officer, he may be forcibly detained by the person or persons there employed by the health officer till he shall have undergone purification in the same manner and under the same regulations as those performing quarantine. [L. '88, p. 48, § 7; 1 H. C., § 2627.]

§ 6054. [5504.] Quarantine Flags—Penalty for not Hoisting.

A red flag, at least six feet long and four feet wide, shall be hoisted from sunrise to sunset at the main truck of any and all vessels ordered for and performing quarantine, failing in which the vessel shall be liable to a fine of five hundred dollars: Provided, the master or other person having the care and custody of any such vessel shall first be notified of such regulation, and have sufficient time and opportunity to procure said flag. A flag, as hereinbefore described, shall also be conspicuously displayed at the place designated by the board of health for the reception of infected persons and property on shore, in default of which the officer or officers having the control of such infected place shall forfeit his appointment, and shall also be liable to a fine of fifty dollars, to be recovered before any justice of the peace by any person suing for the same. [L. '88, p. 48, § 8; 1 H. C., § 2628.]

§ 6055. [5505.] Landing Infected Vessels or Making False Declarations—Penalty.

If any master, owner, supercargo, officer, seaman, or consignee of any vessel, or any other person knowing such vessel to be subject to quarantine, shall bring or suffer the same to be brought to or near any wharf, store, or dwelling-house, or other building not in use for the purpose of the health officer in his official capacity as such, or shall make any false declaration as to the port or place from which such vessel came, or in regard to the condition and health of any person on board any such vessel, or shall cause, aid, or permit the landing of any person or property, of any nature or kind whatever, from such vessel without the permission of the health officer, he shall be punished by fine not exceeding five thousand dollars, or imprisonment not exceeding three months, or both. [L. '88, p. 48, § 9; 1 H. C., § 2629.]

§ 6056. [5506.] Failure to Remove Vessel to Place of Quarantine—Liability.

If any such vessel shall not be removed to the place of quarantine agreeably to the directions of the health officer, or shall be brought near any wharf, store or dwelling-house, or other building without his permission, the health officer shall cause such vessel to be forthwith removed to such place, there to remain at the risk of the owners till expiration of the time limited by the health officer, and the expense of removal shall be paid by the master, owner, or consignee, who shall severally be liable therefor, and may be recovered by the board of health, together with costs of suit, in any court having jurisdiction. [L. '88, p. 49, § 10; 1 H. C., § 2630.]

§ 6057. [5507.] Master to Notify Health Officer—Penalty for Failure.

The master of every vessel arriving at any port in any county in the state of Washington, or at any port in the waters bordering on said state, having on board any persons infected with plague, smallpox, or other malignant, infectious, or pestilential disease, or who have been so infected during the voyage, or having on board any goods which may reasonably be supposed to have any infection of such disease, shall forthwith give notice thereof to the health officer; if any such master or other person having charge of such vessel shall neglect to give such notice, he shall be fined not exceeding five thousand dollars, or may be imprisoned not exceeding six months, or both. [L. '88, p. 49, § 11; 1 H. C., § 2621.]

§ 6058. [5508.] Pesthouse—Expenses for.

It shall be the duty of the health [officers] to appoint [appointed] under the provisions of this chapter, when by them deemed necessary, to procure a suitable building, either by lease or construction, to be used exclusively by the health officers as a pesthouse, and to approve all necessary expenses of said health officer in procuring a building and keeping the same in proper repair, and obtaining necessary furniture therefor, and in carrying into effect the provisions of this act; and the county commissioners of any of the several counties of the state of Washington constituting said board of health shall appropriate a sufficient sum out of any money in the treasury of said county not otherwise appropriated, to pay the health officer a just and reasonable compensation for the services performed in the discharge of his duty as such health officer, and the county auditor shall issue an order, countersigned by said board of health, on the county treasurer, who shall pay the same out of any money in the treasury not otherwise appropriated. [L. '88, p. 49, § 12; 1 H. C., § 2632.]

See, also, § 6093, *infra*.

See note to § 6049. The above section is incomplete.

Cited in 28 Wash. 352.

The acts of the county physician in connection with taking possession of certain property for pesthouse purposes need

not be expressly authorized or subsequently ratified: *Brown v. Pierce County*, 28 Wash. 345, 68 Pac. 872.

§ 6059. [5509.] Notice of Regulations.

The board of health shall give notice, in such manner as they may think reasonable and most for the public good, of any and all regulations made by them under the provisions of this chapter, the expense or cost of which shall be paid out of the county treasury, and the county auditor is hereby authorized to draw his warrant, countersigned by said board of health, on the county treasurer for the same, who shall pay such bill out of any money in the treasury not otherwise appropriated. [L. '88, p. 49, § 13; 1 H. C., § 2633.]

See note to § 6049.

§ 6060. [5510.] Disposition of Fines.

All fines recovered under the provisions of this chapter, and not otherwise provided for, be and the same shall be paid into the county treasury. [L. '88, p. 50, § 14; 1 H. C., § 2634.]

See note to § 6049. See "Proviso" to § 16, L. '88, p. 50.

§ 6061. [5511.] Infected Persons may be Quarantined by City.

When any person is or has recently been infected with any disease or sickness dangerous to the public health, the municipal officers of the town or city where he or she is shall provide for the safety of the inhabitants as they think best, by removing him or her to a separate house, if it can be done without great danger to his or her health, and by providing nurses and other assistants, and necessities, at his or her charge, or that of his or her parent or master, if able; otherwise, that of the town or city to which he or she belongs. [Cd. '81, § 2204; 1 H. C., § 2635.]

See *supra*, § 2539, exposing contagious disease.

Liability of municipality for expenses of quarantined person. 5 Ann. Cas. 233.

§ 6062. [5512.] Persons Arriving from Infected District must Give Notice.

When any infectious or malignant disease is known to exist in any place out of the state, the municipal officers of any town or city in the state, by giving public notice therein as they find convenient, may require any person coming from such place to inform one of them or the town or city clerk of their arrival, and from what place, and if he or she does not within two hours after his or her arrival, or after actual notice of such requirement, give such information, he or she shall forfeit one hundred dollars to the use of the town or city. [Cd. '81, § 2205; 1 H. C., § 2636.]

§ 6063. [5513.] Municipal Officers may Remove Such Persons from State.

Said officer may prohibit a person required to give such information from going to any part of their town where they may think his presence would be unsafe for the inhabitants, and if he does not comply, they may order him, unless disabled by sickness, forthwith to leave the town or city, in the manner and by the road they may direct; and if he neglects or refuses so to do, any justice of any town or city, on complaint of either of said officers, may issue a warrant to any proper officer or other person named therein, and cause him to be removed out of the state; and if, during the prevalence of such disease in the place where he resides, he returns to any town or city in this state, without the permission of the municipal officers thereof, he shall forfeit not exceeding one hundred dollars: and if said forfeiture is not paid, he shall be imprisoned not less than three months nor more than six months. [Cd. '81, § 2206; 1 H. C., § 2637.]

§ 6064. [5514.] Travelers Suspected may be Examined—License.

The municipal officers of any town or city near to or adjoining the line of this state may appoint, by writing under their hands, suitable persons to attend at any places by which travelers may pass into such town or city from infected places in other states, territories, and provinces, who may examine such passengers as they suspect of bringing with them any infection dangerous to the public health, and if need be, may restrain them from traveling until licensed thereto by a justice of the peace in the town or city, or one of said officers, and any such passen-

ger who, without such license, travels in this state, except to return by the most direct way to the state, territory, or province whence he came, after he has been cautioned to depart by the person so appointed, shall forfeit one hundred dollars or be imprisoned three months. [Cd. '81, § 2207; 1 H. C., § 2638.]

§ 6065. [5515.] Baggage Suspected may be Quarantined.

When, on the application of the municipal officers of any town or city it appears to any justice of the peace that there is a just cause to suspect that any baggage, clothing, or goods of any kind within such town or city are infected with any malignant contagious disease, by a warrant directed to a proper officer, he shall require him to impress so many men as the justice thinks necessary to secure such infected articles, and to post said men as a guard over the house or place where the articles are lodged, who shall prevent any person removing or coming near such articles, until due inquiry is made into the circumstances thereof. [Cd. '81, § 2208; 1 H. C., § 2639.]

§ 6066. [5516.] Houses may be Impressed for Safekeeping of Infected Articles.

He may by the same warrant, if it appears to him necessary, require said officers, under the direction of the municipal officers, to impress and take up convenient houses or other buildings for the safekeeping of such infected articles, and cause them to be removed thereto or otherwise detained until municipal officers think they are free from infection. [Cd. '81, § 2209; 1 H. C., § 2640.]

§ 6067. [5517.] Officer may Break Buildings Containing Infected Goods.

Said officers if need be, may break open any house, shop, or other place mentioned in the warrant where infected articles are and require such aid as is necessary to execute it, and all persons at the command of either of said officers shall assist in such execution, under a penalty for refusal of not exceeding ten dollars. [Cd. '81, § 2210; 1 H. C., § 2641.]

§ 6068. [5518.] Expense of Securing Infected Articles to be Paid by Owner.

The charges of securing such infected articles, and of transporting and purifying them, shall be paid by the owners thereof at the price determined by the municipal officers. [Cd. '81, § 2211; 1 H. C., § 2642.]

§ 6069. [5519.] Compensation for Services and Buildings.

When the officer impresses or takes up any house or other building, or other necessities, or impresses any man as herein provided, the parties interested shall have just compensation therefor, to be paid by the town or city in which such persons or property were impressed. [Cd. '81, § 2212; 1 H. C., § 2643.]

§ 6070. [5520.] Courts may Adjourn When and to What Place.

When a malignant infectious disease prevails in any town or city wherein the supreme or judicial court is to be held, said courts may be

adjourned and may be held in any town or city in said county, by proclamation made in such public manner as the courts judge best, as near their usual place of meeting as they think safety permits. [Cd. '81, § 2213; 1 H. C., § 2644.]

§ 6071. [5521.] Prisoners to be Removed When Diseased, etc.

When any person in any jail or prison or workhouse in this state is attacked with any disease which the municipal officers of his town, upon medical advice, consider dangerous to the safety and health of other prisoners, or of the inhabitants of the town or city, they shall, by their order in writing, direct his removal to some place of safety, there to be securely kept and provided for until their further order; and if he recovers from such disease, he shall be returned to his place of confinement. [Cd. '81, § 2214; 1 H. C., § 2645.]

§ 6072. [5522.] Order of Removal—Escape.

If he is committed by order of a court or under a judicial process, the order for his removal, or a copy thereof attested by the municipal officers, shall be returned by them with the [their] doings thereon, into the office of the clerk of the court from which such order or process was issued: No such removal shall be deemed an escape. [Cd. '81, § 2215; 1 H. C., § 2646.]

§ 6073. [5523.] Cities may Elect Health Committees—Number of—Powers.

A town or city may, at its annual meeting, choose or elect a health committee, of not less than three nor more than five, or one person to be a health officer, who shall remove, at the expense of their town or city, all filth found in any place therein, which in their judgment endangers the lives or health of any inhabitant, and require the owner or occupant, when they think necessary, to remove or discontinue any drain or other source of filth. [Cd. '81, § 2216; 1 H. C., § 2647.]

§ 6074. [5524.] Municipal Officers to Constitute Health Committee, When.

If any town or city, at its annual election, omits to choose or elect such committee or officer, the municipal officers shall be a health committee and have all their powers and perform all their duties. [Cd. '81, § 2217; 1 H. C., § 2648.]

§ 6075. [5525.] Source of Filth to be Removed—Forfeiture.

When any source of filth or other cause of sickness is found on private property, the owners or occupants thereof shall, within twenty-four hours after notice from the said committee or officers, at his own expense, remove or discontinue it; and if he neglects or unreasonably delays to do so, he shall forfeit not exceeding fifty dollars; and said committee or officers shall cause said nuisance to be removed or discontinued, and all expenses shall be repaid to the town or city by such owner or occupant, or by the person who caused or permitted it. [Cd. '81, § 2218; 1 H. C., § 2649.]

Cited in 55 Wash. 221.
An ordinance making it unlawful for anyone outside the crematory department to haul refuse through the streets

is not restricted by this section: *Smith v. Spokane*, 55 Wash. 219, 104 Pac. 249, 19 Ann. Cas. 1220.

§ 6076. [5526.] Persons from Infected Districts must Answer Questions—Forfeiture.

If any master, seaman, or passenger of any vessel or steamer in which there is any infection, or has lately been, or is suspected to have been, or which has come from a port where any infectious disease prevails, dangerous to the public health, refuses to answer, on oath, such questions as are asked him relating to such infection or disease, by the municipal or health officer of the town or city to which such vessel comes, which oath either of said officers may administer, he shall forfeit not exceeding two hundred dollars, or be imprisoned not more than six months. [Cd. '81, § 2219; 1 H. C., § 2650.]

§ 6077. [5527.] Vessels to Anchor Below City, When—Permits to Come Ashore.

When a vessel or steamer arrives at any seaport in this state, having on board any person infected with any malignant disease, the master, commander, or pilot thereof shall anchor it at some convenient place below the town or city of such seaport, at a distance safe for the inhabitants thereof and the persons on board other vessels or steamers in the port; and no person or thing on board shall be brought on shore until the municipal or health officers give them written permit so to do. [Cd. '81, § 2220; 1 H. C., § 2651.]

§ 6078. [5528.] Willful Violation of Preceding Section, Forfeiture for.

For the willful violation of the provisions of the preceding section, such master or commander shall forfeit not exceeding two hundred dollars, and the pilot not exceeding fifty dollars, for such offense. [Cd. '81, § 2221; 1 H. C., § 2652.]

§ 6079. [5529.] Vessel to Perform Quarantine When Required.

The municipal or health officers of any seaport town or city may cause any vessel or steamer arriving there to perform quarantine at such place and under such regulations as they may judge expedient, when they think the safety of the inhabitants requires it; and whoever neglects or refuses to obey such orders and regulations shall forfeit not exceeding five hundred dollars, or be imprisoned not exceeding six months. [Cd. '81, § 2222; 1 H. C., § 2653.]

§ 6080. [5530.] Quarantine Notices to Pilots, etc.—Forfeiture.

When such officers of a seaport town or city think it necessary to order all vessels or steamers, arriving there from any particular port or ports, to perform quarantine, they shall give notice thereof to the pilots of their port, who shall make it known to the master or commander of all vessels or steamers which they board. If any pilot neglects to do so, or, contrary thereto, pilots any vessel or steamer up to said seaport town

or city, he shall forfeit not exceeding one hundred dollars. [Cd. '81, § 2223; 1 H. C., § 2654.]

§ 6081. [5531.] Entering Contrary to Quarantine After Notice.

When the master or commander of any vessel or steamer takes either of them up to any seaport town or city after notice that a quarantine has been so directed for all vessels or steamers coming from the port or place whence his vessel or steamer sailed, or by false declaration, or otherwise, fraudulently attempts to elude such directions, or lands or suffers to be landed from his vessel or steamer any person or thing, without permission of the municipal or health officer, he shall be punished as provided in section 6078. [Cd. '81, § 2224; 1 H. C., § 2655.]

§ 6082. [5532.] Municipality to Provide Flags—Duty of Master, etc.

The municipal or health officer of any seaport town or city requiring vessels or steamers to perform quarantine shall provide, at the expense of such town or city, a suitable number of red flags, at least three yards in length; and the master or commander of every vessel or steamer ordered to perform quarantine shall cause one of them to be continually kept, during the term thereof, at the head of the mainmast of his vessel or steamer, and no person shall go on board such vessel or steamer during said term unless by permission of said officers. If he does, he shall be thereafter held liable to the same regulations and restrictions as those belonging to said vessel or steamer, and shall there be detained by force if necessary, until duly discharged by said officers. [Cd. '81, § 2225; 1 H. C., 3656.]

§ 6083. [5533.] Health Officers to Perform Quarantine Duties, When.

In every seaport town or city where there is a health committee or health officer, he or they may perform all the duties and exercise all the authority of municipal officers in requiring vessels or steamers to perform quarantine. [Cd. '81, § 2226; 1 H. C., § 2657.]

§ 6084. [5534.] Expense of Quarantine to be Paid by Whom.

All the expenses incurred on account of any person, vessel, or steamer or goods under quarantine regulations shall be paid by him or the owner of the vessel or steamer, or goods, as the case may be. [Cd. '81, § 2227; 1 H. C., § 2658.]

CHAPTER V.

CITY BOARDS OF HEALTH.

See next chapter.

§ 6085. [5535.] Board of Health—Health Officer.

The town board or common council of every town or city in this state shall hereafter, within thirty days after the adjournment of this legislature and each year thereafter, organize as a board of health, or shall appoint wholly or partially from its own members a suitable number of competent persons who shall organize as a board of health for such town or city. Such organization shall include the election of a

chairman and a clerk, and every board of health organized as provided in this chapter shall immediately after its organization appoint a health officer for the town or city, who shall be ex-officio a member of the board of health, and its executive officer, and the board of health as thus constituted shall, until their successors in office are duly organized, perform all the duties and have all powers that are given to the board of health by the general statutes of the state. Every health officer appointed under the provisions of this chapter shall be, whenever the same is practicable, a reputable physician, and shall hold his office during the pleasure of the board, and until his successor shall have been duly appointed and qualified, and in case of the occurrence of a vacancy in his office the board of health shall immediately fill the same by a new appointment: Provided, that the foregoing provisions shall not apply to any town, city or village in which a health board is organized and a health officer appointed under the provisions of a special charter, but every local board of health, whether organized under the provisions of this chapter or otherwise, shall immediately after each annual or other organization report to the state board of health the names, postoffice addresses and occupations of the chairman, clerk and health officer thereof, and shall make a similar report whenever, for any reason, a new health officer is appointed. [L. '93, p. 79, § 1.]

Appointment of health officers in cities other than first class: See *infra*, § 6092.
Cited in 67 Wash. 241.

§ 6086. [5536.] Duties of Health Officers.

It shall be the duty of every health officer appointed under the provisions of this chapter, or by the provisions of special charters, upon the appearance of smallpox, diphtheria, scarlet fever, Asiatic cholera or other dangerous contagious disease in the town or city under his supervision, immediately to investigate all the circumstances attendant upon the appearance of such disease and to make full report thereof to the board of which he is an executive officer, and also to the state board of health; and it shall be the duty of such health officer at all times promptly to take such measures for the prevention, suppression and control of the diseases herein named, as may in his judgment be needful and proper, subject to the approval of the board of which he is a member, and it shall be the duty of every health officer to keep and transmit to his successor in office a record of all his official acts; and the salary or other compensation to be paid to every health officer appointed under the provisions of this chapter, shall be established by the board of health by whom such officer shall be appointed. The term "dangerous contagious disease" as used in this chapter shall be construed and understood to mean such diseases as the state board of health shall designate as contagious and dangerous to the public health; and health officers shall make report to the state board of health concerning the progress of such diseases and concerning the measures used for their prevention and control with such frequency as to keep the board fully informed with regard thereto, or at such intervals as the said board may direct. [L. '93, p. 80, § 2.]

§ 6087. [5537.] Physicians to Report—Penalty.

Whenever any physician residing and practicing in the state shall know that any person whom he shall be called upon to visit is sick with smallpox, scarlet fever, diphtheria, Asiatic cholera or other dangerous contagious diseases he shall immediately give notice thereof to the board of health of the town, village or city in which such sick person shall be at the time, and any physician who shall refuse or neglect to give such notice for a period of forty-eight hours shall, on conviction thereof, be liable to a penalty of not less than five nor more than twenty-five dollars for each day of such refusal or neglect after the expiration of said forty-eight hours: Provided, that the notices herein required may be sent by mail, or except in the case of cities may be given to or left at the residence of any member of the board of health, and notices so mailed or given within the time specified shall be deemed a compliance with the provisions of this section. [L. '93, p. 80, § 3.] •

§ 6088. [5538.] Expenses, How Paid.

All expenses incurred in carrying out the provisions of this chapter, or any of them, shall be paid by the town, village or city by which, or on behalf of which, such expenses shall have been incurred. [L. '93, p. 81, § 4.]

§ 6089. [5539.] Violations, How Prosecuted.

Upon complaint made in writing, under oath, by any citizen of the state, before any magistrate or justice of the peace charging the commission of an offense against any of the provisions of this chapter in his county, it shall be the duty of the county or district attorney to prosecute the offender, and all sums recovered under the provisions of this chapter shall be for the benefit of the school fund. [L. '93, p. 81, § 5.]

§ 6090. [5540.] Report of State Board.

It shall be the duty of every health officer appointed under the provisions of this chapter and of each member of every board of health of any city or town, to report to the state board of health any information he may receive of any case of smallpox, cholera, yellow fever or typhus fever within three days after receiving any notification or information of the existence of such disease; and any health officer or member of any board of health of any city or town who shall fail or neglect to comply with the provisions of this section shall be liable to a penalty of not less than ten dollars nor more than one hundred dollars for each day of such neglect or refusal to comply with the provisions of this section. [L. '93, p. 81, § 6.]

Cited in 67 Wash. 241.

CHAPTER VI.**COUNTY AND CITY BOARDS OF HEALTH.****§ 6091. [5541.] County Board — Jurisdiction — Officers — County Health Officers.**

The board of county commissioners of each and every county in this state shall be constituted a county board of health for such county, and

said county board of health's jurisdiction shall be coextensive with the boundaries of said county, except that nothing herein contained shall give said board jurisdiction in cities of the first class. The chairman of the board of county commissioners shall be the president of the county board of health, and the county auditor shall be the clerk thereof. They shall on or before July 1st, next following each general election, appoint a legally qualified physician county health officer whose term of office shall be for two years from July 1st, next following each general election and shall fix his compensation.

The county health officer shall be ex-officio member of the county board of health and shall be the executive officer thereof and may be county physician. The county board of health may appoint as many sanitary officers as they may deem necessary and fix the compensation of all appointees, who shall serve during the pleasure of the board. In case of refusal or neglect of any county board of health to appoint a county health officer for thirty days after July 1st, next following any general election, or if a vacancy shall exist in the office of county health officer for a period exceeding thirty days, the state board of health may make such appointment for such county for that term and fix the compensation and a health officer so appointed shall have the same duty, power and authority as though appointed by the county board of health. The county board of health shall be subject to the supervision of the state board of health and shall make such reports to the state board of health as the state board may require. [L. '03, p. 83, § 1; L. '07, p. 162, § 1.]

§ 6092. [5542.] City Health Officers—Appointment—Term.

The mayor of every incorporated city and town except cities of the first class, shall each year appoint a legally qualified physician city health officer whose compensation shall be fixed by the city council and whose term of office shall be until January 31st of the year following that in which he is appointed or until his successor is appointed and qualified: Provided, that in cities of the second class having a board of health the board of health shall appoint the health officer: Provided further, that health officers of cities of the third class elected at the last city election shall hold such office until the expiration of the term for which they were elected. [L. '07, p. 163, § 2.]

§ 6093. [5543.] Regulations by County Board—Approval by State Board—Pesthouses.

It shall be the duty of the county board of health to make such rules and regulations as in their opinion may be necessary for the prevention, suppression and control of any dangerous, contagious or infectious disease, which rules and regulations shall take effect from and after the approval of the state board of health. They shall have the authority to establish and maintain a pesthouse or isolation hospital or quarantine station, and to restrain, quarantine, vaccinate or disinfect any person or persons sick with or exposed to any dangerous, contagious or infectious disease, in accordance with their rules and regulations, and the rules and regulations of the state board of health. [L. '03, p. 83, § 2.]

§ 6094. [5544.] Powers and Duties of Health Officers.

The county health officer shall have supervision over all matters pertaining to the preservation of life and health of the people of his jurisdiction, subject to the supervision and control of the state board of health. He shall have authority to order the abatement or removal of any nuisance detrimental to the public health, and if such nuisance is not properly abated or removed to cause its removal or abatement at the expense of the owner of the property on which the nuisance is maintained. Said expenses, if not promptly paid, to be collected, with costs, by due process of law. He shall cause proper measures, in accordance with the rules and regulations and orders of the state board of health, to be taken to prevent, suppress or control any dangerous contagious or infectious disease that may occur within the county. All city health officers except those of cities of the first class shall report immediately to the state board of health every new outbreak of any contagious or infectious disease and shall make weekly reports to the county health officer of all contagious or infectious diseases occurring within the city.

It shall be the duty of all health officers, upon the appearance of any dangerous contagious or infectious diseases within their jurisdiction, immediately to investigate all circumstances concerning such diseases, and to make a full report thereof as required above and at all times, promptly, to take such measures for the prevention, suppression and control of such diseases as may be needful and proper. Every health officer shall have the power to remove to and restrain in a pesthouse or isolation hospital, or to quarantine or isolate, any person sick with any dangerous, contagious or infectious disease until such sick person shall have thoroughly recovered and been disinfected: Provided, that no person shall be removed to or restrained in a pesthouse or isolation hospital until such person has been examined by the health officer or a medical deputy. He shall also quarantine, isolate, restrain, vaccinate or disinfect any person or persons exposed to any dangerous contagious or infectious disease in such manner and for such time as he may deem best or the state board of health may direct. He shall disinfect any room or house or building and the contents thereof or any clothing, bedding, furniture or other articles that may be infected, in such a manner that the danger of conveying any disease by such means shall be destroyed. [L. '03, p. 84, § 3; L. '07, p. 163, § 3.]

Power of municipalities and other public bodies to establish pest-houses and to compel the removal

of sick persons thereto. 92 Am. Dec. 76; 23 L. R. A. (N. S.) 1188.

§ 6095. [5545.] Physicians to Report Diseases.

Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases, required by the state board of health to be reported, he shall, within twenty-four hours, give notice thereof to the health officer within whose jurisdiction such sick person may then be. [L. '03, p. 84, § 4; L. '07, p. 164, § 4.]

§ 6096. [5546.] Determination of Character of Disease—When Final.

In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the health officer shall prevail until the state board of health can be notified, and then the opinion of the executive officer of the state board of health, or any member or physician he may appoint to examine such case, shall be final. [L. '03, p. 84, § 5.]

Cited in 103 Wash. 415.

§ 6097. [5547.] “Dangerous, etc., Diseases” Defined.

The term, “dangerous, contagious or infectious disease,” as used in this chapter shall be construed and understood to mean such disease or diseases as the state board of health shall designate as contagious or infectious and dangerous to the public health. [L. '03, p. 84, § 6.]

See *infra*, § 6100, a later enactment.

Cited in 103 Wash. 415.

§ 6098. [5548.] Violations—Removal of Officers—Penalties.

Any health officer who shall refuse or neglect to obey or enforce the provisions of this chapter or the rules or regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the county health officer or to the state board of health may be removed as health officer by the state board of health and shall not again be reappointed except with the consent of the state board of health.

Any member of a city or county board of health who shall violate any of the provisions of this chapter or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state or county boards of health made for the prevention, suppression or control of any dangerous, contagious or infectious disease or for the protection of the health of the people of this state, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars. Any physician who shall refuse or neglect to report to the proper health officer within twelve hours after first attending any case of contagious or infectious disease or any diseases, required by the state board of health to be reported or any case suspicious of being one of such diseases, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

Any person violating any of the provisions of this chapter or violating or refusing or neglecting to obey any of the rules and regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the county board of health or health officer or state board of health, or who shall leave any pesthouse or isolation hospital or quarantined house or place without the consent of the proper health officer, or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than

one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment. [L. '03, p. 85, § 7; L. '07, p. 164, § 5. Cf. L. '01, p. 59, §§ 1, 2.]

§ 6099. [5549.] Payment of Expenses.

All expenses incurred in carrying out the provisions of this chapter, or any of them, shall be paid by the county or city by which or in behalf of which such expenses shall have been incurred. [L. '03, p. 85, § 8; L. '07, p. 166, § 6.]

CHAPTER VII.

CONTROL AND TREATMENT OF VENEREAL DISEASES.

§ 6100. Communication of Venereal Diseases.

That syphilis, gonorrhea and chancre hereinafter designated as venereal diseases are hereby declared to be contagious, infectious, communicable and dangerous to the public health. It shall be unlawful for anyone infected with these diseases or any of them to expose another person to infection. [L. '19, p. 277, § 1.]

§ 6101. Examination, Treatment and Quarantine.

State, county and municipal health officers, or their authorized deputies, who are licensed physicians, within their respective jurisdictions are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examination of persons reasonably suspected of being infected with venereal disease of a communicable nature, and to require persons infected with venereal disease of such communicable nature to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured, and also, when in the judgment of the state commissioner of health, it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease of such communicable nature. It shall be the duty of all local and state health officers to investigate sources of infection of venereal diseases, to co-operate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution: Provided, that any person suspected as herein set out may have present at the time of taking the blood sample or smear a physician of his or her choosing, who may satisfy himself that the blood or smear taken is that of the suspected person, and that the same shall be forwarded to the proper state authorities for laboratory tests, and: Provided, further, that the suspected person shall be informed by the health officer of his or her rights under this act. [L. '19, p. 277, § 2.]

Compulsory examination for venereal disease. 2 A. L. B. 1332.

Authority of municipalities to prevent the spread of contagious diseases. 92 Am. Dec. 79.

§ 6102. Prisoners—Examination for Disease—Use of Prisons as Hospitals.

Any person who shall be confined or imprisoned in any state, county, or city prison in the state and who may be reasonably sus-

pected by the health officer of being infected with venereal disease shall be examined for and, if infected, treated for venereal diseases by the health authorities or their deputies who are licensed physicians. The prison authorities of any state, county, or city prison are directed to make available to the health authorities such portion of any state, county, or city prison as may be necessary for a clinic or hospital wherein all persons who may be confined or imprisoned in any such prison and who are infected with venereal disease, and all such persons who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, and, in case no other suitable place for isolation or quarantine is available, such other persons as may be isolated or quarantined under the provisions of section 6101, shall be isolated and treated at public expense until cured, or, in lieu of such isolation any of such persons may, in the discretion of the board of health, be required to report for treatment to a licensed physician, or submit to treatment provided at public expense as provided in section 6101. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. [L. '19, p. 278, § 3.]

§ 6103. Rules and Regulations—Names of Infected Safeguarded.

The state board of health is hereby empowered and directed to make such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of this act, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of section 6101, and such other rules and regulations, not in conflict with provisions of this act, concerning the control of venereal diseases, and concerning the care, treatment and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this act, and shall have the force and effect of law: Provided, that such regulations shall prescribe reasonable safeguards against the disclosure of the names of any such infected persons, who faithfully comply with the provisions of this act and the lawful regulations of the state board of health, except to officers and physicians charged with the enforcement of this act and such rules and regulations and any violation of such safeguarding regulations, shall be a gross misdemeanor. [L. '19, p. 279, § 4.]

§ 6104. Penalty for Violations of Act.

Any person who shall violate any of the provisions of this act or any lawful rule or regulation made by the state board of health pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county or municipal health officer, pursuant to the authority granted in this act, shall be deemed guilty of a gross misdemeanor. [L. '19, p. 279, § 5.]

§ 6105. Laboratory Examinations.

Diagnosis in every instance must be confirmed by laboratory examinations in a laboratory approved by the state board of health, before

any person shall be isolated or committed to quarantine and before any person committed to quarantine shall be discharged therefrom. [L. '19, p. 280, § 6.]

§ 6106. Appeals to State Commissioner of Health—Finding—Conclusion.

Any person committed to quarantine under the provisions of this act, feeling aggrieved at the finding of any health officer that he or she is infected, or at the finding of any quarantine officer that he or she has not been cured of infection, shall have the right of appeal from such finding to the state commissioner of health; and it shall be the duty of every health officer making an examination, and of every quarantine officer, to notify all persons examined or quarantined of their rights in that regard, and to supply them with the forms necessary for that purpose, upon which to make such appeals, to be provided by the state commissioner of health, and to immediately transmit any such appeals by mail to the state commissioner of health; and the state commissioner of health shall, within five days after receiving any such appeal, either in person or by regular or special physician deputy appointed for that purpose, and skilled in the diagnosis of contagious venereal diseases, examine or cause to be examined the person taking the appeal, and the finding and conclusion of the commissioner of health or his deputy so making such examination shall be final and conclusive. [L. '19, p. 280, § 7.]

§ 6107. Quarantine Districts—Clinical Institute for Women.

For the purpose of carrying out the provisions of this act the state board of health shall have the power and authority, from time to time, to divide the state into such number of quarantine districts consisting of one or more counties or parts of counties or municipalities as it shall deem expedient, and to establish at such place or places as it shall deem necessary quarantine stations and clinics for the detention and treatment of persons found to be infected and to establish any such quarantine station and clinic in connection with any county or city jail, or in any hospital or other public or private institution having, or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities as may be required and prescribed by the board, and to enter into arrangements for the conduct of such quarantine stations and clinics with the public officials or persons, associations, or corporations in charge of or maintaining and operating such institutions: Provided, that from and after the date of the proclamation of the governor that that certain public institution if established by the sixteenth legislature to be known as the Women's Industrial Home and Clinic is ready for the reception of inmates, all infected women committed to quarantine under the provisions of this act may be committed to said institution; and all women committed to quarantine in said institution shall be entitled to receive all the benefits of the mental, physical and moral training provided for the inmates of such institution. [L. '19, p. 280, § 8.]

§ 6108. Act Cumulative.

The provisions of this act shall be cumulative with the existing laws and regulations and nothing herein contained shall abridge or limit

the powers of health authorities as construed by the supreme court of the state of Washington; except as herein otherwise provided. [L. '19, p. 281, § 9.]

CHAPTER VIII.

TUBERCULOSIS IN CITIES OF FIRST AND SECOND CLASS.

§ 6109. [5550.] Physician to Report Tuberculosis.

All practicing physicians in cities of the first and second class in said state are hereby required to report to the local boards of health of such cities, in writing, the name, age, sex, occupation and residence of every person having tuberculosis who has been attended by, or who has come under the observation of such physician for the first time, within five days of such time. [L. '99, p. 117, § 1.]

§ 6110. [5551.] Board of Health to Keep Record.

All local boards of health of cities of the first and second class in this state are hereby required to receive and keep a permanent record of the reports required by section 6109 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local and state boards of health alone, and such records shall not be published nor made public. [L. '99, p. 117, § 2.]

§ 6111. [5552] Duties of Board—Disinfection Expenses.

It shall be the duty of such local boards of health unless requested by the attending physician not to do so, to furnish to each patient or to the head of the family where such patient resides, printed instructions for the prevention of the communication of such disease to other persons; to enforce compliance with section 6109; to see that the premises occupied by any such patient are kept in good sanitary condition, and within five days after the death or removal of any such patient, to see that such premises are thoroughly and properly disinfected. The expense of such disinfection shall be a charge against the owner of such premises; and, on the failure of such owner to properly disinfect such premises within five days after notice to do so given him by such board of health, it shall be the duty of such board to have such disinfection done, at the expense of such city, and the costs thereof shall be a lien on said premises in favor of such city and may be enforced by the city by proper action. [L. '99, p. 117, § 3.]

§ 6112. [5553.] Penalty.

Any practicing physician who shall willfully fail to comply with the provisions of section 6109 shall be guilty of a misdemeanor, and on conviction thereof may be fined for the first offense not exceeding five dollars, and for any subsequent offense not exceeding one hundred dollars. [L. '99, p. 118, § 4.]

§ 6113. [5554.] Prevention of Spread of Tuberculosis.

It is hereby made the duty of every person having tuberculosis and of everyone attending such person, and of the authorities of public and

private institutions, hospitals or dispensaries, to observe and enforce the sanitary rules and regulations prescribed from time to time by the boards of health, of such cities and of the state for the prevention of the spread of pulmonary tuberculosis. [L. '99, p. 118, § 5.]

CHAPTER IX.

COUNTY TUBERCULOSIS HOSPITALS.

§ 6114. [5554-1.] County may Maintain—Buildings—Funds.

The board of county commissioners of any county shall have power to establish, provide and maintain hospitals and to employ visiting nurses for the care and treatment of persons suffering from tuberculosis, but whenever a hospital is established as herein provided, such visiting nurse or nurses shall be under the control of and subject to the directions of the board hereinafter designated as the board of managers of such hospital.

For these purposes, said board of county commissioners shall have the following powers:

To purchase or lease real property therefor or to use for this purpose lands already owned by the county, providing such site shall first be approved by the state board of health.

To erect all necessary buildings, make all necessary improvements or repairs and alter any existing building for the use of said hospital: Provided, that such buildings be separate and apart from those designated as almshouses, or county infirmaries: And provided further, that the plans for such erection or alteration shall first be approved by the state board of health.

To use county moneys, to levy taxes and to issue bonds as authorized by law to raise a sufficient amount of money to cover the cost of procuring a site, constructing and equipping hospitals and for the maintenance thereof, and all other necessary and proper expenses herein authorized, and create a fund to be known as the "Tuberculosis Fund," from which all expenses herein provided for shall be paid.

To appoint a board of managers for said hospitals as hereinafter provided. To accept and hold in trust for the county any grant of land, gift or bequest of money, or any donation for the benefit of the purposes of this act, and to apply the same in accordance with the terms of the gift. [L. '13, p. 592, § 1.]

Right of property owner to complain
of location of hospital for tuber-

culosis in neighborhood. 25 L. R.
A. (N. S.) 228.

§ 6115. [5554-2.] Board of Managers—Term.

When the board of commissioners shall have determined to establish a hospital for the care and treatment of persons suffering from tuberculosis and shall have acquired a site therefor and shall have awarded contracts for the necessary buildings and improvements thereon, it may appoint three citizens of the county, only one of whom may be a physician, who shall constitute the board of managers of said hospital. The term of office of each member of said board shall be three years, and the term of one of such managers may expire annually, the first appointments

shall be made for the respective terms of three, two and one years. Appointments of successors shall be for the full term of three years, except that appointment of persons to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any manager to attend four consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers.

The managers shall receive no compensation for their services, but shall be allowed their actual and necessary traveling and other expenses, to be audited and paid in the same manner as the other expenses of the hospital. No manager shall be removed from office except for cause shown and after a public hearing on charges reduced to writing. A copy of said charges and the verdict thereon shall be filed with the county auditor. [L. '13, p. 593, § 2.]

§ 6116. [5554-3.] Superintendent—Salaries.

The board of managers shall appoint a superintendent of the hospital, who shall be the secretary of the board and shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board of managers, and shall be a qualified practitioner of medicine.

Said board of managers shall fix the salaries of the superintendent and all other officers and employees and the management of said hospital shall be entirely in the hands of such board. [L. '13, p. 593, § 3.]

§ 6117. [5554-4.] County Treasurer to be Treasurer.

The county treasurer of any county which establishes such an institution shall be the treasurer of such institution, and shall receive all moneys raised by taxation or otherwise or paid for the maintenance of inmates of such institution, and shall disburse all moneys to be paid on account of such institution upon warrants drawn upon such fund by the county auditor, as approved by the board of managers. [L. '13, p. 594, § 4.]

§ 6118. [5554-5.] Application for Admission to Hospital.

Any person having resided one year within the county in which the hospital is situated desiring treatment in such hospital, may apply in person to superintendent or to any reputable physician for examination and such physician, if he finds that said person is suffering from tuberculosis in any form may apply to the superintendent of the hospital for admission of said person. Upon receipt of such application, if there be a vacancy in said hospital, the superintendent shall notify the person named in such application to appear in person at the hospital. If upon personal examination the superintendent and board of managers are satisfied that such person is suffering from tuberculosis he shall be admitted. All applications shall be in writing and shall state whether applicant can pay in whole or in part for his care and treatment while at the hospital, and every application shall be filed and recorded in a book kept for the purpose in the order of receipt. When said hospital is completed and ready for the treatment of patients, or whenever thereafter [there] are vacancies therein, admission to said hospital shall be made in the order

in which the names of applicants shall appear upon the application book to be kept as above provided, in so far as such applicants are certified to by the superintendent to be suffering from tuberculosis, except that advanced cases shall always be provided for first. No discrimination shall be made in the accommodation, care or treatment of any patient because of the fact that the patient or his relatives contribute to the cost of his maintenance in whole or in part, and no patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital; and no officer or employee of such hospital shall accept from any patient thereof, any fee, payment or gratuity whatsoever for his services. When all persons who are otherwise qualified to admission to any hospital provided by this act are accommodated and provided for, persons who have not resided in the state for one year prior to applying shall be eligible to admission. [L. '13, p. 594, § 5.]

§ 6119. [5554-6.] Support of Patients.

Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he find that such patient or said relatives legally liable for his support, are able to pay for his treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the county treasurer for the support of such patient, a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The county commissioners shall have the power and authority to collect such sum from said patient or his estate, or from his relatives legally liable for his support. If the superintendent find that such patient, or said relatives, are not able to pay, either in whole or in part, for his care and treatment in such hospital, said patient shall be admitted free of charge. [L. '13, p. 595, § 6.]

§ 6120. [5554-7.] State Board of Health to Inspect.

All hospitals established or maintained under the provisions of this act shall be subject to inspection by any authorized representative of the state board of health, the bureau of inspection and supervision of public offices, and the board of county commissioners, and the resident officers shall admit such representatives into every part of the hospitals and its buildings, and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital. [L. '15, p. 253, § 1. Cf. L. '13, p. 595, § 7.]

§ 6121. [5554-8.] Government for Hospital.

Wherever a hospital for the care and treatment of persons suffering from tuberculosis exists in connection with, or on the grounds of a county almshouse, the board of commissioners may appoint a board of managers for such a hospital, and such hospital and its board of managers shall thereafter be subject to all provisions of this act, in like manner as if it had been originally established hereunder. [L. '13, p. 596, § 8.]

§ 6122. [5554-9.] Cities or Counties may Contract for Care.

Any resident of the state of Washington living outside of a county maintaining a tuberculosis hospital may apply for treatment, or any city, village or county may apply on behalf of its charges and the same may be provided for under a stipulated agreement by the party, municipality or county to pay a weekly sum designated by the board of managers of such hospital, but nonresidents of a county shall not be provided for to the exclusion of residents of said county. [L. '13, p. 596, § 9.]

§ 6123. [5554-10.*] Payments by State.

There shall be paid by the state treasurer quarterly to the counties maintaining such hospitals five dollars (\$5.00) per week for each person in such institution during time of confinement, as hereinafter provided, excepting those paying full maintenance. [L. '19, p. 63, § 1. Cf. L. '13, p. 596, § 10.]

§ 6124. [5554-11.] Manager's Report.

On the first day of July and quarterly thereafter the board of managers of any county operating such institution shall certify to the state auditor and the county auditor the number of persons cared for at public expense in such institution, the date when each person was admitted and the number of weeks each person was cared for during the preceding quarter, which certificates shall be attested by the board of managers and sworn to by the superintendent, and the state auditor shall draw a warrant for the amount due according to the provisions of this act. [L. '15, p. 254, § 2. Cf. L. '13, p. 596, § 11.]

"This act" refers to this chapter.

§ 6125. [5554-12.] County Commissioners may be Managers.

Whenever the board of county commissioners shall manage such hospitals, such board shall have the same powers and be subject to the same regulations as herein provided for a board of managers. [L. '13, p. 596, § 12.]

§ 6126. [5554-13.] State Aid.

Hospitals operated by municipalities of the first class, now existing, or hereafter established and maintained for the treatment of tuberculosis exclusively, may receive state aid by complying with the provisions of this act, except such institutions shall not be required to operate under a board of managers as provided herein, nor shall said institutions be subject to the provisions of this act regarding charge to patients, except those patients for whom said institutions receive state aid. [L. '13, p. 597, § 14.]

"This act" refers to this chapter.

§ 6127. [5554-14.] Approval by State Board of Health.

No institution operating under the provisions of this act shall be entitled to participation in the state aid herein provided for, if said institution shall be disapproved by the state board of health and such disapproval certified to the state auditor. [L. '15, p. 254, § 3. Cf. L. '13, p. 597, § 15.]

§ 6128. [5554-15.] Use of Hospital.

After the establishment in any county of a hospital as herein provided for, no person suffering from tuberculosis shall be taken care of or treated at any almshouse or county institution, other than such hospital, except in cases of emergency. [L. '13, p. 597, § 16.]

CHAPTER X.**PLUMBING IN CITIES OF THE FIRST CLASS.****§ 6129. [5555.] Plumbing Inspectors.**

The board of health of each city [of the first class in this state having a system of water supply and sewerage], shall, within three months from and after this act, appoint one or more inspectors of plumbing (if such appointment has not already been made) who shall be practical plumbers, and shall hold office until removed by such board of health for cause, which must be shown. The compensation of such inspectors shall be determined by the city council of said city, and be paid from the treasury of their respective cities. Said inspectors so appointed shall inspect all plumbing work for which permits are hereafter granted within their respective jurisdictions, in process of construction, alteration or repair, and shall report to said board of health all violations of any law, ordinance or by-law relating to plumbing works, and also perform such other appropriate duties as may be required by said board. [L. '97, p. 211, § 5; L. '01, p. 96, § 5.]

The words in brackets substituted for "mentioned in § 3 of this act."

These sections are retained; but §§ 1—4 of this act, and Bal. Code, §§ 1247—1250, are believed to be void, in view of *State ex rel. Richey v. Smith*, 42 Wash. 237, 84 Pac. 851, declaring the plumber's act, L. '05, p. 126, unconstitutional.

§ 6130. [5556.] Rules and Regulations—Permit for Plumbing.

The board of health of each city of the first class in this state having a system of water supply and sewerage, shall, within three months from the passage of this act, prescribe rules and regulations for the construction, alteration and inspection of plumbing and sewerage placed in or in connection with any building in such city, which shall be approved by ordinance by the council of such city, and the board of health shall further provide that no plumbing work shall be done, except in the case of repairs or leaks, without a permit being issued first therefor, upon such terms and conditions as such board of health of said city shall prescribe. [L. '97, p. 212, § 6; L. '01, p. 96, § 6.]

§ 6131. [5557.] Penalty.

Any person violating any provisions of this chapter shall be deemed guilty of a misdemeanor, and be subject to a fine not exceeding fifty dollars, nor less than five dollars, for each and every violation thereof. [L. '97, p. 212, § 7; L. '01, p. 97, § 7.]

CHAPTER XI.**SALE OF SHODDY.****§ 6132. [5492.] Shoddy must be Disinfected.**

No person, firm or corporation shall, within this state, sell, offer for sale, or manufacture for sale, what is commonly known as shoddy, or use

the same in the manufacture of mattresses, quilts, pillows, rugs, couches, lounges or bedding of any kind or description, unless such commodity has been first properly disinfected or in some other manner rendered free from pathogenic or disease-bearing germs. [L. '09, p. 100, § 1.]

§ 6133. [5493.] Shoddy Defined.

The term "shoddy," as used in this chapter shall include all materials made or manufactured of rags, old clothing, burlap, old mattresses, quilts or pillows. [L. '09, p. 100, § 2.]

§ 6134. [5494.] Enforcement of Act by Health Officers.

It shall be the duty of all departments of health, health officers, commissioners of health or officials discharging similar duties in the state of Washington to enforce the provisions of this chapter, and they shall have power, in the performance of their official duties, to enter any store or manufacturing establishment where the articles mentioned in section 6132 are manufactured or are for sale and make such examination as they deem necessary in order to ascertain whether or not the provisions of this act are being violated. [L. '09, p. 100, § 3.]

§ 6135. [5495.] Prosecution.

It shall be the duty of the attorney general and prosecuting attorneys of the counties of this state to prosecute all cases arising under the provisions of this chapter. [L. '09, p. 101, § 4.]

§ 6136. [5496.] Penalty.

Every person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. [L. '09, p. 101, § 5.]

CHAPTER XII.

ADULTERATION OF FOODS, DRINKS AND DRUGS.

§ 6137. Regulation of Misbranding and Adulteration — United States Standard.

The commissioner of agriculture shall, from time to time, with the approval of the agricultural advisory board, adopt, publish and enforce reasonable and uniform rules and regulations against the adulteration and misbranding of foods and drugs, and shall adopt, publish and enforce, as the standards of this state, the standards of quality, purity and strength adopted and applied by the United States department of agriculture, in the enforcement of the laws of the United States against the adulteration and misbranding of foods and drugs, except in cases where other standards are specifically prescribed by the laws of this state. [L. '17, p. 779, § 1.]

See *infra*, § 10841, division of foods, feeds and drugs created.

See *infra*, § 10851, duties devolve upon director of agriculture.

See *infra*, § 10893, advisory board abolished.

Power of state to regulate or prohibit the manufacture or sale of

adulterated food. 10 *Am. St. Rep.* 423.

§ 6138. Record of Standards—Distribution of Rules.

The standards of quality, purity and strength of foods and drugs, and the rules and regulations against adulteration and misbranding of foods and drugs adopted by the commissioner of agriculture, as in this act provided, shall be recorded and indexed by the commissioner of agriculture in well bound books to be kept in his office as public records, and shall take effect at the expiration of thirty days from the date of their adoption, and it shall be the duty of the commissioner of agriculture to cause said standards, rules and regulations, and the amendments and additional standards, rules and regulations adopted from time to time, to be published in pamphlet form for general distribution to manufacturers and dealers in foods and drugs. [L. '17, p. 779, § 2.]

See note to § 6137.

§ 6139. Prima Facie Evidence of Adulteration or Misbranding.

In any prosecution for the violation of the laws of this state against adulteration or misbranding of foods and drugs, and in any proceedings for the condemnation of adulterated or misbranded foods or drugs, it shall be competent to prove that the standards of quality, purity and strength adopted by the commissioner of agriculture, as in this act provided, have not been complied with, and proof of that fact shall be prima facie evidence of a violation of the law against the adulteration or misbranding of foods and drugs. [L. '17, p. 780, § 3.]

See note to § 6137.

§ 6140. [5449.] Combination of Poisonous Substances With Bread.

It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. [L. '05, p. 259, § 1.]

See supra, § 2516, willfully poisoning food.

§ 6141. [5450.] Penalty.

Any person violating the provisions of the preceding section shall upon conviction be punished by a fine of not less than ten (\$10) dollars nor more than five-hundred dollars (\$500). [L. '05, p. 259, § 2.]

§ 6142. [5451.] Sale of Adulterated Milk, a Felony.

Any person who shall sell, offer for sale, or have in his possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one (1) year nor more than (3) years. [L. '05, p. 79, § 1.]

§ 6143. [5452.] Act Supplementary to Existing Laws—Enforcement.

This and the preceding section shall be supplementary to the laws of this state now in force prohibiting the adulteration of food and fraud in

the sale thereof; and the state dairy and food commissioner, the chemist of the State Agricultural Experiment Station, the state attorney general and the prosecuting attorneys of the several counties of this state are hereby required, without additional compensation, to assist in the execution of this act, and in the prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this state against the adulteration of food and fraud in the sale thereof. [L. '05, p. 79, § 2.]

See *infra*, § 10851, duties devolve upon director of agriculture.

§ 6144. [5453.] Sale of Adulterated Articles Prohibited.

No person, firm or corporation shall, within this state, sell, offer for sale, have in his possession with intent to sell, or manufacture for sale, any article of food or drug which is adulterated or misbranded within the meaning of this act. [L. '01, p. 194, § 1; L. '07, p. 478, § 1.]

"Act" refers to the following sections of this chapter, to § 6154.

Cited in 64 Wash. 48; 81 Wash. 242; Co., 75 Wash. 622, 135 Pac. 633, Ann. 86 Wash. 434; 93 Wash. 49; 96 Wash. Cas. 1915C, 140, 48 L. R. A. (N. S.) 577. 213; *Flessner v. Carstens Packing Co.*, 81 Wash. 241, 142 Pac. 694.

Liability for Injuries: See *Remington's Digest, Food*, § 4; *Mazetti v. Armour &*

§ 6145. [5454.] "Drug" and "Food" Defined.

The term "drug," as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals. The term "food," as used herein, shall include all articles used for food, drink, confectionery or condiment by man or other animals, whether simple, mixed or compound. [L. '07, p. 478, § 2.]

"This act": See note to § 6144.

§ 6146. [5455.] Adulterated, What Deemed.

For the purposes of this act an article shall be deemed to be adulterated: In the case of drugs: First.—If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation: Provided that no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary. Second.—If its strength or purity fall below the professed standard or quality under which it is sold;

In case of confectionery: If it contains terra alba, barytes, talc chrome yellow or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

In case of food: First.—If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. Second.—If any substance has been substituted wholly or in part for the article. Third.—If any valuable constituent of the article has been wholly or in part abstracted. Fourth.—If it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed. Fifth.—If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health: Provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water, or otherwise, and directions for the removal of said preservatives shall be printed on the covering or the package, the provisions of this act shall be construed as applying only when said products are ready for consumption. Sixth.—If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. [L. '07, p. 478, § 3. Cf. L. '01, p. 195, § 3.]

“This act”: See note to § 6144.

Cited in 64 Wash. 48; 81 Wash. 242;
93 Wash. 49; 109 Wash. 689.

The dismissal of a prosecution for the
violation of this section when not a bar

to another prosecution for the violation
of a disjunctive clause of the same sec-
tion: State v. Poole, 64 Wash. 47, 116
Pac. 468.

§ 6147. [5456.] Misbranded Articles—What are.

The term “misbranded,” as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, territory or country in which it is manufactured or produced.

For the purposes of this act an article shall also be deemed to be misbranded: In the case of drugs: First.—If it be an imitation of or offered for sale under the name of another article. Second.—If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide or any derivative or preparation of any such substances contained therein.

In the case of food: First.—If it be an imitation of or offered for sale under the distinctive name of any other article. Second.—If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha, or beta eucaine, chloroform, cannabis indica,

chloral hydrate or acetanilide, or any derivative or preparation of any substances contained therein. Third.—If the net weight or net measure of such package, bottle or container be given, and it shall not be the true net weight or net measure. Fourth.—If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular: Provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases: First.—In the cases of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where the said article has been manufactured or produced. Second.—In the case of articles labeled, branded or tagged so as plainly to indicate that they are compounds, imitations or blends, and the word “compound,” “imitation,” or “blend,” as the case may be, is plainly stated on the package in which it is offered for sale: Provided, that the term “blend” as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring and flavoring ingredients used for the purpose of coloring and flavoring only: And provided further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding. [L. '07, p. 480, § 4.]

“This act”: See note to § 6144.

See *supra*, § 2597, displaying goods with false trademark.

§ 6148. [5457.] Guaranty of Purity—Guarantor Liable.

No dealer shall be prosecuted under the provisions of this act if he shall prove a written guaranty of purity in a form approved by the dairy and food commissioner: Provided, that the guarantor is a resident of the state of Washington. The guaranty referred to herein shall contain the full name and address of the person, firm or corporation making the sale to the dealer, and such person, firm or corporation shall be held liable to all prosecutions, fines and other penalties which would attach to the dealer under the provisions of this act. [L. '07, p. 481, § 5.]

“This act”: See note to § 6144.

§ 6149. [5458.] Possession Prima Facie Evidence—Seizure by Commissioner—Procedure as to Disposal.

Possession by any person, firm or corporation of any article of food or drug, the sale of which [is] prohibited by this act, or being the consignee thereof, shall be prima facie evidence that the same is kept or shipped to the said person, firm or corporation in violation of the provisions of this act, and the dairy and food commissioner is hereby authorized to seize upon and take into his possession such articles of food and thereupon apply to the superior court of the county in which such food

is seized for an order directing him to dispose of or sell the same and apply the proceeds of the same to the general fund, less the amount required to reimburse the purchaser for actual loss as shown by the bill, provided he or they have a guaranty as required in the preceding section: Provided, however, that the dairy and food commissioner shall first give notice to the person, firm or corporation in whose possession such goods are found, if in the possession of a common carrier, then the consignee of such food or drug, notifying such person, firm or corporation that he has seized such foods or drugs, and the reason therefor, and that he has made an application to the superior court for an order to sell or dispose of the same, and that he will call up said application for hearing on a day certain, which shall not be less than ten days from the service of such notice, and that at the hearing of said application the said person, firm or corporation shall show cause, if any they have, why the prayer of the petition should not be granted. Upon the hearing of said petition the affidavits or oral testimony may be introduced to establish the contention of the respective parties. Hearing, however, may be had at an earlier date by mutual consent of the parties to said application. [L. '07, p. 482, § 6. Cf. L. '01, p. 196, § 5; L. '05, p. 80, § 1.]

"This act": See note to § 6144.

See *infra*, § 10851, duties devolve upon director of agriculture.

See *infra*, § 10893, dairy and food commissioner abolished.

Seizure or Penalty and Complaint: See Remington's Digest, Adulteration, §§ 3, 4; Hathaway v. McDonald, 27 Wash. 659, 68 Pac. 376, 91 Am. St. Rep. 889; State v. Henderson, 15 Wash. 598, 47 Pac. 19.

Constitutionality of statute making possession of adulterated food criminal. 51 Am. Rep. 347.

§ 6150. [5459.] Samples to be Furnished for Analysis.

Every person selling, exhibiting or offering for sale, manufacturing or having in his possession with intent to sell or serve, or deliver to a purchaser, any article of food or drug included in the provisions of this act, shall furnish to the dairy and food commissioner or any of his deputies or any person authorized by him and demanding the same, who shall apply to him for the purpose and shall tender him the price at which the article of food is sold, a sample sufficient for the analysis of any such article of food which is in his possession. [L. '07, p. 483, § 7. Cf. L. '01, p. 197, § 6; L. '05, p. 81, § 2.]

"This act": See note to § 6144.

See note to § 6149.

§ 6151. [5461.] Prosecutions—By Whom.

It shall be the duty of the attorney general and the prosecuting attorneys in the counties of this state to prosecute all cases arising under the provisions of this act. [L. '07, p. 483, § 10. Cf. L. '95, p. 73, § 17; L. '99, p. 62, § 15; L. '01, p. 198, § 9.]

"This act": See note to § 6144.

§ 6152. [5462.] Taking Samples—Possession, Prima Facie Evidence of Intent.

The dairy and food commissioner, or his deputies, shall have power in the performance of their official duties to enter any restaurant, eat-

ing-house, hotel, public conveyance, public or private hospital, asylum, school, eleemosynary or penal institution, where foods or drugs are served or used, and take for analysis any article of food or drug, or ingredients which enter into the composition of food or drugs, there used. Any article of food, drugs, or ingredients which enter into the composition of foods or drugs therein used and so taken, if found to be adulterated, shall be prima facie evidence that the same is kept to be used or served to patrons, guests, boarders, patients or inmates of such institution, and the person, firm or corporation owning and operating said restaurant, eating-house, hotel, public conveyance, public or private hospital, asylum, school, eleemosynary or penal institution, and having in his or its possession adulterated foods or drugs shall be deemed to have such adulterated food or drugs contrary to the provisions of this act. [L. '07, p. 483, § 11. Cf. L. '01, p. 198, § 10.]

"This act": See note to § 6144.

See note to § 6149.

§ 6153. [5463.] Penalties—Payment and Disposal of.

Every person, firm or corporation violating the provisions of this act or refusing to comply upon demand with any of the provisions thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25) and not to exceed five hundred dollars (\$500), or, in case of second offense, to be imprisoned not less than thirty days and not to exceed ninety days, or both such fine and imprisonment. Any person found guilty of selling, offering for sale, having in his possession with intent to sell or serve, or manufacturing for sale any adulterated article of food or drug under the provisions of this act, shall pay, in addition to the penalties herein provided for, all necessary costs and expenses incurred in inspecting and analyzing such adulterated articles of food or drugs, in addition to the costs of such action: Provided, that all penalties and costs for the violation of the provisions of this act shall be paid to the board of state dairy and food commission, or to their agent, and by them paid into the state treasury and applied to the general fund: And provided further, that the dealers having goods in stock on the passage of this act, which do not comply with its provisions relating to branding or labeling, may inventory the same and stamp them with a mark for identification, and shall have the right thereafter to sell the goods so inventoried and marked, in ordinary course of business until disposed of: And provided further, that this act shall go into effect on the first day of October, 1907. [L. '07, p. 484, § 12. Cf. L. '01, p. 198, § 11.]

"This act": See note to § 6144.

See note to § 6149.

§ 6154. [5466.] Monthly Report of Commissioner.

The dairy and food commissioner shall publish each month a report of the work of his office, including the brand, name and address of manufacturer, analysis and fines of food and drugs found to be adulterated, and the necessary expense, if any, of said publication, shall be de-

frayed as provided in section 5465 of Remington and Ballinger's Code. [L. '01, p. 199, § 14; L. '07, p. 485, § 15.]

See note to § 6149.

§ 6155. [5466-1.] Classifying and Labeling Eggs.

For the purposes of this act, eggs shall be classified and branded as follows:

(a) Cold-storage eggs shall include all eggs which have been in cold storage for more than ninety days, and before being offered for sale shall be branded or stamped with the words "storage."

(b) Preserved eggs shall include eggs in which the natural deterioration has been prevented or retarded by any means, process or treatment whatsoever, and before being offered for sale shall be branded or stamped with the word "preserved."

(c) All eggs imported into the state of Washington from foreign countries shall be sold as such. The case or container in which they are shipped shall have the words "foreign eggs" displayed thereon in letters two inches high. All retailers of said eggs shall sell them from the container in which he received them and shall inform each purchaser that said eggs are foreign eggs. All restaurants, hotels, cafes, bakeries and confectioners using or serving foreign eggs must place a sign in letters not less than four (4) inches in size in some conspicuous place where the consumer entering their place of business can see it, to read "we use foreign eggs."

(d) Incubated eggs shall include all eggs which have been subjected to incubation whether natural or artificial for more than forty-eight hours and it shall be unlawful to expose or offer for sale or sell incubated eggs. [L. '15, p. 274, § 1.]

Validity and construction of statute regulating sale of eggs. *Ann. Cas.* 1918A, 181.

§ 6156. [5466-2.] Branding by Vendors.

Every person, firm or corporation having in his possession for the purpose of sale or offering for sale or selling any eggs shall classify and brand the same with the classification provided for in section 6155. [L. '15, p. 275, § 2.]

Proper and improper branding of food and drugs. *Ann. Cas.* 1915A, 46; *L. R. A.* 1916D, 169.

State regulations as to branding as affected by federal pure food law. 47 *L. R. A.* (N. S.) 985.

Validity of police regulation as to branding articles of food. 1 *L. R. A.* (N. S.) 184; 40 *L. R. A.* (N. S.) 875.

§ 6157. [5466-3.] "Branded" and "Stamped" Defined.

The term "branded" or "stamped" as used in this act shall mean a mark, imprint or impression made by means of a rubber stamp, stencil or other method upon the package containing eggs offered for sale or upon the receptacle from which eggs are offered for sale and such brand shall be legible and in gothic letters not smaller than one inch in height, except foreign eggs, and they shall be marked as provided for in paragraph (c) of section 6155. [L. '15, p. 275, § 3.]

§ 6158. [5466-4.] "Person" Defined.

The word "person" as used in this act shall mean and include individuals and employees or agents of individuals, firms and members of firms and their employees and agents, corporations and officers of corporations and their employees and agents. [L. '15, p. 275, § 4.]

§ 6159. [5466-5.] Penalty.

Every person who shall violate any provision of this act shall be guilty of a misdemeanor. [L. '15, p. 275, § 5.]

§ 6160. Branding of Imported Eggs.

All eggs imported from foreign countries and offered for sale in the state of Washington shall be sold as such. Each egg offered for sale in this state shall be marked, branded or stamped with the name of the country in which it was produced, and such mark shall be in legible gothic letters and in durable, indelible ink. [L. '19, p. 290, § 1.]

Constitutionality of statute requiring announcement that eggs are imported.
L. R. A. 1916E, 1186.

§ 6161. Broken Eggs, Containers to be Marked.

Broken eggs or eggs offered for sale in other than the original form shall be marked or branded as in section 6160, except that such mark or brand shall be stenciled on the can, container, and cover or covers in letters two (2) inches high in black face type and in durable ink or paint, and the words "EGGS FROM" shall prefix the mark or brand and such words shall be in similar type and ink or paint. [L. '19, p. 290, § 2.]

§ 6162. Rules and Regulations.

The state commissioner of agriculture shall make all necessary rules and regulations to carry this act into effect, such rules and regulations shall be filed in the office of the state commissioner of agriculture and shall be in effect thirty (30) days after such filing. [L. '19, p. 290, § 3.]

§ 6163. Penalty.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor and in case of second or subsequent offense shall be guilty of a gross misdemeanor. [L. '19, p. 290, § 4.]

CHAPTER XIII.**MANUFACTURE AND SALE OF DAIRY PRODUCTS.****§ 6164. Definitions.**

That for the purpose of this act certain words, terms and expressions therein contained shall be construed as follows:

The term "dairy" shall mean any place where milk from two or more cows is produced for sale.

The term "creamery" shall mean any place, building or structure wherein milk or cream is manufactured into butter.

The term "milk plant" shall mean any place, building or structure wherein milk is received for bottling, pasteurizing, clarifying, or otherwise processing.

The term "cheese factory" shall mean any place, building or structure wherein milk is manufactured into cheese.

The term "factory of milk products" shall mean any place, building or structure, other than a creamery, milk plant, cheese factory, or milk condensing plant, wherein milk or any of its products is manufactured, altered, changed or compounded into any article, compound or product designed and intended for human consumption.

The term "milk" shall mean the fresh, clean, lacteal secretion obtained by milking one or more healthy cows, properly fed and kept, and not obtained or taken within ten days preceding the parturition of such cow or cows, nor within five days thereafter, and which contains not less than eight and fifty one-hundredths per cent of milk solids, and not less than three and twenty-five one-hundredths per cent of fat: Provided, however, that nothing in this act shall prohibit the sale of the whole, unadulterated and unskimmed milk of any cows whose milk tests below the butter fat standard herein fixed.

The term "skimmed milk" shall mean any milk from which the cream has been removed, or which contains less than three and twenty-five one-hundredths per cent of butter fat, and not less than eight and eight-tenths per cent of milk solids exclusive of fat.

The term "sterilized milk" shall mean milk that has been heated to the temperature of boiling water or to a higher temperature, and maintained at such temperature for a length of time which shall be sufficient to kill all organisms present in such milk.

The term "blended milk" shall mean milk which is modified in its composition so as to have a definite and stated percentage of one or more of its constituents.

The term "condensed milk," "evaporated milk," and "concentrated milk," and each or either of them, shall mean the product resulting from the evaporation of a considerable portion of the water from the whole, fresh, clean, lacteal secretion obtained by the milking of one or more healthy cows, and not obtained within ten days before nor within five days after parturition, and which contains, all tolerances being allowed for, not less than twenty-five and five-tenths per cent of total solids and not less than seven and eight-tenths per cent of milk fat.

The words "condensed milk" when used in this act, not in connection with "sweetened condensed milk," shall include condensed milk to which sucrose has been added.

The term "condensed skimmed milk," "evaporated skimmed milk" and "concentrated skimmed milk," and each or either of them shall mean the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and which contains, all tolerances being allowed for, not less than eighteen per cent of milk solids.

The term "sweetened condensed milk," "sweetened evaporated milk," and "sweetened concentrated milk," and each or either of them, shall mean condensed milk conforming to the standards and definitions of this act, to which sugar (sucrose) has been added.

The term "sweetened condensed skimmed milk," "sweetened evaporated skimmed milk" and "sweetened concentrated skimmed milk," and each or either of them, shall mean the product resulting from the evaporation of a considerable portion of the water from skimmed milk, to which sugar (sucrose) has been added, and which contains, all tolerances being allowed for, not less than twenty-eight per cent of milk solids.

The term "dried milk" shall mean the product resulting from the removal of water from milk, and which contains, all tolerances being allowed for, not less than twenty-six per cent of milk fat and not more than five per cent of moisture.

The term "dried skimmed milk" shall mean the product resulting from the removal of water from skimmed milk and which contains, all tolerances being allowed for, not more than five per cent of moisture.

The term "malted milk" shall mean the product made by combining whole milk with the liquids separated from a mash of ground barley malt and wheat flour, with or without the addition of sodium chloride, sodium bicarbonate, or potassium bicarbonate, in such manner as to secure the full enzymic action of the malt extract, and by removing water, and which contains not less than seven and one-half per cent of butter fat and not more than three and one-half per cent of moisture.

The term "buttermilk" shall mean that portion of the cream which remains after the separation and removal therefrom of the butter fat without the addition of water.

The term "ice-cream" shall mean the frozen product made from the combination of milk fats, milk solids, and sugar, with or without harmless coloring or flavoring matter, and with or without the addition of pure gelatine or vegetable gums, and which contains not less than eight per cent of milk fat, and not less than eighteen per cent of milk fats and milk solids, not fat, combined.

The term "fruit ice-cream" shall mean the frozen product made from the combination of milk fats, milk solids, and sugar, with or without harmless coloring or flavoring matter, and with or without the addition of pure gelatine or vegetable gums, and to which has been added sound, clean and mature fruits and which contains not less than eight per cent of milk fat, and not less than eighteen per cent of milk fats and milk and milk solids, not fat, combined.

The term "nut ice-cream" shall mean the frozen product made from the combination of milk fats, milk solids, and sugar, with or without harmless coloring or flavoring matter, and with or without the addition of pure gelatine or vegetable gums, and to which has been added sound, clean and non-rancid nuts, and which contains not less than eight per cent of milk fat and not less than eighteen per cent of milk fat and milk solids, not fat, combined.

The term "ice milk" shall mean the frozen product made from the combination of pure, sweet milk and sugar, with or without harmless coloring or flavoring matter, and containing not less than two and four-tenths per cent of milk fat, and not more than six-tenths of one per cent of pure and harmless vegetable gum or gelatine.

The term "milk fat" and "butter fat," and each or either of them shall mean the fat of milk having a Reichert-Meissel number not less than

twenty-four, and a specific gravity not less than .905 at a temperature of forty degrees centigrade.

The term "cream" shall mean that portion of milk rich in butter fat which rises to the surface on standing, or is separated from it by centrifugal force, and which is fresh and clean and contains not less than eighteen per cent of milk fat.

The term "butter" shall mean the clear, non-rancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass containing not less than eighty per cent of milk fat, and which also contains a small portion of other milk constituents with or without harmless coloring matter.

The term "renovated butter" shall mean butter that has been reduced to a liquid state by melting and drawing off such liquid or butter oil, and has thereafter been churned or manipulated in connection with milk, cream or other product of milk.

The term "re-worked butter" shall mean the product obtained by mixing, re-churning or re-working butter manufactured on different dates or at different places: Provided, however, that the mixing of the clean, fresh trimmings or remnants from one day's churning or cutting with butter from the churning of the same creamery on the day next following shall not make the product re-worked butter within the meaning of this act.

The term "milk products" shall mean and include each, every and any article, substance, product or compound manufactured, produced or compounded from milk, whether such milk conform to the standard and definitions set forth in this section, or not.

The term "milk by-product" shall mean any and all products of milk derived or made therefrom after the removal of the milk fat or milk solids in the process of making butter or cheese, and shall include skimmed milk, buttermilk, whey, casein and milk powder.

The term "cheese" shall mean the sound, solid, and ripened product made from milk or cream by coagulating the casein therein with rennet, lactic acid or pepsin with or without the addition of ripening ferments and seasoning, and with or without salt or harmless coloring matter.

The term "full cream cheese" or "full milk cheese" and each or either of them, shall mean cheese which contains in the water-free substance thereof not less than fifty per cent of milk fat.

The term "half skim cheese" shall mean cheese which contains in the water-free substance thereof less than fifty per cent and not less than twenty-five per cent of milk fat.

The term "skim cheese" shall mean cheese which contains in the water-free substances thereof less than twelve per cent of milk fat.

The term "quarter skim cheese" shall mean cheese which contains in the water-free substance thereof less than twenty-five per cent and not less than twelve per cent of milk fat.

The term "imitation cheese" shall mean any article, substance or compound, other than that produced from pure milk or from the cream from pure milk, which shall be made in the semblance of cheese, and designed to be sold or used as a substitute for cheese made from pure milk or cream: Provided, however, that the use of salt, rennet, lactic acid or pepsin, and harmless coloring matter for coloring the product

of pure milk or cream shall not be construed to render such product an imitation, and Provided further, that nothing in this section shall prevent the use of pure skimmed milk in the manufacture of cheese.

The term "whey" shall mean the product remaining after the removal of fat and casein from milk in the process of cheese making.

The term "oleomargarine" shall mean all manufactured substances, extracts, mixtures or compounds, including mixtures or compounds with butter, heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral, and shall include all lard and tallow extracts and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, intestinal fat and offal fat made in imitation or semblance of butter, or calculated or intended to be sold as butter or for butter.

The term "substitute butter" shall mean and include all compounds of vegetable oils with milk fats or milk solids, and all compounds of milk fats or milk solids with butter, when such compound contains less than eighty per cent of milk fat.

The term "person" shall import both the singular and plural as the case may demand, or as shall be applicable, and shall include individuals, copartnerships, corporations and unincorporated societies and associations. [L. '19, p. 613, § 1.]

See *infra*, § 10841, division of dairy and livestock created.

Validity of regulations as to milk.
4 Ann. Cas. 119; 5 Ann. Cas. 911;

18 Ann. Cas. 321; Ann. Cas. 1915C, 72; L. R. A. 1917C, 243.

§ 6165. Unsanitary Dairy, What Constitutes.

A dairy shall be deemed unsanitary in the following cases:

(a) If the drinking water provided for the cows therein be stagnant, polluted with manure, urine, drainage, or decaying vegetable or animal matter.

(b) If the yards or inclosures in which the cows are confined or kept be filthy or unsanitary.

(c) If any part of the yards or inclosures in which the cows are confined or kept, other than pastures, be made depositories of manure in heaps, or otherwise, where it is allowed to ferment and decay.

(d) If a suitable milk-house or milk-room is not provided and maintained, properly screened to exclude flies and insects, for the purpose of cooling, mixing, bottling, canning, keeping or separating the milk or cream. Such milk-house or milk-room shall not be located in, or be a part of, any barn or poultry-house, and shall not be used for any other purpose whatsoever, and if contained in any building or structure in which any business, occupation or trade, other than handling, bottling or processing milk is conducted or carried on, such milk-room shall be separated from the portion or portions of such building or structure in which such business, trade or occupation is conducted or carried on, by a tightly ceiled or plastered partition constructed in such manner as to meet with the approval of, and comply with, any regulations issued by the department of agriculture.

(e) If milk or cream shall be cooled, stored, mixed, bottled, canned or kept in any room or place occupied by any person as a sleeping or living apartment, or occupied by horses, cows, hogs or other animals, or by fowl of any kind.

(f) If any urinal, privy vault, open cesspool, pig-pen, stagnant water, accumulation of manure, or other filth shall be permitted within one hundred feet of such milk-house, milk-room, or within fifty feet of any cowstalls or stanchions, or other place where milking is done.

(g) If the walls or floor of such milk-house or milk-room shall become soiled with manure, urine, dirt or other filth.

(h) If an application of lime whitewash to the interior of any cattle stable, barn or milking-shed in which cows are kept or milked, or any milk-house or milk-room in which milk is cooled, stored, mixed, bottled, canned or kept, shall not be made as often as once in one year.

(j) If the pails, cans or other containers of milk, or the strainers or coolers coming in contact with the milk are not thoroughly sterilized with boiling water or live steam each and every time the same are used.

(k) If the person or wearing apparel of the dairyman, or his employees, or other persons coming in contact with milk and its products, are allowed to become soiled, or are not washed from time to time with reasonable frequency.

(l) If the milking-stools, milking-machines and equipment therein are not kept clean.

(m) If there shall be permitted to exist any other cause or thing calculated or tending to render the milk or its products in such dairy unclean, impure and unhealthy. [L. '19, p. 619, § 2.]

§ 6166. Unsanitary Creameries, Plants and Factories.

A creamery, milk plant, cheese factory, milk condensing factory or factory of milk products, and any store, market, depot, booth or other place where milk is handled, stored or kept for sale, shall be deemed unsanitary in the following cases:

(a) If milk or cream is received that has reached an advanced stage of fermentation, or that shows a state of putrefactive fermentation.

(b) If milk be received, stored or kept in cans or other retainers that have not been sterilized with boiling water or live steam after each delivery.

(c) If utensils and apparatus that come in contact with milk or its products in the process of manufacture are not thoroughly washed and sterilized by means of boiling water or live steam after each using.

(d) If the floor of such creamery, factory, plant, store, market, depot, booth or place is so constructed, or in such condition, as to permit the flowing or soaking of water, milk or other liquids underneath such floor, or among the interstices of such floor in such manner as to permit fermentation and decay to take place.

(e) If the condition of the floor in any such creamery, factory, plant, store, market, depot, booth or other place be such that it may not be readily kept free from dirt and filth.

(f) If drains are not provided that will convey refuse milk, water and sewage to a point at least fifty yards distant from such creamery, factory, plant, store, market, depot, booth or place.

(g) If any cesspool, privy vault, hog-yard, slaughter-house, hen-house, manure, or any decaying vegetable or animal matter that will emit or produce foul odors, shall be permitted to exist within such distance as

will permit the odors therefrom to reach any such creamery, factory, plant, store, market, booth, depot or other place where milk or milk products are handled, stored or kept for sale.

(h) If such creamery, factory, plant, depot, booth, store, market or other place where milk or milk products are handled, stored, or kept for sale is so constructed, or is so maintained as not to permit access thereto of sufficient light and air to secure good ventilation.

(i) If in any building or buildings used in connection with any creamery, cheese factory, milk plant, milk condensing factory, or factory of milk product any insects, vermin or other species of animal life are permitted.

(j) If upon the floor of any creamery, cheese factory, milk plant, milk condensing factory or factory of milk products, or upon the sides of walls thereof, any milk or its products, or any other filth is allowed to accumulate, ferment or decay.

(k) If the body or wearing apparel of any person employed in any creamery, cheese factory, milk plant, milk condensing factory, or factory of milk products, or coming in contact therein with any milk or milk product, shall be unclean, or shall not be washed from time to time with reasonable frequency.

(l) If there shall be permitted to exist any other cause or thing calculated or tending to render the milk or its products produced, kept, handled or manufactured in such creamery, plant, factory, store, booth, or depot unclean, impure and unhealthy. [L. '19, p. 621, § 3.]

§ 6167. Protection from Flies and Contamination.

No milk, cream, butter, or other milk product which has been prepared for human consumption shall be offered for sale for such consumption unless it shall be kept properly protected from flies, dust, dirt or other injurious contamination by being properly covered with a glass, wooden or metal case or covering. [L. '19, p. 623, § 4.]

Validity of statute requiring food
exposed for sale to be protected

from flies, dust, etc. **Ann. Cas.**
1912D, 957; **Ann. Cas.** 1915D, 1085.

§ 6168. Cleansing Containers.

Every person, firm or corporation, not a common carrier, who receives from a common carrier in cans, bottles, vessels or any other container, any milk, cream, ice-cream, or ice milk, intended for human consumption, which has been transported over any railroad, boat or freight line, or by wagon, automobile, auto-truck or other common carrier, shall cause such cans, bottles, vessels or containers to be thoroughly cleansed and sterilized with boiling water or live steam before returning the same to the consignor or to the carrier from whom the same were received. [L. '19, p. 623, § 5.]

Validity of statute regulating receptacles used in selling milk. 14 **Ann. Cas.** 703.

§ 6169. Empty Bottles, etc., to be Cleansed.

All cans, bottles, vessels, or other containers received from consumers by any vendor, peddler, or retailer shall be thoroughly cleansed before being returned to the dealer or distributor. [L. '19, p. 623, § 6.]

§ 6170. Sanitary Handling of Shipments.

Milk, cream, ice-cream, ice milk and other milk products, when being shipped or transported by freight, express, truck or wagon, or other carrier, shall be handled, kept and maintained during such transportation in a clean and sanitary condition and manner, and shall not be exposed to contamination by dirt, dust, foul odors or other contaminating influences, nor shall such milk, cream, ice-cream or ice milk, be allowed to remain in any place where it, or its containers, shall be exposed to the direct rays of the sun. [L. '19, p. 623, § 7.]

§ 6171. Separators—Cleaning.

No person shall sell, offer to sell or expose for sale any milk or cream taken from any cream separator not kept thoroughly washed and cleaned, and not regularly washed and cleaned in a thorough manner within three hours after each use thereof. [L. '19, p. 624, § 8.]

§ 6172. Isolation of Separators.

No person shall sell, offer to sell or expose for sale any milk or cream taken from any cream separator kept in any stable or other building wherein any animal or fowl is housed or kept, or in any place where the conditions are unsanitary or where the air is foul or contaminated: Provided, that this section shall not be construed to prohibit the keeping of such cream separator in any room which is wholly separated by tightly ceiled or plastered partitions having no openings from that part of the stable or building in which milking cows are housed or kept. [L. '19, p. 624, § 9.]

§ 6173. Cleanliness of Utensils.

All tinware, woodenware, glassware, and other utensils used in or about any dairy, creamery, milk plant, milk condensing plant or factory of milk products shall be kept clean and in sanitary condition. [L. '19, p. 624, § 10.]

§ 6174. Pasteurization Processes.

That process of pasteurization as applied to milk, skimmed milk, cream and milk products is here defined and declared to be a process for the elimination therefrom of organisms harmful to human beings. Such process as applied to milk shall consist of uniformly heating such milk to a temperature of not less than one hundred and forty degrees Fahrenheit and of holding the same at such temperature for a period of not less than twenty-five minutes, and immediately thereafter of cooling such milk to a temperature of not above fifty degrees Fahrenheit. Such process as applied to skimmed milk, cream or other milk product shall consist of uniformly heating such skimmed milk, cream or milk product to a temperature of not less than one hundred and forty degrees Fahrenheit and of holding the same at such temperature for a period of not less than twenty-five minutes, or of heating the same to a temperature of one hundred and seventy-six degrees Fahrenheit, without holding: Provided, however, that whenever milk or cream shall be subjected to such process before being used in the manufacture of butter or cheese, and when the

process of ripening is to be commenced immediately, it shall not be necessary that such milk or cream be cooled to a lower temperature than is necessary for such ripening or starting. [L. '19, p. 624, § 11.]

Validity of statute making regulations for pasteurization of milk.

Ann. Cas. 1915C, 72; 10 A. L. R. 132.

§ 6175. Pasteurization for Butter and Cheese.

All milk or cream used in the manufacture of pasteurized butter or cheese shall be subjected to the process of pasteurizing in the creamery or cheese factory where such butter or cheese shall be manufactured therefrom, and not elsewhere. [L. '19, p. 625, § 12.]

§ 6176. Duplication Prohibited.

No milk that has once been subjected to the process herein described and defined as pasteurization shall be a second time subjected to such process. [L. '19, p. 625, § 13.]

§ 6177. Sufficiency of Pasteurizing Apparatus.

Every pasteurizing plant or apparatus by which the process of pasteurization is applied to any milk shall be equipped with a holding device which will insure the holding and maintaining of the milk being subjected to such process at the temperature and for the periods of time required by the provisions of this act. [L. '19, p. 625, § 14.]

§ 6178. Registering Thermometer.

Every pasteurizing plant or apparatus by which the process of pasteurizing is applied to any milk, skimmed milk or cream, shall be equipped with a registering thermometer device which will accurately indicate and record the temperature of such milk, skimmed milk or cream. [L. '19, p. 625, § 15.]

§ 6179. Approval of Apparatus.

All registering thermometer devices used in the pasteurization of milk or milk products must be such as shall be approved by the department of agriculture. [L. '19, p. 626, § 16.]

§ 6180. Measuring Bottles—Penalty—Tests and Reports.

All bottles and pipettes used in measuring milk or milk products for making determination of the per cent of fat in said milk or milk products shall have clearly blown or otherwise permanently marked in the side of the bottle or pipette the word "Sealed," and in the side of the pipette or the side or bottom of the bottle the name, initials, or trademark of the manufacturer and his designating number, which designating number shall be different for each manufacturer and may be used in identifying bottles. The designating number shall be furnished by the commissioner of agriculture upon application by the manufacturer and upon the filing by the manufacturer of a bond in the sum of one thousand dollars (\$1,000) with sureties to be approved by the attorney general, conditioned upon conformance with the requirements of this section. A record of the bonds furnished, the designating number, and to whom furnished, shall be kept in the office of the department of agriculture.

Any manufacturer who sells Babcock milk, cream or butter test bottles or milk pipettes, to be used in this state, that do not comply with the provisions of this section shall suffer the penalty of five hundred dollars (\$500) to be recovered by the attorney general in an action against the offender's bondsmen, to be brought in the name of the people of the state. Any dealer who uses, for the purpose of determining the per cent of milk fat in milk or milk products, any bottles or pipettes purchased after this law takes effect that do not comply with the provisions of this section relating thereto, shall be deemed guilty of a misdemeanor.

The commissioner of agriculture shall prescribe specifications with which the glassware mentioned in this section shall comply. The unit of graduation for all Babcock glassware shall be the true cubic centimeter or the weight of one gram of distilled water at four degrees centigrade.

Inspectors of the department of agriculture are not required to seal Babcock milk, cream or butter test bottles or milk pipettes marked as in this section provided, but they shall from time to time make tests of individual bottles used by the various firms in the territory over which they have jurisdiction in order to ascertain whether the above provisions are being complied with and they shall report immediately to the commissioner of agriculture violations found. [L. '19, p. 626, § 17.]

See *infra*, § 10851, duties devolve upon director of agriculture.

§ 6181. Operation of Testers.

In all tests made of milk or cream received or purchased upon the basis of the amount of butter fat contained therein, and in all tests of any sample of milk or cream so received or purchased, the Babcock tester shall be operated at the proper speed or speeds. The proper speeds for such operations are hereby declared to be as follows:

For tester with diameter of fourteen inches, the speed shall be between eight hundred seventy-five and nine hundred twenty-five revolutions per minute.

For tester with diameter of sixteen inches, the speed shall be between eight hundred twenty-five and eight hundred seventy-five revolutions per minute.

For tester with diameter of eighteen inches, the speed shall be between seven hundred seventy-five and eight hundred twenty-five revolutions per minute.

For tester with diameter of twenty inches, the speed shall be between seven hundred and twenty-five and seven hundred and seventy-five revolutions per minute.

For tester with diameter of twenty-four inches, the speed shall be between five hundred seventy-five and six hundred twenty-five revolutions per minute. [L. '19, p. 627, § 18.]

§ 6182. Temperature for Testing Purposes.

In all tests made of milk or cream to determine the amount of milk fat therein the Babcock tester must be read at the proper temperature which is hereby declared to be not less than one hundred and thirty degrees Fahrenheit and not more than one hundred and forty degrees

Fahrenheit, and all payments for or sales of milk or cream made on the basis of measurement or weight shall be made according to the true weight and measurement which is hereby declared to be seventeen and six-tenths cubic centimeters for milk and nine grams or eighteen grams for cream. In all tests for cream the cream shall be weighed into the test bottle. [L. '21, p. 306, § 1. Cf. L. '19, p. 628, § 19.]

§ 6183. Scale Sensibility.

The sensibility of all scales used for weighing cream samples into the test bottles used in making any test with the Babcock tester shall be not more than thirty milligrams, and the standard weights shall be nine grams and eighteen grams. [L. '19, p. 628, § 20.]

§ 6184. Test Samples.

Each and every person whose duty it shall be to take, or who shall take or make any test or measure or take or extract any sample of milk or cream sold or purchased, or to be sold or purchased, by weight, test or measure, shall weigh, test or measure the milk or cream sold or purchased by or from each individual separately. He shall before making any test, or taking or extracting any such sample, thoroughly mix the milk and cream of the entire shipment or delivery from which a sample is to be taken, or extracted, by pouring or stirring until such milk and cream is of uniform and homogeneous constituency and richness, or shall take a sample from each can or other container of the entire shipment to be sampled and tested. [L. '19, p. 628, § 21.]

§ 6185. Deceit in Weight, Measure or Test.

No person, firm or corporation, selling, delivering or hauling milk or cream, and no person, firm or corporation receiving or purchasing milk or cream by weight or test, or both, or by measure or test, or both, shall with intent to deceive, defraud or mislead as to the weight, measure or test thereof, manipulate, change or alter such measure, test or weight, or make or return to any person any false, deceitful, inaccurate or untrue statement of such weight, test or measure, or use any measure or testing apparatus which does not comply with the standards defined therefor in this act or which has been condemned as inaccurate by the department of agriculture. [L. '19, p. 629, § 22.]

§ 6186. Unfair Samples.

No person shall take, extract or return to any creamery, milk plant, cheese factory or factory of milk products, any unfair, fraudulent or manipulated sample of any cream or milk purchased, received, hauled, sold or delivered. [L. '19, p. 629, § 23.]

§ 6187. Dealers' and Testers' Licenses.

Whenever in any year an application shall be made to the department of agriculture subsequent to the first day of August in such year, for the issuance of a license for the balance of the year ending June 30th thereafter, such license shall be issued by said department upon payment by the applicant of such pro rata proportion of the license fee provided

by this act as shall be obtained by pro rating the number of months, including the month in which application is made, during which such license will be in force and effect with the whole number of months in the year ending June 30th thereafter: Provided, however, the provisions of this section shall not apply to any person who subsequent to the first day of July in the year in which application for license is made, and before receiving such license, was engaged in the trade, business or occupation for which a license is applied for, nor to any person applying for a Babcock licensed tester's license, or for a milk vender's license, nor to any person applying for a license to purchase milk and cream in bulk. [L. '19, p. 629, § 24.]

§ 6188. Official Testers.

All tests of milk or cream sold, purchased or delivered on the basis of the amount of milk fat or butter fat contained therein shall be performed by a Babcock licensed tester. Such tester shall personally operate and conduct each test and shall be personally responsible to any person injured by any careless, negligent or unskillful operation thereof, and for any fraudulent, intentionally inaccurate or manipulated report or return of any such test. [L. '19, p. 630, § 25.]

§ 6189. Babcock Licensed Testers.

Any person may receive from the department of agriculture a license as a Babcock licensed tester upon application therefor and upon the payment to said department of a license fee of one dollar (\$1.00) therefor. Before issuing such license the department of agriculture shall inquire into the qualifications of the applicant, and shall require such applicant to submit to examination as to his qualifications, and may require the applicant to submit to it satisfactory proof that he is of good moral character. [L. '19, p. 630, § 26.]

See *infra*, § 10851, duties devolve upon director of agriculture.

§ 6190. Applications and Permits.

Applications for licenses as a Babcock licensed tester shall be made upon an application blank to be provided and furnished by the department of agriculture, and shall be filed with the department. Upon receipt of any such application the department of agriculture may, if the commissioner shall so direct, issue a permit to the applicant to act as a Babcock licensed tester for such period as may be prescribed and stated in said permit, not to exceed sixty days, but such permit shall not be renewed so as to extend the period beyond sixty days from the filing of the application. [L. '19, p. 630, § 27.]

§ 6191. Duration of License.

Every license as a Babcock licensed tester shall be valid and in force during the life of the person to whom it is issued, unless it shall be sooner revoked. Any license as a Babcock licensed tester may at any time be revoked by the department of agriculture, upon due notice to the person to whom it is issued, if such person shall fail to comply with the provisions of this act, or shall exhibit in the discharge of his functions any gross carelessness or lack of qualification, or shall fail to comply with the

rules and regulations issued and promulgated by the department of agriculture under the authority of this act. [L. '19, p. 631, § 28.]

See note to § 6189.

§ 6192. Plant and Factory Licenses.

Every creamery, milk plant, shipping station, milk condensing plant, ice-cream factory or factory of milk products, or other person receiving or purchasing milk or cream in bulk and not bottled, and by weight or measure or upon the basis of the amount of milk fat contained therein, shall annually obtain a license therefor. Such license shall be issued by the department of agriculture upon being satisfied that the building, structure, place or premises where such milk is to be received or purchased is maintained in a sanitary condition in accordance with the provisions of this act; and upon the payment to the department of a license fee of one dollar (\$1.00) therefor. Such license shall be for the period of one year and shall expire on the thirtieth day of June subsequent to the date of its issue, and may be sooner revoked by the department of agriculture, upon reasonable notice to the licensee, if such licensee shall fail to comply with the provisions of this act and the rules and regulations issued and promulgated by the department of agriculture under the authority of this act: Provided, however, that the provisions of this section shall not apply to individuals purchasing milk or cream for consumption by themselves or their families, nor to the owners or keepers of hotels, restaurants, boarding-houses and eating-houses purchasing milk or cream to be served or consumed therein. [L. '19, p. 631, § 29.]

See note to § 6189.

§ 6193. Licensed Ambulatory Dealers.

No person, firm or corporation shall convey, transport or carry any milk, skimmed milk, buttermilk, or cream in any wagon, automobile, cart, or other vehicle, for the purpose of selling or vending the same in any city or town within the state or sell or vend any milk, skimmed milk, buttermilk, or cream from any such wagon, cart, automobile, or other vehicle, within any such town or city, unless such person, firm or corporation shall have first obtained a milk vender's license therefor. [L. '19, p. 632, § 31.]

§ 6194. Vender's License.

Milk vender's licenses shall be issued by the department of agriculture upon application and upon the payment therefor of a license fee of one dollar (\$1.00). Such licenses shall be for the period of one year, unless sooner revoked, and shall expire on the thirtieth day of June next subsequent to the issue thereof. Each milk vender's license shall contain the number of the license, and the name, residence and place of business, if any, of the licensee, and no such license shall be sold, assigned or transferred. Any milk vender's license may be at any time revoked by the department of agriculture upon reasonable notice to the licensee, if such licensee shall be guilty of violation of or shall fail to comply with this act or any section or provision thereof, or shall violate or refuse or neglect to comply with any lawful regulation or order of the department of agriculture, or any officer, agent or inspector thereof. [L. '19, p. 632, § 32.]

See note to § 6189.

§ 6195. Licensed Purchasers.

No person, firm or corporation who shall hold a license to purchase milk or cream in bulk as required by section 6192, shall be required to obtain or hold a milk vender's license. [L. '19, p. 633, § 33.]

§ 6196. License Regulations.

The department of agriculture shall from time to time, prepare, issue and promulgate such rules and regulations governing the issuing of licenses, the making of applications therefor, the determination of the qualifications of such applicants, and for the making of complaints, the giving of notice, and for hearing, and other proceedings for the revocation of licenses, as it shall deem necessary and as shall not be in conflict with the provisions of this act. [L. '19, p. 633, § 34.]

See note to § 6189.

§ 6197. Dairy and Plant Inspection.

It shall be the duty of the department of agriculture to inspect dairies, milk plants, creameries, cheese factories, milk condensing plants and factories of milk products and all stores, markets, depots, booths, milk-rooms, and other places wherein milk or milk products are produced, manufactured, bottled, handled or processed, or in which milk or any milk product designed or intended for sale for human consumption is kept, stored, or sold, and all wagons, automobiles, carts and other vehicles by which any milk or milk product is being transported for sale or with intent to sell, and it shall have power to condemn the same when found to be unsanitary within the standards and definitions of this act. [L. '19, p. 633, § 35.]

See note to § 6189.

§ 6198. Enforcement of Laws.

It shall be the duty of the department of agriculture to enforce all laws that now exist or which may hereafter be enacted in this state relating to the production, manufacture, sale or distribution of milk or milk products, and to inspect all such articles or imitations thereof, made or offered for sale within the state which he may suspect or have reason to suspect to be impure, unhealthy, adulterated or not in conformity with the standards prescribed by this act, and to prosecute or cause to be prosecuted any person, firm or corporation engaged in the manufacture, keeping, exposing or offering for sale, serving, vending or furnishing any adulterated, counterfeit, or imitation milk product, or of any substitute for or imitation of any milk or milk product, contrary to law, [L. '19, p. 633, § 36.]

See note to § 6189.

§ 6199. Revisory Tests.

The department of agriculture shall conduct tests at any creamery, milk plant, cheese factory, milk condensing plant or factory of milk products where there is reason to believe that milk or cream purchased or sold upon any basis of test, weight or measure is not being tested, weighed or measured accurately. [L. '19, p. 634, § 37.]

See note to § 6189.

§ 6200. Inspection of Testing Apparatus.

All apparatus used for the purpose of testing milk or cream sold, purchased or delivered upon the basis of the amount of milk fat contained therein shall be inspected and tested from time to time by the department of agriculture and any such apparatus, or any portion thereof, found defective or faulty shall be condemned and be replaced through the department at cost to the user. [L. '19, p. 634, § 38.]

§ 6201. Performance of Inspection Duties.

The duties of inspection imposed by this act on the department of agriculture, and all powers and authorities conferred upon said department in connection with any test or inspection of any creamery, dairy, plant, factory, store, depot, booth, market, wagon, automobile, cart, vehicle, or place, or of any milk or milk product or any substitute therefor, or imitation thereof may be exercised by any commissioner, assistant commissioner, or inspector thereof. [L. '19, p. 634, § 39.]

See note to § 6189.

§ 6202. Preservation of Thermometer Records.

All persons, firms or corporations using a thermometer device in connection with the pasteurization of milk or milk products shall preserve and keep on file for a period of not less than two months after being made all records made by such thermometer device, or deliver the same to the department of agriculture or to such person as it may direct. Such records shall at all times be open to inspection by the department of agriculture and by the state board of health and by all other state, county and municipal officers charged by law with the enforcement of laws and ordinances relating to milk or milk products, or relating to the public health. [L. '19, p. 634, § 40.]

§ 6203. Statistical Reports.

The department of agriculture shall provide blanks for reporting statistics of the production of milk and milk products. The department shall annually on or before the first day of January of each year cause to be mailed to the owners or operators of all creameries, cheese factories, milk plants, milk condensing factories, factories of milk products, and to all milk venders and milk dealers, one or more of such blanks. All such persons shall on or before the first day of February next following transmit to said department such blanks properly filled out and signed by such person and showing a full and accurate report of the amount of milk, cream, butter, cheese, ice-cream, ice milk, buttermilk, skimmed milk, or other milk produce received, produced, manufactured or distributed during the year ending on the thirty-first day of December next previous thereto. The words "milk vender" or "milk dealer" shall mean any person, firm or corporation who sells, vends, furnishes or delivers milk, skimmed milk, buttermilk or cream from any wagon, automobile, cart or other vehicle. [L. '21, p. 306, § 3. Cf. L. '19, p. 635, § 41.]

§ 6204. Dissemination of Dairy Information.

The department of agriculture is hereby authorized to gather and compile statistics relative to the dairy industry, and to the production,

manufacture and sale of milk, cream, butter, cheese, ice-cream, ice milk, condensed milk and other milk products, and to disseminate to the public in such manner as it shall judge most advisable the information contained in all such statistics, and to furnish such other information and do such other things, as it shall judge to be for the general good and tend to promote the development of the dairy industry of the state, and the healthfulness and purity of the products thereof. [L. '19, p. 635, § 42.]

§ 6205. Failure to Comply With Regulations.

Any person, firm or corporation who shall fail or refuse to keep any record, or to make and return any report or statement required by this act to be kept or made, or who shall fail or refuse to make and return any such report or statement within the times limited by this act, and any person, firm or corporation who shall refuse to permit the examination of any such record by the department of agriculture, or by any officer, agent or inspector thereof, or milk inspector of any city, or any health officer of the state, or any city, county or town therein shall be deemed to be guilty of a violation of this act. [L. '19, p. 636, § 43.]

§ 6206. Use of Substitutes in State Institutions.

No oleomargarine, substitute butter, renovated butter, or any other substance designed as an imitation of or substitute for butter or any condensed milk from which the butter fat has been removed and a vegetable or other oil has been substituted therefor shall be used in any of the charitable hospital, medical, reformatory or penal institutions maintained by the state or which receives from the state any money, appropriation or financial assistance whatsoever. [L. '19, p. 636, § 44.]

§ 6207. Deceitful Advertising of Substitute Products.

No person, firm or corporation shall use in connection with the offering or exposing for sale, serving, furnishing or delivering of any milk from which the butter fat has been removed and a vegetable or other oil has been substituted therefor, oleomargarine, substitute butter, or other substance designed as a substitute for or imitation of butter, or in any advertisement, or sign or card relating to such oleomargarine, substitute butter or other substance, the words "butter," "creamery," "dairy," or "butterine," or any representation, picture, or likeness of any cow or cow kind. [L. '19, p. 636, § 45.]

§ 6208. Imitation Cheeses to be Branded.

Every person, firm or corporation who shall manufacture any imitation cheese or any substitute for cheese shall at the place of manufacture before removing such imitation cheese or substitute therefrom distinctly and durably brand such cheese with the words "Imitation Cheese" and the name and address of the manufacturer on every box, package or container in which such imitation cheese or substitute is packed, contained or designed to be sold. Such name and address and such words shall be printed in letters of plain, uncondensed gothic type

and not less than one inch in height and in such a manner that said brand cannot readily be obliterated. Failure to brand any such imitation cheese or substitute as provided in this section and the selling of any such imitation cheese or substitute not so branded shall constitute a violation of this act on the part of the manufacturer and on the part of every person selling the same with knowledge that the same is not full cream cheese. [L. '19, p. 637, § 46.]

§ 6209. Standards to be Observed.

No person, firm or corporation shall sell, offer or expose for sale, exchange with, furnish or deliver to any other person, firm or corporation for sale for human consumption as or for milk, cream, skimmed milk, condensed milk, or other milk product, any substance, product or compound whatsoever which shall not conform to the standards for such milk or milk product as set forth in this act. [L. '19, p. 637, § 47.]

§ 6210. Sale of Impure Products.

No person, firm or corporation shall sell, expose or offer for sale, or exchange with, present or deliver to any creamery, milk plant, cheese factory, milk condensing factory, factory of milk products, or other buyer or consumer of milk or milk products, any unclean, unwholesome, adulterated, stale or impure milk, cream, butter or other milk product. [L. '19, p. 637, § 48.]

§ 6211. Milk from Diseased Cattle.

No person, firm or corporation shall knowingly sell, expose or offer for sale, present, exchange with or deliver to any creamery, consumer, milk plant, cheese factory, milk condensing factory, factory of milk products, or any other buyer or consumer of milk or milk products, any milk, or any cream, skimmed milk, buttermilk, butter, ice-cream, ice milk, cheese, condensed milk or other milk product made or manufactured from milk produced from cows affected with any disease, or that was produced within ten days preceding parturition or within five days thereafter: Provided, that nothing in this section shall be construed to prohibit the sale of milk or cream from cows which have reacted to a tuberculin test when such cow or cows exhibit no physical symptoms of disease, and such milk or cream is pasteurized or sterilized as required by the provisions of this act and a permit therefor has been obtained from the department of agriculture, or from an inspector thereof. [L. '19, p. 638, § 49.]

§ 6212. Malted Milk.

The use of malted milk or substances conforming to the standards prescribed by this act for malted milk shall not constitute an adulteration, nor shall anything in this act be construed to prevent the sale, furnishing or serving of malted milk in connection with milk or other milk products, or separately: Provided, the same be sold, furnished or served as and for malted milk and not as pure milk. [L. '19, p. 638, § 50.]

§ 6213. Skimmed Milk to be Labeled.

No person, firm or corporation shall sell, exchange, offer or expose for sale, furnish or deliver any milk from which the cream shall have been removed or which does not contain 3.25 per cent milk fat, unless the same be sold, offered or exposed for sale, furnished and delivered as and for skimmed milk, nor unless there shall be attached to the outside of any bottle, can, package, vessel or container in which the same is contained, a tag upon which shall be printed in black letters at least one inch high the words "Skimmed Milk." [L. '19, p. 638, § 51.]

§ 6214. Hotels, etc., Serving Skimmed Milk.

No owner, keeper or manager of any hotel, restaurant, boarding-house, eating-house, or other place where meals are served or sold for compensation or food is sold to be consumed on the premises, shall sell, serve or furnish either as a part of or in connection with any meal or food served, sold or furnished therein, any skimmed milk unless there shall at all times be kept and conspicuously displayed in the room where such meals or food is served, sold or furnished, and in full view of the public, a durable sign with the words "Skimmed Milk Sold Here" printed or painted thereon in letters at least one inch high. [L. '19, p. 639, § 52.]

§ 6215. Cooling of Milk.

All milk shall be cooled in the dairy where it is produced to a temperature of not more than fifty-five degrees Fahrenheit within thirty minutes after the same is drawn from the cows, and shall not before being delivered to the milk plant, creamery, cheese factory, factory of milk products, or other place where the same is to be distributed, bottled, pasteurized or manufactured be permitted to reach a temperature above sixty degrees Fahrenheit, and all such milk shall thereafter be maintained at a temperature of not exceeding fifty degrees Fahrenheit until delivered to the consumer: Provided, nothing in this section shall be deemed applicable to milk or cream while being subject to the process of pasteurization: And provided further, that milk that is delivered to a milk condensing factory within three hours after the same is drawn from the cows need not be so cooled or kept at a temperature of less than sixty degrees Fahrenheit. [L. '19, p. 639, § 53.]

§ 6216. Bottling in Open Air Prohibited.

No person, firm or corporation shall bottle, any milk, skimmed milk, buttermilk or cream in the open air or in, or upon any wagon, automobile, cart or other vehicle, or in any building, structure or room other than a milk-room, creamery, milk plant, or other place where milk is regularly kept and stored and which is kept and maintained in a sanitary condition within the meaning of this act, or transfer the same from one container to another in the open air or upon any such wagon, automobile, cart or other vehicle. [L. '19, p. 640, § 54.]

§ 6217. Milk Wagons to Display Owner's Address.

All wagons, automobiles, carts and other vehicles, from which milk, skimmed milk, buttermilk, cream, butter, ice-cream or ice milk is sold,

marketed, peddled or delivered shall have the name and address of the owner thereof plainly painted thereon, and on both sides thereof, in letters not less than three inches in height and not less than one and one-half inches in width. [L. '19, p. 640, § 55.]

§ 6218. Removal of Milk Containers from Quarantine.

No person, firm or corporation shall remove from any dwelling-house, or other place, in which any contagious or infectious disease exists and which has been quarantined by the health officer of any city, county or other municipality, any bottles or other containers which have been used for, or which are to be used for containing or storing milk, skimmed milk, buttermilk, cream, ice-cream, or ice milk while such dwelling-house or place is subject to quarantine, without first obtaining the permission of such health officer. [L. '19, p. 640, § 56.]

§ 6219. Illegal Designation as "Certified" Milk.

No person, firm or corporation shall sell, exchange, offer or expose for sale as certified milk, cream or other milk product, or under any name or designation of which the word "certified" is a part, any milk, cream, milk product, or other substance not certified by the health officer of the city or by the health officer or county medical society of the county where the same is produced, manufactured or sold, according to the rules and regulations demanded by the American Association of Medical Commissions. [L. '19, p. 640, § 57.]

§ 6220. Ice-cream Standards.

No owner, manager or keeper of any hotel, restaurant, boarding-house, eating-house, or other place where meals are served for compensation or food is sold to be consumed therein, shall sell, serve or furnish either as a part of any meal sold, served or furnished therein, or otherwise, any ice-cream, nut ice-cream, fruit ice-cream or ice milk or any substance resembling ice-cream or ice milk which does not conform to the standards and requirements prescribed by this act. [L. '19, p. 641, § 58.]

State and municipal regulation of ice-cream. *Ann. Cas.* 1917B, 645; *Ann.*

Cas. 1918B, 1035; *L. R. A.* 1917B, 207.

§ 6221. Homogenized and Emulsified Cream.

Nothing in this act shall be construed to prevent the use of fresh, wholesome, unsalted butter and skimmed milk or other dairy product, homogenized or emulsified and used in the place of cream: Provided, that the product shall be labeled and sold or served as homogenized cream or emulsified cream, and unless the person served therewith be distinctly informed at the time served of the true nature and character thereof. [L. '19, p. 641, § 59.]

§ 6222. Sterilized Containers.

No person, firm or corporation shall fill any bottle or other commercial container with milk, skimmed milk, buttermilk, cream, ice-cream, or ice milk until such bottle or other container has been cleansed and sterilized with live steam or boiling water. [L. '19, p. 641, § 60.]

§ 6223. Wagon Awnings Required.

Every person, firm or corporation using in the sale, gathering or distribution of milk, skimmed milk, buttermilk, cream, ice-cream or ice milk, any wagon, automobile, cart, or other vehicle, shall, between the first day of May and the thirtieth day of September in each year, have and keep over such wagon, automobile, cart, or other vehicle a covering of canvas, or other material, so arranged and of such quality and thickness as to adequately protect the contents of such wagon, automobile, cart or other vehicle from the heat of the sun. [L. '19, p. 641, § 61.]

§ 6224. Use of Adulterated Milk.

No person, firm or corporation shall knowingly sell, exchange, or expose or offer for sale, for human consumption any butter, cheese or condensed milk made or manufactured from any milk which is adulterated within the meaning of this act: Provided, however, that nothing in this section shall prevent the use of milk from cows that have reacted to a tuberculin test in the manufacture of butter, cheese or condensed milk when such cow or cows exhibit no physical symptoms of disease, and such milk is pasteurized or sterilized as required by the provisions of this act and a permit therefor has been obtained from the department of agriculture, or from an inspector thereof: Provided, further, that the use of rennet, lactic acid or pepsin in the manufacture of cheese and the use of harmless coloring or flavoring matter shall not be deemed a violation of this section. [L. '19, p. 642, § 62.]

§ 6225. Use of Words "Washington Creamery Butter"—"Reworked Butter."

No person, firm or corporation shall use the words "Washington Creamery Butter" upon any butter, or imitation thereof, or upon any product, substance or compound resembling butter, or upon any box, package, wrapper, or other container thereof, as a brand, emblem or trademark of such butter, imitation, product, substitute or compound, and no person, firm or corporation shall manufacture, sell or offer for sale or have in his possession with intent to sell butter known as reworked butter, unless the package in which the butter is sold has marked on the side of it the words "REWORKED BUTTER" in capital letters one inch high and one-half inch wide with ink which is not easily removed. [L. '21, p. 307, § 5. Cf. L. '19, p. 642, § 63.]

§ 6226. Branding Cheeses.

Every person, firm or corporation who shall manufacture any cheese shall at the place of manufacture, and before selling or removing such cheese therefrom, distinctly and durably brand such cheese on the bandage of every such cheese and on the box, package or container in which every such cheese shall be packed or contained, with the name and address of the manufacturer and with the words "Full Cream Cheese," "Half Skim Cheese," "Quarter Skim Cheese," or "Skim Cheese," according to the percentage of milk fats and milk solids contained in any such cheese and the definitions and standards established by this act. Such name and address and such words shall be printed in letters of plain

uncondensed gothic type and not less than one inch in height and in such a manner that such brand cannot be readily obliterated or erased. Failure to brand any cheese and the selling of any such cheese not so branded, as provided in this section, shall constitute a violation of this act upon the part of the manufacturer and on the part of every person selling, furnishing, exchanging or delivering the same with knowledge that same is not full cream cheese: Provided, however, that the provisions of this section shall not be construed to apply to cheeses commonly known as "Edam," "Pineapple," "Brickstein," "Limburger," "Swiss" or to other hand made cheeses not made by ordinary cheddar process. [L. '19, p. 642, § 64.]

§ 6227. Unbranded Cheeses.

The vending, exposing or offering for sale, or sale, furnishing or exchange of any cheese not branded according to the provisions of section 6226 of this act shall constitute a representation on the part of the person vending, exposing, selling, furnishing, exchanging or offering such article or product that the same is full cream cheese conforming to the standards of this act. [L. '19, p. 643, § 65.]

§ 6228. Adulterated Products.

No person, firm or corporation shall manufacture, sell, offer or expose for sale, furnish, serve or deliver to any other person, firm or corporation for human consumption any milk, cream, butter, cheese, ice-cream, ice milk, condensed milk, or other milk product which is adulterated within the meaning and intent of this act, or which shall have been prepared from any milk or milk product that shall be or shall have been adulterated within the intent and meaning of this act. [L. '19, p. 643, § 66.]

§ 6229. Adulteration—What Constitutes.

All milk and milk products which do not conform to the definitions and standards set forth in section 6164 shall be deemed to be adulterated within the intent and meaning of this act. [L. '19, p. 644, § 67.]

§ 6230. Addition of Foreign Substances.

No persons, firm or corporation shall add to any milk, cream or condensed milk any gelatine, gum or other substance for the purpose of increasing the apparent richness of such milk, cream or condensed milk: Provided, however, that nothing in this act shall be construed as prohibiting the use of harmless coloring matter and common salt (sodium chloride) in butter or cheese, or the use of harmless coloring and flavoring matter in ice-cream and ice milk, nor the use of rennet, lactic acid or pepsin in the process of manufacturing cheese. [L. '19, p. 644, § 68.]

§ 6231. Addition of Water.

All milk, skimmed milk, buttermilk or cream which is reduced, altered or changed in any respect by the addition of water or other substance, shall be deemed to be adulterated within the meaning of this act. [L. '19, p. 644, § 69.]

§ 6232. Impure Milk, What Constitutes.

Any milk which shall not be free from foreign substances, coloring matter or preservatives, pathogenic bacteria or germs, pus cells or blood cells or which contains more than 400,000 bacteria or germs of all kinds to the cubic centimeter or which has been infected by or exposed to any contagious or infectious disease, shall be deemed to be impure, unwholesome and adulterated within the meaning of this act. [L. '19, p. 644, § 70.]

§ 6233. Unlawful Designation as "Pasteurized."

No person, firm or corporation shall use the word "pasteurized," or any derivative thereof, in connection with the sale, designation, advertising, labeling, billing or offering for sale of any milk, cream, skimmed milk, ice-cream, ice milk, butter, buttermilk, cheese, or other milk products unless the same and all products of milk therein contained or used in the manufacture thereof shall consist exclusively of milk, skimmed milk or cream which has been treated by the process of pasteurization as defined in section 6174. [L. '19, p. 644, § 71.]

§ 6234. Effacing or Removal of Labels.

No person shall efface, erase, cancel, obliterate or remove any mark, tag, label, sign, brand, word or lettering or other designation required by this act, with intent thereby to mislead, defraud or deceive, or for the purpose of concealing the true character of composition of any product, substance or compound, or for the purpose of violating any of the provisions of this act. [L. '19, p. 645, § 72.]

§ 6235. Bottling Regulations, First and Second Class Cities.

No person, firm or corporation shall bottle, any milk, skimmed milk or cream, designed or intended for sale within any city of either the first or second class, or transfer such milk, skimmed milk or cream from any can, bottle or container to any other can, bottle or container, in any place, building or structure not a milk-room, milk plant, creamery, or other place used exclusively for bottling, handling, storing or processing milk. Such milk-room, milk plant, creamery, or other place shall be a room or place used exclusively for bottling, handling, storing or processing milk, cream or other milk products and shall not be used for any other purpose whatsoever, and shall not be located in or be a part of any residence, dwelling-house, barn or poultry-house, and if contained in any building or structure in which any trade, business or occupation other than that of bottling, handling, storing or processing milk is conducted or carried on, such milk-room, milk plant, creamery, or other place shall be separated from the portion or portions of such building or structure in which such other trade, occupation or business is carried on, by a tightly ceiled or plastered partition constructed in such a manner as to meet with the approval of and comply with the regulations of the department of agriculture. Every such milk-room, milk plant, creamery, or place shall be provided with suitable windows or other openings permitting the entrance of light and air from outside

such building or structure without passing through any other portion thereof, and such milk-room or other place shall be otherwise constructed, kept and maintained in a sanitary condition and manner within the intent and meaning of section 6166. [L. '19, p. 645, § 73.]

§ 6236. Sterilization for City Sales.

No person, firm or corporation shall fill any bottle or other container with milk, skimmed milk, buttermilk, cream, ice-cream, or ice milk designed for sale or intended to be sold in any city of either the first, second or third class until such bottle or other container has been cleansed and sterilized with live steam or boiling water. [L. '19, p. 646, § 74.]

§ 6237. Regulatory Duties of Department.

It shall be the duty of the department of agriculture to enforce the provisions of this act, and said department is hereby empowered and authorized to make, issue and promulgate from time to time such rules and regulations to carry out the provisions of this act for the enforcement thereof and for the regulation and management of dairies, creameries, milk plants, cheese factories, condensed milk factories and other factories of milk products, and for the regulations of the sale, serving, vending and delivery of milk, cream, butter, cheese, ice-cream, ice milk, and other milk products, and for the issuing, granting and revocation of licenses, as it shall deem necessary. [L. '19, p. 646, § 75.]

§ 6238. Obstruction of Officials.

No person, firm or corporation shall interfere with, prevent, hinder or obstruct any officer, agent or inspector of the department of agriculture, or any officer or inspector of the state board of health, or of any city or county within such city or county, in the discharge of his or her duty, or from entering any place which such officer, agent or inspector is entitled by law to enter, or from making any inspection and examination of any such place or any article, substance or compound found therein or from taking and removing such sample of any such article, compound or substance as such officer, agent or inspector shall deem necessary to be taken, or from examining any book or record required by the provisions of this act to be kept in any such place, or to be open for the inspection of such department, or from making and removing copies thereof. [L. '19, p. 646, § 76.]

§ 6239. Penalty for Violations of Act.

Any person who shall violate or fail to comply with the provisions of this act, or any section or provision or part of a section or provision thereof, shall, unless otherwise herein provided, be guilty of a misdemeanor. [L. '19, p. 647, § 77.]

§ 6240. Prosecutions.

It shall be the duty of the prosecuting attorney of each and every county in this state, upon application of the department of agriculture or of any officer, agent or inspector thereof, to attend to the prosecution

in the behalf of the state of Washington, of any and all persons whom he shall have reason to believe to have been guilty of any violation of this act in such county. [L. '19, p. 647, § 78.]

§ 6241. Jurisdiction of Courts.

Any superior court of this state and any municipal court or justice of the peace shall have jurisdiction of all prosecutions and all proceedings for forfeiture and sale arising under this act. [L. '19, p. 647, § 79.]

§ 6242. Combinations to Fix Prices.

No two or more persons, companies or corporations shall by agreement or understanding, tacitly, or otherwise, fix or attempt to fix, the price at which butter, cheese, milk or other products herein mentioned shall be bought or sold; provided, this shall not apply to ordinary purchases or sales between buyer and seller. [L. '19, p. 647, § 80.]

§ 6243. Assistance of Law Officers.

It shall be the duty of the attorney general of the state, and of the prosecuting attorney in any county, when called upon by the department of agriculture, to render any legal assistance in his power to execute the laws and prosecute violations of this act: Provided, however, that the department of agriculture may employ special counsel when necessary. [L. '19, p. 648, § 81.]

§ 6244. Disposition of Fines.

One-half of all fines collected from prosecutions under the provisions of this chapter shall be paid forthwith to the state treasurer and be placed to the credit of the general fund, and the remainder shall be forthwith paid into the treasury of the county in which the conviction is had. [L. '19, p. 648, § 82.]

§ 6245. Declaration of Police Power.

It is hereby declared that this act is enacted as an exercise of the police power of the state of Washington for the preservation of the public health and each and every section thereof shall be construed as having been intended to effect such purpose and not as having been intended to affect any regulation or restraint of commerce between the several states which may be the Constitution of the United States of America have been reserved to the congress thereof. [L. '19, p. 648, § 83.]

§ 6246. Partial Invalidity.

The invalidity or unconstitutionality of any section or part of a section of this act shall not affect the act as a whole, or any other section or part of a section thereof. [L. '19, p. 648, § 84.]

§ 6247. Act Cumulative.

Nothing in this act shall be construed as modifying, altering or repealing sections 6259 to 6265, *infra*, or any section, part or provision thereof. [L. '19, p. 648, § 85.]

"This act," see note to § 6266.

See *infra*, §§ 11622, 11624, milk cans, capacity to be stamped.

§ 6248. [5446f.] Counterfeiting Butter Prohibited.

No person, by himself, his agents or his servants, shall render or manufacture, sell, offer for sale, expose for sale, or shall have in his possession with intent to sell or serve for patrons, guests, boarders or inmates of any hotel, eating-house, restaurant, public conveyance or boarding-house or public or private hospital, asylum, school or eleemosynary or penal institution, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced directly and wholly at the time of manufacture from unadulterated milk or the cream from the same, with or without harmless coloring matter, which shall be in imitation of yellow butter produced from pure, unadulterated milk or the cream from the same: Provided, that nothing in this chapter shall be construed to prohibit the manufacture and sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to resemble butter, or the use of the same by patrons, guests, boarders or inmates of any hotel, eating-house, restaurant, public conveyance or boarding-house, when signs are displayed in a conspicuous place that may be easily read from any part of the room. [L. '95, p. 70, § 5; L. '99, p. 59, § 5.]

Former laws cited in 14 Wash. 103, 105; 15 Wash. 599.

This section effects a repeal of section 242 of the Penal Code upon the same subject matter, and a defendant who has been convicted under section 242, and has taken an appeal therefrom, is entitled to a discharge by the repeal of section 242, pending his appeal: *State v. Allen*, 14 Wash. 103, 44 Pac. 121.

Validity of police regulations as to

branding or labeling oleomargarine. 40 L. R. A. (N. S.) 879.

Applicability of oleomargarine statutes where resemblance to butter results from choice of ingredients, and not from the introduction of foreign coloring matter. 14 L. R. A. (N. S.) 1062; L. R. A. 1915A, 757.

§ 6249. [5447b.] Disposition of License Fees, etc.

All moneys received for licenses or from the sale of any and all goods confiscated by the dairy commissioner under this chapter shall be received by said commissioner and deposited the first of every month with the state treasurer, to be placed in the general fund. [L. '99, p. 65, § 27.]

§ 6250. [5447c.] Possession Prima Facie Proof of Guilt—Seizure.

Possession by any person or firm of an article or substance the sale of which is prohibited by this act shall be considered prima facie evidence that the same is kept by such person or firm in violation of the provisions of this chapter, and the commissioner shall be authorized to seize upon and take possession of such articles or substances, and upon the order of any court which has jurisdiction thereof, he shall sell the same for any purpose other than to be used for food, the proceeds to be paid to the state treasurer and placed to the credit of the general fund. [L. '99, p. 66, § 28.]

Cited in 67 Wash. 439.

§ 6251. [5447e.] "Renovated Butter"—Must be Plainly Marked.

No person, firm or corporation shall manufacture, sell or offer for sale or have in his possession with intent to sell butter known as process butter, unless the package in which the butter is sold has marked on the side of it the words "renovated butter" in capital letters one inch high and one-half inch wide with ink which is not easily removed: Provided, that it shall be unlawful for any retailer to sell said butter unless a card is displayed on the package from which he is selling butter with the following words printed thereon so that it may be easily read by the purchaser "renovated butter," or if it is sold in packages on which a wrapper is used the words "renovated butter" shall be plainly printed on each and every wrapper: Provided further, that all process butter shipped from other states shall be subject to the same regulations as provided in this section. Whoever violates the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined for each and every offense not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment. [L. '99, p. 66, § 30.]

Cited in 67 Wash. 439; 76 Wash. 477. 91 Am. St. Rep. 889; *Armour & Co. v. Construction of act*, see, *Hathaway v. Jesmer*, 76 Wash. 475, 136 Pac. 689. *McDonald*, 27 Wash. 659, 68 Pac. 376,

§ 6252. [5447f.] Brands—Cancellation Where Butter Inferior.

The commissioner is hereby authorized and directed to cancel all state brands issued to creameries where the butter manufactured does not score ninety points. [L. '05, p. 197, § 2.]

§ 6253. [5448.] Butter Scores.

The commissioner or instructor shall have the power to score the butter and the score made by them shall be final. [L. '05, p. 197, § 3.]

§ 6254. [5448d.] Misreading Babcock Test.

It shall be unlawful for the owner, manufacturer, agent or any employee of a butter or cheese factory or condensory to under or over read the Babcock test, or to manipulate for the purpose of deception any other contrivance used for determining the quality or value of milk or cream. [L. '05, p. 197, § 7.]

§ 6255. [5448e.] Duty of Commissioner—Enforcement of Law.

It shall be the duty of the dairy and food commissioner to devote his entire time and attention to the dairy interests of the state of Washington, to enforce all laws that now exist or that may be hereafter enacted in this state regarding the production, manufacture or sale of dairy produce, and personally to inspect any articles of milk, butter, cheese, or imitations thereof, made or offered for sale within the state, which he may suspect or have reason to believe to be impure, unhealthful, adulterated or counterfeit; and to prosecute or cause to be prosecuted any person or persons, firm or firms, corporation or corporations

engaged in the manufacture or sale of any adulterated or counterfeit dairy products contrary to law. [L. '95, p. 71, § 10; L. '99, p. 60, § 10.]

See *infra*, § 10851, duties devolve upon director of agriculture.

§ 6256. [5448f.] Analysis—Duty of Chemists of State Institutions.

It shall be the duty of the chemist of any state institution to correctly analyze, without extra compensation, and without other charge to the state than necessary traveling expenses, any and all substances that the dairy commissioner may send to any of them and to report to him without unnecessary delay the result of any analysis so made, and when called upon by said dairy commissioner, any such chemist shall assist him in prosecuting violators of the law, by giving testimony, either expert or otherwise. [L. '95, p. 72, § 11; L. '99, p. 61, § 11.]

§ 6257. [5448h.] Powers of Commissioner and Deputies—Seizure—Samples.

The dairy and food commissioner or his deputies shall have power, in the performance of their official duties, to enter any creamery, cheese, or condensed milk factory, store, salesroom, warehouse, or any place or building where he has reason to believe that any dairy products or imitations of dairy products are kept, made, prepared, sold, or offered for sale or exchange; and to open any cask, tub, package or receptacle of any kind, containing or supposed to contain any such article, and to examine, or cause to be examined and analyzed, the contents thereof; he may seize or take any such article for analysis: Provided, that if the person from whom such sample is taken shall request him to do so, he shall at the same time and in the presence of the person from whom such property was taken, seal up two samples of the article seized or taken, one of which shall be for examination or analysis under the direction of said commissioner, and the other of which shall be delivered to the person from whom the article is taken. [L. '95, p. 72, § 13; L. '99, p. 61, § 12.]

See note to § 6255.

§ 6258. [5448j.] Certain Persons must Assist Commissioner.

All clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers shall render to the dairy and food commissioner and his deputies all the assistance in their power in tracing, finding, or discovering the presence of any article named in this chapter. Any refusal or neglect on the part of such clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers to render such friendly aid, shall be a misdemeanor, punishable by fine of not less than twenty-five (\$25) nor more than one hundred dollars (\$100), or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment for each and every offense. [L. '99, p. 63, § 22.]

§ 6259. [5448-1.] Registration of Dealers' Brands—Right to Marks.

Any person, firm or corporation engaged in the manufacture, sale or transportation of milk, cream, ice-cream or any other dairy product may adopt a mark or marks of ownership to be stamped, marked or

otherwise affixed to any can, tub or case used in the manufacture, sale or transportation of any such product and may upon the payment of a fee of five dollars (\$5) file an application for the exclusive right to use such mark or marks, in the office of the department of agriculture, which application shall contain the name and address of the applicant, a description of the mark or marks proposed and the use to be made of the cans or tubs, or cases by such applicant. The department of agriculture shall refuse such application if such mark or marks of ownership shall be the same or so nearly similar to any mark or marks or ownership theretofore registered as to be misleading. Otherwise such application shall be granted and such fact, together with a description of the mark or marks of ownership, shall be entered in a register to be kept by said department of agriculture. [L. '19, p. 649, § 86. Cf. L. '15, p. 296, § 1.]

§ 6260. [5448-2.] Character of Marks.

The mark or marks of ownership so selected and adopted may consist of a name, design or other mark or marks to be used upon the cans or tubs of the applicant. [L. '15, p. 297, § 2.]

§ 6261. [5448-3.] Prohibition of Use by Others.

No person, firm or corporation shall use or adopt any name, design, mark or marks registered by any other person, firm or corporation under the provisions of this act. [L. '15, p. 297, § 3.]

§ 6262. [5448-4.] Other Use of Cans or Tub.

No person shall use any can or tub marked as herein provided, for any other purpose than the transportation of the products herein mentioned to or from the rightful owner of said cans or tubs. [L. '15, p. 297, § 4.]

§ 6263. [5448-5.] Defacement of Marks.

No person other than the owner thereof shall deface any registered mark upon any can or tub nor remove the same. [L. '15, p. 297, § 5.]

§ 6264. [5448-6.] Enforcement.

It shall be the duty of the department of agriculture to enforce the provisions of this act. It shall seize cans, tubs, and cases not rightfully used and return them to the person, firm or corporation in whose name they are registered. Any expense in transporting such seized cans, tubs or cases shall be paid by the owner of the cans, tubs or cases: Provided, that the department of agriculture shall not be liable for any loss of cans, tubs or cases lost in transportation. [L. '19, p. 649, § 87. Cf. L. '15, p. 297, § 6.]

§ 6265. [5448-7.] Penalty.

Any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor. [L. '15, p. 297, § 7.]

"This act" refers to §§ 6259—6264.

§ 6266. Act Cumulative.

Nothing in this act shall be construed as effecting or being intended to effect a repeal of sections 6140 to 6154, both inclusive, of this code, or of any of such sections, or of any part or provision of any such sections, and if any section or part of a section in this act shall be found to contain, cover or effect any matter, topic or thing which is also contained in, covered in or effected by said sections, or by any of them, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers and duties herein prescribed shall be construed to be additional to those prescribed in such sections and not substitution therefor. And nothing in this act shall be construed to forbid the importation, transportation, manufacture, sale, or possession of any article of food which is not prohibited from interstate commerce by the laws of the United States or rules or regulations lawfully made thereunder, if there be a standard of quality, purity and strength therefor authorized by any law of this state, and such article comply therewith and be not misbranded. [L. '19, p. 650, § 88.]

"This act" refers to §§ 6164—6247, 6259, 6264, 6266, 3110, 3111.

CHAPTER XIV.**SALE OF MILK IN CITIES OF THE FIRST CLASS.****§ 6267. [5467.] Milk Inspectors—Qualifications—Salary.**

The board of health or health officer of any city of the first class of the state of Washington shall annually appoint one or more inspectors of milk for their respective cities. All inspectors hereafter appointed shall be graduates of a recognized dairy school or shall have completed a course in dairying in a college where such instruction is given. Each inspector shall be sworn before entering upon the performance of his official duty and shall publish a notice of his appointment for two weeks in a newspaper published in said city, and shall be under the direction and supervision of the board of health of such city. He shall receive such compensation as the city council of such city may determine. [L. '07, p. 575, § 1.]

§ 6268. [5468.] Office and Records—Analysis of Samples.

Such inspector shall keep an office and shall record in books kept for the purpose, the names and places of business of all persons engaged in the sale of milk within the limits of said city. He may with the approval of the city council employ collectors of samples of milk who shall be sworn before entering upon their duties. The inspectors or collectors may enter all places in which milk is stored or kept for sale and all carriages used for the conveyance of milk and may take therefrom samples for analysis. They shall upon request made at the time such sample is taken, seal and deliver to the owner or person from whose possession the milk is taken, a portion of each sample, and a receipt therefor shall be given to the inspector or collector. Inspectors shall cause such samples to be analyzed or otherwise satisfactorily tested as

to its quality and purity. Such sample shall be kept by such inspector under ice so that the temperature of said sample shall not be over the degree of forty degrees Fahrenheit until such analysis is made, and shall record and preserve as evidence the result thereof, and no evidence of the result of such analysis or test shall be received if the inspector or collector upon request refuses or neglects to seal and deliver a portion of the sample taken as aforesaid, to the owner or person from whose possession it is taken. [L. '07, p. 576, § 2.]

Cited in 71 Wash. 203.

§ 6269. [5469.] Permits to Sell Milk—Unlawful Sale—Penalty.

Whoever in such city in which an inspector of milk is appointed conveys milk in carriages or otherwise for the purpose of selling it in such city shall annually before the first day of June obtain a permit from the inspector of milk of such city to sell within the limits thereof, said permit to be furnished without cost upon the production of a license from the state dairy and food commission. A permit shall be issued only in the name of the owner of the carriage or other vehicle. They shall for the purposes of this chapter be conclusive evidence of ownership and shall not be sold, assigned or transferred without the consent of the city council of such city. Each permit shall contain the number thereof, the name, residence, place of business, number of carriage or other vehicle used by the person obtaining a permit, the name of every driver or other person employed by him in carrying or selling milk. Each person obtaining a permit shall before engaging in the sale of milk cause his name, the number of his permit and his place of business to be legibly placed on each side of all carriages or vehicles used by him in the conveyance and sale of milk, and he shall report to the inspector any change of driver or other person who may be employed by him occurring during the term of his permit. And it shall be unlawful for any person under an assumed name or representing himself to be the person named in permit above mentioned to engage in the business of selling or conveying milk or cream, and upon conviction thereof shall be subject to the penalty prescribed in this section.

Whoever without first being permitted to sell milk or dispose of it for sale from carriages or other vehicles or has in his custody or possession with intent to sell, or whoever violates any of the provisions of this section, shall for the first offense be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, and for a second offense by a fine of not less than fifty dollars, nor more than three hundred dollars, and for a subsequent offense by a fine of fifty dollars and by imprisonment for not less than thirty days nor more than sixty days. [L. '07, p. 576, § 3.]

§ 6270. [5470.] Registration of Places of Business—Penalty.

Every person before selling milk or cream or offering it for sale in booth, store, stand or market place in any such city in which an inspector of milk is appointed, shall register in the book of such inspector his name and proposed place of sale.

Whoever refuses or neglects to register shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. [L. '07, p. 577, § 4.]

§ 6271. [5471.] Selling Impure Milk—Penalty.

Whoever by himself or by his agent or servant or as the agent or servant of another person sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver or expose or offer for sale or exchange, impure, infected or adulterated milk or milk to which water or any foreign substance has been added, or milk produced from a cow which has been fed on refuse or unwholesome food, or from a sick or diseased cow, or from a cow kept in an unclean shed, barn or barnyard, or from a cow within fifteen days before or five days after parturition or in any case before fever has left said cow, as pure milk, or milk from which the cream or a part thereof has been removed, and whoever sells, exchanges or delivers or has in his custody or possession with intent to sell, exchange or deliver, skimmed milk containing less than nine and three-tenths per cent of milk solids, exclusive of fat, shall for the first offense be punished by a fine of not less fifty dollars nor more than one hundred dollars, and for a second offense by a fine of not less than one hundred dollars nor more than three hundred dollars, and for a subsequent offense by a fine of fifty dollars and by imprisonment for not less than sixty days nor more than ninety days. [L. '07, p. 578, § 5.]

See *infra*, §§ 6272, 6273, penalty for selling below standard.

A compliance with this section is not for violating the pure milk law: State a condition precedent to a prosecution *v. Burnam*, 71 Wash. 199, 128 Pac. 218.

§ 6272. [5472.] Definition of Standard Milk—Penalty.

In prosecutions under the provisions of sections 6270 and 6271 of this chapter, milk, normal and of standard quality, is defined as milk, pure, healthy; wholesome and uninfected, free from any foreign substance whatsoever, including coloring matter or preservatives, free from all pathogenic bacteria or germs, pus cells, or blood cells, and which does not contain more than four hundred thousand bacteria or germs of all kinds to the cubic centimeter, and which has not been infected by or exposed to the infections of any contagious or infectious disease and which comes from cows healthy and free from all kinds of diseases and kept in a healthy, sanitary condition and fed upon wholesome food, and which contains not less than twelve per cent of milk solids and not less than eight and seventy-five hundredths per cent of solids exclusive of fat, or not less than three and twenty-five hundredths per cent of fat. Any dealer therein who shall sell milk not normal and up to said standard shall be subject to prosecution and fine as provided in section 6271 of this chapter. [L. '07, p. 578, § 6.]

§ 6273. [5473.] Selling Milk not of Standard Quality—Penalty.

Whoever by himself or by his servant or agent or as the servant or agent of another, sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver milk which is not

of good standard quality, free from infection and from contamination, by any unwholesome substance or substances, shall for the first offense be punished by a fine of not less than fifty dollars, and for the second offense by a fine of not less than one hundred dollars nor more than two hundred dollars, and for a subsequent offense, by a fine of fifty dollars and by imprisonment for not less than sixty days nor more than ninety days. [L. '07, p. 579, § 7.]

§ 6274. [5474.] Sale of Cream Below Standard—Penalty.

No cream shall be sold, offered for sale, exchanged, delivered or shipped, transported or carried for purposes of sale, exchange or delivery, that contains less than eighteen per cent of butter fat, or which contains any pathogenic bacteria or germs, pus cells, blood cells or more than four hundred thousand bacteria or germs of all kinds to the cubic centimeter, and any person who shall adulterate cream or reduce or change it in any respect by the addition of water or any foreign substance with the intention of selling or offering the same for sale or exchange, shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or imprisonment for not less than thirty nor more than sixty days. [L. '07, p. 579, § 8.]

§ 6275. [5475.] Counterfeiting Seal—Tampering With Samples.

Whoever makes or causes to be made, uses or has in his possession an imitation or counterfeit of seal used by an inspector of milk, collector of samples or other person engaged in the inspection of milk, and whoever changes or tampers with the sample taken or sealed as provided in section 6268, shall be punished by a fine of one hundred dollars or imprisonment for not less than three nor more than six months. [L. '07, p. 579, § 9.]

§ 6276. [5476.] Willful Connivance of Inspector—Penalty.

An inspector of milk or his servant or agent who willfully connives at or assents to the violation of the provisions of this chapter, or whoever hinders, obstructs or interferes with an inspector of milk or his agent, in the performance of his duty, shall be punished by a fine not less than fifty dollars nor more than one hundred dollars, or by imprisonment for not less than thirty nor more than sixty days. [L. '07, p. 580, § 10.]

§ 6277. [5477.] Producers—Liability to Prosecution.

A producer of milk shall not be liable to prosecution for the reason that the milk produced by him is not of good standard quality, unless such milk was taken upon his premises or while in his possession or under his control by an inspector or by a collector of samples or by an agent, and a sealed sample thereof given to him. [L. '07, p. 580, § 11.]

Cited in 71 Wash. 203.

§ 6278. [5478.] Results of Analysis Sent to Dealer.

An inspector of milk or a collector of samples or other state or city officer who obtains a sample of milk for analysis, shall within ten

days after obtaining the result of the analysis, send said result to the person from whom the sample was taken or to the person responsible for the condition of such milk. [L. '07, p. 580, § 12.]

Cited in 71 Wash. 202, 203.

§ 6279. [5479.] Inspector shall Prosecute—Costs.

An inspector shall make a complaint for a violation of any of the provisions of any of the sections of this chapter upon the information of any person who lays before him satisfactory evidence by which to sustain such complaint, and the cost of the prosecution for the violation of any of the provisions of this chapter shall be borne by the city in which said inspector is appointed. [L. '07, p. 580, § 13.]

§ 6280. [5480.] Analysis by Chemists at State Institutions.

It shall be the duty of the chemist of any state institution to correctly analyze without extra compensation and without other charge to cities having milk inspectors any and all cream or milk that such inspector may send to them and to report to said inspector without unnecessary delay the result of any analysis so made: Provided, however, that analysis as to standard of quality of milk and for adulteration, contamination and unwholesomeness may be made by the bacteriologist or chemist employed by any such city, which analysis shall have the same force and effect as though made by an official of a state institution or said chemist. [L. '07, p. 580, § 14.]

§ 6281. [5481.] Penalty.

Whoever violates any of the provisions of the six preceding sections shall be punished by a fine of not less than twenty-five dollars for the first offense and not more than one hundred dollars for each subsequent offense. [L. '07, p. 581, § 15.]

§ 6282. [5481-1.] Sale in Bottles—Label.

Hereafter no bottled milk or bottled cream shall be offered for sale, sold or otherwise disposed of in cities of the first class in the state of Washington, unless the caps on all such bottles containing the milk or cream indicate and have inscribed thereon the name of the dairy, person, firm or corporation offering the same for sale. [L. '11, p. 133, § 1.]

§ 6283. [5481-2.] Penalty.

Any person, firm or corporation in the state of Washington selling or offering for sale any bottled milk or bottled cream which do not have inscribed on the caps of the bottles the name of the dairy, person, firm or corporation offering the same for sale, shall be guilty of a misdemeanor. [L. '11, p. 133, § 2.]

The title to this act limits the operation of this and the next section to cities of the first class.

§ 6284. [5481-3.] Substituting Label—Penalty.

Any person, firm or corporation in the state selling or offering for sale any bottled milk or bottled cream with caps containing the name

of some person, firm or corporation other than the owner of the same, for the purpose of inducing or securing a sale, or in any other way wrongfully or fraudulently brand the same as to name, or otherwise, shall be guilty of a misdemeanor. [L. '11, p. 133, § 3.]

See note to § 6283.

CHAPTER XV.

REGULATION AND CONDUCT OF BAKERIES.

§ 6285. [5482.*] Bakeries—Drainage, Plumbing and Ventilation of.

All buildings or rooms occupied as biscuit, bread or cake bakeries shall be drained or plumbed in a manner conducive to the proper healthful and sanitary condition thereof, and constructed with air-shafts and windows or ventilating pipes sufficient to insure ventilation as the commissioner of agriculture shall direct and no cellar or basement not used as a bakery on the thirtieth day of January, 1919, shall thereafter be used and occupied as a bakery and a cellar or basement theretofore occupied as a bakery shall, when once closed, not be reopened for use as a bakery. [L. '19, p. 724, § 1. Cf. L. '03, p. 258, § 1.]

See infra, § 10851, duties devolve upon director of agriculture.

Cited in 111 Wash. 246.

Power to regulate the location or

condition of bakeries. 26 L. R. A. (N. S.) 842.

§ 6286. [5483.] Wash-rooms, etc., to be Apart from Bake-room.

Every such bakery shall be provided with a proper wash-room and water-closet, or closets, apart from the bake-room or rooms where the manufacturing of such products is conducted; and no water-closet, earth-closet, privy or ash-pit shall be within or communicate directly with a bake-shop. [L. '03, p. 259, § 2.]

§ 6287. [5484.] Baking-rooms—Size, Plastering, etc.

Every room used for the manufacture of flour or meal food shall be at least eight feet in height, the side walls of such room shall be plastered or wainscoted, the ceiling plastered or ceiled with lumber or metal, and if required by the commissioner of labor, shall be whitewashed at least once in three months; the furniture and utensils of such room shall be so arranged as to be easily moved in order that the furniture and floor may at all times be kept in proper healthful sanitary condition. [L. '03, p. 259, § 3.]

See infra, § 10839, duties of commissioner of labor devolve upon director of labor and industries.

§ 6288. [5485.] Food Products—How Kept.

The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned. [L. '03, p. 259, § 4.]

§ 6289. [5486.] Sleeping-rooms to be Separated from Storage-rooms.

The sleeping places for persons employed in a bakery shall be kept separate from the room or rooms where flour or meal food products are manufactured or stored. [L. '03, p. 259, § 5.]

§ 6290. [5487.] Inspection—Certificate to Owner.

After an inspection of a bakery has been made by the commissioner of labor and it is found to conform to the provisions of this chapter, said commissioner shall issue a certificate to the owner or operator of such bakery, that it is conducted in compliance with all the provisions of this chapter, but where orders are issued by said commissioner to improve the condition of a bakery, no such certificate shall be issued until such order and the provisions of this chapter have been complied with. [L. '03, p. 259, § 6.]

See note to § 6287, *supra*.

Cited in 111 Wash. 247.

§ 6291. [5488.] Order to Alter, Service of Notice of.

The owner, agent or lessee of any property affected by the provisions of this chapter, shall, within thirty days after the service of notice upon him, of an order issued by the commissioner of labor requiring any alterations to be made in or upon such premises, comply therewith, or cease to use or allow the use of such premises as a bake-shop; such notice shall be in writing and may be served upon such owner, agent, or lessee, either personally or by mail, and a notice by registered letter, postage prepaid, mailed to the last known address of such owner, agent, or lessee shall be deemed sufficient for the purposes of this chapter. [L. '03, p. 259, § 7.]

See note to § 6287, *supra*.

§ 6292. [5489.] Diseased Persons, Employment of, Prohibited.

No employer shall require, permit or suffer any person to work in his bake-shop who is affected with tuberculosis, or with scrofulous diseases, or with any venereal disease, or with any communicable skin affection or contagious disease and no person so affected shall work or remain in a bake-shop. Every employer is hereby required to maintain himself and his employees in a clean and sanitary condition while engaged in the manufacture, handling or sale of such food products. [L. '03, p. 260, § 8.]

§ 6293. [5490.] Persons Under Sixteen—Work Hours for.

No employer shall require, permit or suffer any person under sixteen years of age to work in his bake-shop between the hours of 8 o'clock in the evening and 5 o'clock in the morning. [L. '03, p. 260, § 9.]

See *supra*, § 2447, employment of children.

§ 6294. [5491.] Penalty for Violation.

Any person who violates the provisions of this chapter or refuses to comply with the requirements of the commissioner of labor, as provided herein, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined not less than twenty-five nor more than fifty dollars or imprisoned not more than ten days for the first offense; and shall be fined not less than fifty nor more than one hundred dollars and imprisoned not less than ten nor more than thirty days for each offense after the first. [L. '03, p. 260, § 10.]

HIGHWAYS.

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HIGHWAYS.

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CHAPTER I.

THE LAW OF TRAVEL.

§ 6295. [5558.] Vehicle to Turn to the Right.

Whenever any persons driving any vehicle shall meet on any public highway in this state, whether owned or kept by a corporation or private person, the persons so meeting shall seasonably turn their vehicles to the right of the center of the road, so as to permit each vehicle to pass without interfering with or interrupting the other. [L. '69, p. 288, § 68; L. '79, p. 67, § 66; Cd. '81, § 3030; 1 H. C., § 2064.]

Cited in 3 Wash. 663; 64 Wash. 247; 81 Wash. 122.

An ordinance requiring vehicles to keep as near the right-hand curb as possible is not in conflict with this section, and the ordinance establishes the law of the road within the boundaries of the city: *Hiscock v. Phinney*, 81 Wash. 117, 142 Pac. 461, Ann. Cas. 1916E, 1044.

Such a law as this has no application to vehicles meeting a street-car, as it is the duty of the driver of a vehicle in such case to turn to either side so as best to avoid collision: *Spurrier v. Front St. Cable Ry. Co.*, 3 Wash. 659, 29 Pac. 346.

Instructions under this section: *Segerstrom v. Lawrence*, 64 Wash. 245, 116 Pac. 876.

The law of the road. 73 Am. Dec. 404; 13 Am. Rep. 135.

How far vehicle must turn to the right to comply with law of the

road. 5 Ann. Cas. 148; 41 L. R. A. (N. S.) 1188.

Law of road as to vehicles going in same direction. Ann. Cas. 1913A, 833; Ann. Cas. 1918E, 562; 41 L. R. A. (N. S.) 322.

Law of the road at crossings. 1 Ann. Cas. 164; 41 L. R. A. (N. S.) 346.

Validity of statute giving particular vehicles right of way in streets. Ann. Cas. 1915A, 93.

Rights and duties of pedestrians and vehicles in highways. 4 Ann. Cas. 398; Ann. Cas. 1914A, 249.

Law of the road as applicable with respect to one using highway for play. Ann. Cas. 1917C, 454.

Right of way as between street-car and vehicle where streets intersect. 49 L. R. A. (N. S.) 506.

§ 6296. [5559.] Penalty for Violation of Preceding Section.

If any person shall willfully violate the provisions of this chapter, he shall forfeit and pay the sum of five dollars for every such violation, to the party injured, to be recovered by a civil action, and such further damage in the same action as such party may directly sustain by reason of such violation. [L. '69, p. 288, § 69; L. '79, p. 67, § 67; Cd. '81, § 3031; 1 H. C., § 2065.]

§ 6297. [5560.] Liability of Master.

Whenever any person driving a vehicle, who shall violate the provisions of this chapter, is at the time in the employ of another, such other person is liable for the penalty herein provided, the same as if he were the driver of such vehicle at the time of such violation; but an election to sue the driver or employer is a bar to an action against the other. [L. '69, p. 288, § 70; L. '79, p. 68; § 68; Cd. '81, § 3032; 1 H. C., § 2066.]

Persons Liable: See Remington's Digest, Mun. Corp., § 385; *Hewitt v. Seattle*, 62 Wash. 377, 113 Pac. 1084, 32 L. R. A. (N. S.) 632; *Jaquith v. Worden*, 73 Wash. 349, 132 Pac. 33, 48 L. R. A. (N. S.) 827. See, also, Remington's Digest, Mast. & Ser., § 172; *Jones v. Hoge*, 47 Wash. 663, 92 Pac. 433, 125 Am. St. Rep. 914, 14

L. R. A. (N. S.) 216; *Ludberg v. Barghoorn*, 73 Wash. 476, 131 Pac. 1165.

See, also: *Olsen v. Veness*, 105 Wash. 599, 178 Pac. 822; *Singer v. Metz Co.*, 107 Wash. 562, 182 Pac. 614, 186 Pac. 327; *Olson v. Clark*, 112 Wash. 691, 191 Pac. 810.

§ 6298. [5561-4.] Prohibiting Heavy Loads and Spiked or Cleated Wheels.

It shall be unlawful for any person to drive, propel, draw, move, convey or transport, or cause to be driven, propelled, drawn, moved, conveyed or transported, over, upon, along or across any public street, road or highway, without the corporate limits of any city of the first class, any vehicle or object which, with or without its load, shall be of such weight, or which shall have any wheel or tire so made, constructed, formed or shaped, or so equipped with spikes, cleats, lugs or other attachments or projections, as to destroy or permanently injure such street, road or highway or the surface, foundation or other part thereof, and it shall be unlawful for any person to drive, propel, draw, move, convey or transport, or cause to be driven, propelled, drawn, moved, conveyed or transported, over, upon, along or across any public street, without the corporate limits of cities of the first class, road or highway, any automobile, auto truck or motor propelled vehicle which with or without its load shall weigh more than twenty-four thousand pounds. All road supervisors, county and municipal officers and their deputies are hereby vested with the powers and duties of sheriffs in preventing violations of this act and in making arrests therefor. [L. '15, p. 65, § 1.]

See *infra*, § 6332, limitation on weight of vehicle.

Cited in 108 Wash. 206.

This section, making it a misdemeanor to use any vehicle within the corporate limits of a city of the first class which shall be of such weight as to destroy or permanently injure the surface of the

street, is not void for indefiniteness and uncertainty in failing to specifically point out the facts which constitute the offense: *State v. Brown*, 108 Wash. 205, 182 Pac. 944.

§ 6299. [5561-5.] Penalty.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor. [L. '15, p. 66, § 2.]

§ 6300. [5561-6.] Disposition of Fines.

All fines collected under the provisions of this act shall be paid into the "general road and bridge fund" of the county where the misdemeanor is committed. [L. '15, p. 66, § 3.]

"This act," has reference to this, and the two preceding sections.

§ 6301. Lights Required After Dark—Animal-drawn Vehicles.

Every vehicle drawn or propelled by horses, mules or other animal power shall, when driven on any public road, highway, park, parkway, street or avenue within this state during the hours of darkness, have fixed or carried thereon in some conspicuous place on the left side of said vehicle at least one lighted lamp so fixed or carried that the light therefrom may be seen both from the front and rear of said vehicle. [L. '17, p. 194, § 1.]

§ 6302. Penalty.

Every person violating this act shall be guilty of a misdemeanor. [L. '17, p. 194, § 2.]

§ 6303. Guide-posts—Standard Style to be Prepared.

It shall be the duty of the state highway commission to prepare plans and specifications for sign-boards or guide-posts, making them uniform and of standard style, to be used on the public highways, with a plan of proper and suitable inscription thereon, furnishing suitable information as to ways and distances to travelers, using such colors and designs as the commissioner may deem advisable, and to at once furnish said plans and specifications to the board of county commissioners of each county and the governing body of each incorporated city or town within the state. [L. '17, p. 264, § 1.]

§ 6304. Duty to Maintain Standard Guide-posts.

It shall be the duty of the county commissioners of each county to construct and maintain on the public highways outside of incorporated cities and towns, at all crossroads or forks of roads, sign-boards or guide-posts according to the plans and specifications furnished by the state highway commissioner. [L. '19, p. 408, § 1. Cf. L. '17, p. 264, § 2.]

§ 6305. Cities to Maintain on State Highways.

It shall be the duty of the governing body of incorporated cities and towns throughout the state to construct and maintain sign-boards or guide-posts on the state highways passing through their respective cities and towns, at such places suitable and necessary for the information of travelers, according to plans and specifications furnished by the state highway commissioner. [L. '17, p. 264, § 3.]

§ 6306. Dangerous Places Designated.

It shall be the duty of the state highway commissioner to designate such places upon the public highway as are dangerous to travelers, and to furnish at once a list of such dangerous localities to boards of county commissioners of each county and to the governing body of each incorporated city and town within the state. [L. '19, p. 408, § 2.]

§ 6307. Danger Signals Maintained.

It shall be the duty of the county commissioners of each county to place and maintain at such localities on said highways, suitable signals and warnings, which shall sufficiently warn travelers, by night and day, of such dangerous localities. [L. '19, p. 408, § 3.]

§ 6308. Sign-posts—Destruction or Imitation Prohibited.

It shall be unlawful for any person to remove, deface, mutilate or destroy any of the public sign-boards or guide-posts, or inscriptions thereon, or danger signals or warnings, herein provided for, and it shall be unlawful for any person to fraudulently imitate or counterfeit said public sign-boards or danger signals or warnings, either for use on private roads and highways, or for the purpose of advertising and use on public highways. Provided, that nothing herein shall be construed to prevent associations of standing, in constructing, placing and maintain-

ing as a public gift the official sign-boards or guide-posts herein provided for. [L. '19, p. 409, § 4. Cf. L. '17, p. 265, § 4.]

See, also, *supra*, §§ 2716, 2717.

§ 6309. Construction on Failure of County to Act.

If, at the expiration of thirty days after the state highway commissioner has transmitted to the proper county authorities plans and specifications for the erection of sign-posts as set forth above, the county commissioners have not actually begun the erection of said sign-posts, then the highway commissioner shall immediately take steps to have the necessary sign-posts erected on the state highways passing through said counties and deduct the cost of same from the permanent highway funds held by the state treasurer to the credit of any such county having failed to comply with this law. [L. '19, p. 409, § 5.]

§ 6310. Penalty for Violations of Act.

Any person violating any of the provisions of section 6308 of this act or failing to comply with any of these provisions, shall be guilty of a gross misdemeanor. [L. '19, p. 409, § 6. Cf. L. '17, p. 265, § 5.]

§ 6311. Allowance for Arrests and Convictions.

The county commissioners of any county are hereby authorized to offer and pay out of the current expense fund of such county not more than twenty-five dollars (\$25) for the arrest and conviction of any person or persons violating the provisions of this act. [L. '19, p. 410, § 7.]

CHAPTER II.

AUTOMOBILES AND MOTOR VEHICLES.

§ 6312. [5562-1.*] Scope of Act.

Except as otherwise provided by law this act shall be controlling:

- (1) Upon the registration and numbering of motor vehicles;
- (2) Upon the use of motor vehicles upon the public highways;
- (3) Upon penalties for the violation of any of the provisions of this act. [L. '21, p. 251, § 1. Cf. L. '15, p. 385, § 1.]

Former laws cited in 94 Wash. 311; 95 Wash. 33; 99 Wash. 64, 66; 101 Wash. 657; 102 Wash. 485, 491; 106 Wash. 543.

An automobile owned by a city and operated by an employee in the light and power department is not exempted

from the operation of the state license law: *State v. Collins*, 94 Wash. 310, 162 Pac. 556.

The law of automobiles. 108 Am. St. Rep. 212.

§ 6313. Definitions.

The words and phrases herein used, unless the same be clearly contrary to or inconsistent with the context of the act or section in which used, shall be construed as follows:

(1) "Motor vehicle" shall include all vehicles or machines propelled by any power other than muscular, used upon the public highways for the transportation of persons, freight, produce or any commodity, except traction engines temporarily upon the public highway, road rollers

or road making machines, and motor vehicles that run upon fixed rails or tracts [tracks];

(2) "Automobiles" shall mean the ordinary four-wheeled motor vehicles, and shall be synonymous with the term "motor vehicle" except as otherwise herein provided;

(3) "Motorcycle" shall mean a motor vehicle of two or three wheels intended for the carrying of one, two or three persons, or operated by one person for the carrying of parcels or packages;

(4) "Auto stage" as distinguished from "automobile" shall mean a motor vehicle used for the purpose of carrying passengers, baggage and freight on a regular schedule of time and rates: Provided, however, that no motor vehicle shall be considered an auto stage where the whole route traveled by such vehicle is within the corporate limits of any incorporated city;

(5) "Motor-truck" shall mean any motor vehicle designed or used for the transportation of commodities, merchandise, produce, freight or animals;

(6) "Trailer" shall mean any vehicle which is attached to a motor vehicle for the purpose of being drawn or propelled by such motor vehicle;

(7) "Public highway" or "public highways" shall include any highway, state road, county road, public street, avenue, alley, driveway, boulevard or other place built, supported, maintained, controlled or used by the public or by the state, county, district or municipal officers for the use of the public as a highway, or for the transportation of persons or freight, or as a place of travel or communication between different localities or communities;

(8) "Local authorities" shall include the officers of counties, cities or towns or other municipal subdivisions of the state having control, power or authority over any of the subject matter embraced in this act;

(9) "Peace officer" or "peace officers" shall be taken to mean any officer or officers authorized by law to execute criminal process or to make arrest for the violation of the statutes generally or of any particular statutes relative to the public highways of the state;

(10) "Dealer" shall be taken to mean any person, firm or corporation engaged in the sale of new or second-hand motor vehicles;

(11) "Privately owned" shall include all motor vehicles not operated for hire, and shall include hearses, ambulances, or any other motor propelled vehicle used exclusively in connection with the conduct of funerals.

(12) "For hire" shall be taken to mean all motor vehicles other than auto stages, used for the transportation of persons, for which transportation remuneration of any kind is received, either directly or indirectly.

(13) The word "operator" wherever used in this act shall be held to mean any person who operates or drives a motor vehicle. [L. '21, p. 252, § 2. Cf. L. '15, p. 386, § 2; L. '17, p. 627, § 1; L. '19, p. 113, § 1.]

Cited in 99 Wash. 65; 106 Wash. 544. carried "for hire" signs; and it is immaterial that they operated only within the city limits and not from city to city: State v. Ferry Line Auto Bus Co., 99 Wash. 64, 168 Pac. 893.

Under Rem. Code, § 5562-2, auto vehicles operated on regular schedules and for regular fares must take out licenses for auto stages, notwithstanding they

§ 6314. Fees and Licenses—Supervision—Secretary of State—Duties.

The secretary of state, acting through the county auditors of the several counties of the state of Washington as hereinafter provided, shall have the general supervision of the issuing of motor vehicle licenses and of the collecting of fees therefor and shall have full power to do all things necessary and proper to carry out the provisions of this act; he shall have the power to appoint a deputy or deputies and such clerk or clerks as may be required from time to time, and may purchase all materials and make all expenditures as may be necessary hereunder.

It shall be the duty of the secretary of state to make and furnish to each county auditor, and to such persons as may be in any manner responsible for the collecting of the motor tax as hereinafter provided for, a tabulated list of all motor vehicles of the privately owned class, except motorcycles, giving the make, model, year, shipping weight as given by the manufacturer and setting opposite each description the license fee charged therefor. [L. '21, p. 253, § 3. Cf. L. '13, p. 387, § 3; L. '17, p. 629, § 2.]

Cited in 106 Wash. 544.

§ 6315. Unlawful Age of Operators.

(1) It shall be unlawful for any person under the age of fifteen (15) years to operate or drive any motor vehicle upon the highways of this state, except when accompanied by parent or guardian.

(2) It shall be unlawful for any person under the age of eighteen (18) years to operate or drive a motor truck having a capacity load of four tons or more.

(3) It shall be unlawful for any person under the age of twenty-one years to operate or drive a motor vehicle while being used for the transportation of persons for hire: Provided, however, upon application to the director of licenses a special permit may in his discretion be given to a person under the age of twenty-one years. [L. '21, p. 254, § 4. Cf. L. '15, p. 387, § 4; L. '17, p. 629, § 3; L. '19, p. 115, § 3.]

Cited in 94 Wash. 311.

§ 6316. Application for Motor Vehicle License—Requisites.

Application for a motor vehicle license shall be made to the secretary of state on blanks to be furnished by him. Such application shall be made by the owner of the vehicle, or his duly authorized agent, over the signature of such owner or agent, and he shall certify that the statements therein are true to the best of his knowledge. The application must show:

(1) Name and address of the owner of the vehicle.

(2) Trade name of the vehicle, the model, year, type of body, factory number and motor number thereof.

(3) The power to be used, whether electric, steam, gas or other power.

(4) The purpose for which said vehicle is to be used and the nature of the license required.

(5) The rated carrying capacity of such vehicle, which in cases of auto for hire, auto stages or auto stage trailers shall be the adult seating capacity thereof and in cases of motor-trucks or trailers shall be the rated

capacity load as given by the manufacturer: Provided, that no license shall be issued on a truck or trailer for less than the rated carrying capacity as given by the manufacturer: Provided, further, that if the secretary of state is unable to obtain the rated carrying capacity of any particular make or model of truck or trailer he may, by general rules and regulations adopted and published from time to time, prescribe the method of ascertaining such rated carrying capacity and proof thereof by certificate, affidavit or otherwise.

(6) The weight of all automobiles for private use, which shall be determined by the shipping weight thereof as given by the manufacturer: Provided, however, that if the secretary of state is unable to obtain such shipping weight on any particular make or model of automobile he may by general rules and regulations adopted and published from time to time prescribe the method of ascertaining such weight and the proof thereof by certificate, affidavit or otherwise which shall accompany the application for license when the same is forwarded to the secretary of state and the owner of the vehicle shall pay the license fee in accordance with weight shown on such certificate, affidavit or other proof.

(7) The weight of all automobiles for hire, auto stages and motor-trucks, which shall be determined in such manner and proven by certificate, affidavit or otherwise as may be prescribed by general rules and regulations adopted and published from time to time by the secretary of state.

The certificate, affidavit or other proof of weight of automobiles for private use, automobiles for hire, auto stages and motor-trucks prescribed by the secretary of state as hereinbefore provided for must be attached to and accompany the application for license which is forwarded to the secretary of state. The secretary of state is hereby forbidden to accept any application for a license unless such certificate, affidavit or other proof of weight as provided for herein is furnished him at the time the application is made and the fee paid in accordance with the weight given upon such certificate, affidavit or other proof: Provided, however, that in determining the weight of vehicles as provided for in this section no fraction of one hundred pounds shall be taken into consideration, but where such fraction occurs the fee shall obtain upon the next lowest one hundred pounds.

(8) Such other information as shall be required by the secretary of state.

(9) Application for dealer's license shall be made direct to the secretary of state upon blanks to be furnished by him, accompanied by the fee as hereinafter provided. Such application shall be made by the dealer or his authorized agent and he shall certify that the statements therein are true to the best of his knowledge.

The application must show:

(A) Name under which business is conducted.

(B) Location of business (street, city or town and county).

(C) Name and address of all owners or persons having an interest in the business, except that in case of a corporation the name and address of the two principal officers will be sufficient.

(D) Name and make of all new vehicles handled.

(E) Whether or not used cars are handled.

(F) A certificate to the effect that the applicant is a bona fide dealer in motor vehicles, with an established place of business at the location given, such certificate to be signed by the chief of police or town marshal. (If an incorporated city or town), by the sheriff of the county (if not in an incorporated city or town).

(G) Such other information as shall be required by the secretary of state. [L. '21, p. 254, § 5.. Cf. L. '15, p. 388, § 5; L. '19, p. 115, § 4; L. '19, p. 523, § 1.]

Cited in 108 Wash. 611.

Statutory regulation as to licensing automobiles. *Ann. Cas.* 1915C, 712;
1 *L. B. A. (N. S.)* 215; 21 *L. B. A.*

(*N. S.*) 41; 37 *L. B. A. (N. S.)* 440; 52 *L. B. A. (N. S.)* 949;
L. B. A. 1915D, 322.

§ 6317. Filing Application—Temporary Number Plates.

Upon receipt of such application accompanied by the proper fee, the county auditor shall give one copy to the applicant, retain one for the county files, and immediately forward the original, together with the proper fee, to the secretary of state. The county auditor shall, at the expense of the county issuing the same, furnish the applicant with a temporary number printed upon durable cardboard, which number shall be displayed always on the vehicle and shall entitle the licensee to operate the same for a period of thirty days from and after the date of such application. Immediately on receipt of the state license and permanent number plates, such temporary number shall be returned to the county auditor.

All temporary number plates shall contain the name of the county issuing the same, together with the date of such issuance; the letters "Wn." and the year in which such license shall expire; and shall be displayed upon said vehicle in the same relative position as is hereinafter provided for the displaying of the permanent number: Provided, that the secretary of state may at his option furnish to the county auditor temporary permits of such design as he may determine which may be used instead of the temporary number above provided for, which temporary permits, when furnished shall be used under such rules and regulations as the secretary of state may determine. [L. '21, p. 257, § 6. Cf. L. '15, p. 389, § 6.]

Cited in 108 Wash. 611.

§ 6318. Issue of License.

The secretary of state shall, upon receipt of the application for a motor vehicle license accompanied by the required fee, place the original application on file in his office and thereupon issue to such applicant a license for such motor vehicle, stating therein the number to be displayed on such motor vehicle, as hereinafter provided, and authorizing the use of such vehicle upon the public highways for and during the current calendar year: Provided, that if such application is received during the month of December in any year a license shall be issued therefor, which license shall be valid up to and including December 31st

of the ensuing calendar year. [L. '21, p. 258, § 7. Cf. L. '21, p. 10, § 1; L. '15, p. 389, § 7.]

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§ 6319. Transfer of Licenses to Other Vehicles.

No license shall be transferred from one person to another person, but may be transferred from one vehicle to another vehicle, when duly authorized by the secretary of state on application therefor, accompanied by the proper fee, and in case such vehicle to which it is desired to have such license transferred requires a greater fee than the vehicle for which the original license was issued, the applicant shall accompany such application with the additional amount required to cover the difference between the license fees for the two ratings. A license may be transferred from one classification to a different classification upon application to the secretary of state and the payment of the difference between the license fee originally paid and the fee provided by this act for the class to which the transfer is made, together with an additional transfer fee of one dollar (\$1): Provided, that no refund shall be made if the fee fixed by this act for the class of vehicle to which such transfer is made be less than the fee originally paid: Provided, however, the original license and the number plates must be returned at the time application for transfer is made. [L. '21, p. 258, § 8. Cf. L. '19, p. 117, § 5; L. '17, p. 630, § 5; L. '15, p. 389, § 8.]

Cited in 99 Wash. 160.

A casualty company issuing a jitney bus bond, covering only accidents arising from the negligent or unlawful act of the principal, his agents or employees,

is not liable for an accident happening while the car was operated by an assignee of the principal: *Young v. Wilson*, 99 Wash. 159, 168, Pac. 1137.

§ 6320. Duty to Carry License.

A license to be valid must have indorsed thereon the signature of the owner (if a firm or corporation the signature of one of its officers, or other duly authorized agent), must be inclosed in a suitable container and attached to the steering-post or upon the instrument board of the vehicle for which it was issued, at all times. The said container shall have a cover of transparent material through which the certificate may be inspected as to the information shown thereon, including the signature of the owner. Any person in charge of such vehicle shall upon demand of any of the local authorities or of any peace officer or of any representative of the secretary of state's office permit an inspection of the same. Upon application supported by affidavit of loss or destruction of a license and upon payment of the fee required therefor, a duplicate copy thereof shall be issued. [L. '21, p. 259, § 9. Cf. L. '15, p. 390, § 9.]

§ 6321. Demonstration License to Dealers.

A dealer's license and a pair of distinctive number plates shall be issued to an actual dealer for any and all motor vehicles owned, handled, or dealt in by him and for the fees hereinafter specified, but shall not be used upon any motor vehicle while the same is being operated for hire, or for the transportation of any produce, freight or commodity unless the same is for the actual use of the dealer owning the vehicle so trans-

porting such produce, commodity or freights: Provided, however, that no motor vehicle transporting any produce, commodity or freight under a dealer's license shall exceed one ton in carrying capacity: Provided, further, that nothing in this section shall be construed to prohibit the use of a motor vehicle of under one ton capacity from rendering assistance to, or transporting necessary supplies to a motor vehicle which has become disabled.

Such number plates, or duplicates thereof, shall be displayed on every motor vehicle by such dealer whenever the same is operated or driven upon any public highway in this state: Provided, that whenever a dealer shall maintain a branch or subagency, he shall apply for a separate registration for such branch, or subagency, and shall pay therefor the fee hereinafter provided for an original dealer's license. [L. '21, p. 259, § 10. Cf. L. '17, p. 631, § 1; L. '15, p. 390, § 10.]

§ 6322. Nonresidents of State—Exemptions.

The provisions of the foregoing sections relative to registration of motor vehicles and display of license numbers and licenses shall not apply to a motor vehicle owned by a nonresident of this state, other than a foreign corporation doing business in this state: Provided, that the owner thereof has complied with the laws of the foreign country, state, territory or federal district of his residence relative to registration of motor vehicles and the display of license numbers thereon as required thereby. The provisions of this section, however, shall be operative as to a motor vehicle owned by a nonresident of this state only to the extent that under the laws of the foreign country, state, territory or federal district of his residence, like exemptions and privileges are granted to motor vehicles duly registered and licensed under the laws of and owned by residents of this state. [L. '21, p. 260, § 11. Cf. L. '19, p. 118, § 6; L. '17, p. 631, § 7; L. '15, p. 390, § 11.]

Validity of inclusion or exclusion of
nonresidents in statute regulating

use of motor vehicles. *Ann. Cas.*
1917E, 324.

§ 6323. Number Plates Furnished by Secretary of State.

The secretary of state shall furnish to such licensee of a motor vehicle two number plates containing the number to be displayed on such vehicle as hereinafter provided. The number shall be in block numerals and of such size as the secretary of state may determine, and shall be preceded by the letters "Wn." and by the last two numerals of the year in which such license shall expire, and such number plate, if issued to a dealer, shall contain the word "Dealer." The secretary of state may put such other mark or character on such plates or fix the color of same as he may determine, to properly identify the kind of license issued. Such plates shall be obtained by the secretary of state on competitive bids. [L. '21, p. 260, § 12. Cf. L. '21, p. 11, § 2; L. '19, p. 18, § 7; L. '17, p. 632, § 8; L. '15, p. 390, § 12.]

Regulation of automobiles as to numbering. 1 *L. R. A. (N. S.)* 215.

§ 6324. Removal of Number Plates in Case of Sale.

Immediately upon the sale of any motor vehicle and prior to the date of delivery of the same the vendor shall remove his license and num-

ber plates therefrom and shall immediately send the secretary of state a statement of such sale, showing the date thereof, the name and address of the purchaser and the name and motor number of the vehicle. [L. '21, p. 261, § 13. Cf. L. '17, p. 633, § 9; L. '15, p. 391, § 13.]

Cited in 101 Wash. 210, 211.

§ 6325. Duplicate Plates in Case of Defacement or Loss.

Upon the loss or defacement or destruction of any number plate or plates or when for any reason the letters or figures upon the number plate or plates become illegible or in such condition to be difficult to distinguish, application supported by affidavit setting forth such fact must be made to the secretary of state for new plates. The application must be accompanied by the fee of two dollars, together with the original license certificate. Upon receipt of the same the secretary of state shall cancel such number and issue a new license certificate and number plates bearing the next consecutive unassigned number. The secretary of state shall forward to all chiefs of police of incorporated cities and towns, to the sheriffs of the various counties of the state at least once each month a list of all number plates so canceled: Provided, however, that the above provision shall not apply to dealer's plates. [L. '21, p. 261, § 14. Cf. L. '19, p. 119, § 8; L. '15, p. 391, § 14.]

§ 6326. License Fees—Schedule.

All fees herein authorized to be collected shall be as follows unless otherwise provided:

ANNUAL FEES.

MOTOR CYCLES.

All \$6.00

AUTOMOBILES.

AUTOMOBILES FOR PRIVATE USE.

Weighing 1,500 pounds or less 10.00
Weighing 1,500 pounds or more \$10.00, and 60 cents per hundred weight for all excess over 1,500 pounds.

AUTOMOBILES FOR HIRE.

Weighing 1,500 pounds or less, \$20.00, and, in addition thereto at the rated carrying capacity, per person..... 3.00
Weighing more than 1,500 pounds, \$20.00, and 60 cents per hundred weight for all excess over 1,500 pounds, and in addition thereto, at the rated carrying capacity, per person 3.00

AUTO STAGES.

Weighing 1,500 pounds or less, \$25.00, and, in addition thereto, at the rated carrying capacity, per person..... 3.00
Weighing more than 1,500 pounds, \$25.00, and 60 cents per hundred weight for all excess over 1,500 pounds, and in addition thereto at the rated carrying capacity, per person 3.00

AUTO STAGE TRAILERS.

Weighing 1,500 pounds or less, \$10.00, and at the rated carrying capacity per person	3.00
Weighing 1,500 pounds or more, \$10.00, and 60 cents per hundred weight for all excess over 1,500 pounds, and in addition thereto at the rated carrying capacity per person.....	3.00

MOTOR-TRUCKS.

Weighing 1,500 pounds or less.....	10.00
Weighing more than 1,500 pounds and not to exceed 6,500 pounds	10.00
(And 40 cents per hundred weight for all in excess of 1,500 pounds and in addition thereto 40 cents per hundred weight at the rated carrying capacity.)	
Weighing more than 6,500 pounds, \$10.00, and 50 cents per hundred weight for all in excess of 1,500 pounds and in addition thereto 50 cents per hundred weight at the rated carrying capacity.	

Trailers used as trucks shall be classified and rated as, and shall pay the same fees as hereinbefore provided for motor trucks of like weight and capacity.

DEALERS' LICENSES.

Dealers in motorcycles.....	10.00
Dealers in all other motor vehicles regardless of weight.....	50.00
Additional dealers' license plates, bearing same number except motorcycle dealers' licenses	10.00

GENERAL FEES.

Duplicate license certificates, each.....	\$1.00
Dealers' duplicate plates, each.....	5.00
Transfer of motor vehicle licenses, each.....	1.00

Provided, it shall be unlawful for any private or corporation car to carry passengers for hire, except that this provision shall not apply to private automobiles that shall be operated for hire for a period of one week or less and for which a special permit so to operate shall have been obtained from the county auditor. The fee for any such permit shall be for each automobile the sum of five dollars (\$5).

At the time any application for a license or a transfer of license is made to the county auditor as provided elsewhere in this act, the applicant shall pay to the county auditor the sum of twenty-five cents for each application, in addition to the license fee provided for in this section, which fee shall be paid to the county treasurer in the same manner as other fees, collected by the county auditor and credited to the county current expense fund. [L. '21, p. 261, § 15; L. '19, p. 90, § 1; L. '17, p. 633, § 10; L. '15, p. 391, § 15.]

Cited in 106 Wash. 543, 545.

Subjects of License or Tax—Vehicles and Means of Transportation: See Remington's Digest, Licens., § 5; State v. Bruce, 23 Wash. 777, 63 Pac. 519; Simpson v. Whateom, 33 Wash. 392, 74 Pac. 577, 99 Am. St. Rep. 951, 63 L. R. A. 815; Seattle v. King, 74 Wash. 277, 133 Pac. 442; State v. Collins, 94 Wash. 310, 162 Pac. 556; Allen v. Bellingham, 95 Wash. 12, 163 Pac. 18; State v. Ferry Line Auto Bus Co., 99 Wash. 64, 163 Pac. 893; Spokane v. Knight, 101 Wash. 656, 172 Pac. 823.

The operation of a motorcycle without first having obtained a license does not bar an action to recover for personal injuries sustained in a collision with an automobile, as there was no causal connection between the acts: *Switzer v. Sherwood*, 80 Wash. 19, 141 Pac. 181, Ann. Cas. 1917A, 216.

§ 6327. County Fee for License Application.

At the time any application is made to the county auditor for a license, as provided elsewhere in this act, the applicant shall pay to the county auditor the sum of twenty-five cents for each application, in addition to the license fee provided for in section 15 of this act, which fee shall be paid to the county treasurer in the same manner as other fees, collected by the county auditor and credited to the county current expense fund. [L. '17, p. 641, § 21.]

This section was not expressly repealed by the act of 1921, and its present force is doubtful.

"Section 15" of this "act" repealed.

§ 6328. Fees for Partial Year.

For all motor vehicle licenses issued between the first day of September and the thirtieth day of November of any year only one-half the rate named in section 6326 shall be charged. [L. '21, p. 263, § 16. Cf. L. '17, p. 635, § 11; L. '15, p. 392, § 16.]

§ 6329. Public Vehicles—Exemption from License.

Motor vehicles and trailers owned by the state of Washington, or by the counties, county game commissions, cities and school districts therein, and used exclusively by them, and all motor vehicles owned by the United States government, and used exclusively in its service, shall be exempt from the payment of the license fees herein provided: Provided, however, such vehicles shall be registered as prescribed in this act and shall display upon the machine the number plates assigned by the secretary of state, and, except in case of the federal government, shall pay for such number plates a fee of one dollar (\$1). [L. '21, p. 263, § 17. Cf. L. '19, p. 93, § 2; L. '17, p. 635, § 12; L. '15, p. 393, § 17.]

Cited in 94 Wash. 311; 106 Wash. 543, 545.

§ 6330. Disposition of Fees.

There is hereby created in the state treasury a state fund to be known as the "motor vehicle fund," and a state fund to be known as the "primary highway maintenance fund." All fees collected by the state treasurer, as herein provided shall be paid into the state treasury and placed to the credit of the motor vehicle fund, from which shall be paid or transferred annually:

First: One-half of the amount appropriated for the biennium for the motor vehicle department in the director of licenses' office for the issuing of licenses;

Second: The amount required to be repaid to the counties entirely surrounded by water;

Third: The sum of one million four hundred thousand dollars (\$1,400,000), which shall be transferred and placed to the credit of the primary highway maintenance fund;

Fourth: The balance remaining in the motor vehicle fund after the payments and transfers hereinabove provided for shall be applied annually to paving and general road construction of the state primary highways as provided by appropriation.

The moneys in the primary highway maintenance fund shall annually be distributed, paid, used and transferred as follows:

First: To each city of the first or second class in the state in which there are streets forming a part of the route of any primary state highway through such city, there shall be remitted by the state auditor, by warrant drawn on the state treasurer and payable from the primary highway maintenance fund, a sum equal to five hundred dollars (\$500) per mile for each mile of primary highway in such city, to be expended for the maintenance and improvement of streets therein;

Second: To each city of the third or fourth class in which there are streets forming a part of the route of any primary state highway through such city, there shall be remitted by the state auditor, by warrant drawn on the state treasurer and payable from the primary highway maintenance fund, a sum equal to three hundred dollars (\$300) per mile for each mile of primary highway in such city, to be expended for the maintenance and improvement of the streets forming a part of primary highways therein: Provided, the director of public works may give the city or town authorities permission to expend said maintenance money upon the other city or town streets;

Third: To each of the counties in the state in which are located primary highways there shall be credited a sum equal to three hundred dollars (\$300) per mile for each mile of primary highway which is now or may hereafter be constructed on permanent location according to state specifications;

Fourth: Any balance that may remain in the primary highway maintenance fund after making the payments and credits hereinabove provided for shall be credited to the several counties, other than counties entirely surrounded by water, in proportion to the amount of money paid into the permanent highway fund by the several counties.

The moneys credited to the several counties, other than counties entirely surrounded by water, or so much thereof as may be necessary, shall be expended by the boards of county commissioners of the several counties under the direction of the director of public works, for the maintenance of the primary highways within the respective counties.

Any unexpended balance of the moneys placed to the credit of any county as above provided, which may remain at the end of any calendar year, shall be transferred to the permanent highway fund and placed to the credit of the county to be expended in the manner provided by law: Provided, that if it shall appear to the satisfaction of the director of public works at any time prior to the end of the calendar year, that after providing for all necessary maintenance of primary highways in the county for the year, there will remain surplus funds to the credit of the county, he may certify such fact to the state treasurer, stating definitely the amount of money that will not be needed for maintenance, and such amount shall thereupon be transferred to the permanent highway fund and placed to the credit of the county to be expended in the manner provided by law.

All primary highways and streets, in order to come under the provisions of this act for maintenance purposes, must be of a character equal to the standard of permanent highway construction. The director of public works through and by means of the division of highways shall determine what streets in cities and towns form a part of the route of any primary highway and shall, between the fifteenth day of February and the fifteenth day of March of each year, certify in triplicate, one copy to the state treasurer, one copy to the county commissioners of each such county and one copy to the clerk of each city affected by the provisions of this act, the number of miles of such constructed highways within such county, city or town forming a part of the route of a primary highway.

The powers and duties vested by this act in the director of public works shall be exercised and performed by the highway commissioner until such time as the director of public works shall be appointed, qualified and exercise and assume the duties of his office. [L. '21, p. 264, § 18. Cf. L. '19, p. 93, § 3; L. '17, p. 635, § 13; L. '15, p. 393, § 18.]

Cited in 106 Wash. 543, 545.

§ 6331. Number Plates, How Attached.

The authorized number plates of each motor vehicle shall be attached conspicuously at the front and rear of such vehicle and in such manner that they can be plainly seen and read at all times. Each number plate shall hang in a horizontal position at a distance of not less than one foot nor more than four feet from the ground, and each number plate shall be kept clean so as to be plainly seen and read at all times.

It shall be unlawful to display upon the front or rear of any motor vehicle any number plate other than those furnished by the secretary of state or to display upon any motor vehicle any such number plates which have in any manner been changed, altered or disfigured, or have become illegible. [L. '21, p. 266, § 19. Cf. L. '19, p. 120, § 9; L. '17, p. 636, § 14; L. '15, p. 393, § 19.]

§ 6332. Weight of Vehicle—Limitation.

It shall be unlawful for any person, firm or corporation to operate any vehicle of four wheels or less over and along the roads in this state whose gross weight including load is more than twenty-four thousand pounds, or any vehicle having a greater weight than twenty-two thousand four hundred pounds on one axle, or any vehicle having a combined weight of over eight hundred pounds per inch width of tire upon any wheel concentrated upon the surface of the highway (said width of tire in the case of solid rubber tires to be measured between the flanges of the rim): Provided, that in special cases vehicles whose weight including loads exceeds those herein prescribed, may operate under special written permits, which must be first obtained and under such terms and conditions as to time, route, equipment, speed and otherwise as shall be determined by the director of licenses if it is desired to use a state highway; the county commissioners, if it is desired to use the county road; and the city or town council, if it is desired to use a city or town street; from each of which officer or officers such permit shall be

obtained in the respective cases. Provided, that no motor-truck or trailer shall be driven over or on a public highway with a load exceeding the licensed capacity: Provided, further, upon the conviction of any person, for a second violation of the provisions of this section, the court or judge before whom such conviction is had, may in its or his discretion, in addition to the imposition of any penalties provided by law, suspend the license provisions for said truck for a period of thirty days, and upon a third conviction, the court or judge may in its or his discretion, in addition to the imposition of any penalties provided by law, suspend said license covering the vehicle involved in such violation for a period of three months. [L. '21, p. 267, § 20.]

Unlawful use of traction engine, see *supra*, § 2719.

§ 6333. Use of Exhaust Muffler.

Every motor vehicle using an internal combustion engine, shall use an exhaust muffler, and the same shall not be cut out or disconnected. [L. '21, p. 268, § 21. Cf. L. '15, p. 393, § 20.]

§ 6334. Exhibit Lights—Requirements and Restrictions.

Every motor vehicle operated or driven upon the public highways of this state shall exhibit during the period from one-half hour after sunset to one-half hour before sunrise and at all times when fog or other atmospheric conditions render the operation of said vehicle dangerous to traffic or the use of the highways, at least two head-lamps, one on each side of said vehicle showing white or yellow tinted lights visible at least five hundred feet or more in advance of said vehicle. Such motor vehicle or any trailer attached thereto shall have attached to the rear not less than one lamp showing a red light visible at least two hundred feet in the rear of such vehicle, and the same light or additional light casting white rays of sufficient strength on the rear number plate thereof, so that such number plate may be easily read at a distance of at least sixty feet: Provided, that motorcycles shall be required to carry only one light in the front thereof, which shall show white or yellow tinted rays visible at least five hundred feet in advance of such motor vehicle: Provided, further, that it shall be unlawful to display any light showing red to the front of any motor vehicle. Every motor-truck, the body of which exceeds six (6) feet in width shall exhibit during the hours of darkness, in addition to the above required lights, a white light on the left side of the machine defining the limit of the body of the machine or the overhanging load, if any there be, and beyond the outside thereof, the said light shall be so fixed or carried that the light therefrom may be seen both from the front and rear of said motor-truck. Every motor-truck, automobile or trailer carrying a load which projects over the rear end three feet or more shall be required to display a red flag by day and a red light by night, on the extreme rear end of such overhanging load. No person shall install or use a light of more than twenty-seven candle power in any motor vehicle head-lamp equipped with a reflector. It shall be unlawful to use on a motor vehicle of any kind operated on the public highways of this state any lighting device of over four candle power equipped with a reflector, unless the same shall be so designed, deflected or arranged as to deflect or

diffuse the light and to produce sufficient light to reveal objects at least one hundred and fifty feet ahead thereof and ten feet on either side of the center line of said vehicle measured at a distance of ten feet in front thereof and in such manner that the beam of light therefrom, when measured seventy-five feet or more ahead of the lamps shall not rise above forty-two inches from the level surface on which the vehicle stands under all conditions of load.

The term "beam of light" shall be construed to mean the reflected rays of light which are projected approximately parallel to the optical axis of the reflector.

A light shall be deemed "diffused" when produced by a head-lamp which has the entire surface of the glass front etched, ground, sand blasted or so formed that the light emitted therefrom is entirely dispersed.

The above provisions of this act shall not apply to spot lights but all spot lights shall, while in use upon the highways of this state, be so directed that the beams of light therefrom shall strike the roadway at a point at least six (6) feet to the right and not more than seventy-five (75) feet in front thereof when approaching a vehicle.

In any prosecution under this act, the candle power indicated on the headlight bulb from any electric head-lamp shall be and constitute prima facie evidence of the light candle power of such head-lamp.

All vehicles, other than motor vehicles, when operated upon the highways between one-half hour after sunset and one-half hour before sunrise and at all times when fog or other atmospheric conditions render the operation of said vehicles dangerous to traffic or the use of the highways, shall display on the left side of said vehicle a white light which must be visible from the front and rear for a distance not less than two hundred (200) feet in either direction.

It shall be unlawful to sell or offer for sale, or have in possession with intent to sell, any vehicle of any kind for operation on the public highways of this state equipped with any lighting device of over four candle power with a reflector unless such lighting device shall conform to the provisions of the preceding paragraphs of this section. [L. '21, p. 268, § 22. Cf. L. '19, p. 120, § 10; L. '17, p. 636, § 15; L. '15, p. 393, § 21.]

An act providing that every automobile "when driven" on a public road or street must be lighted during the hours of darkness, applies to cars left standing in the street: *Jaquith v. Worden*, 73 Wash. 349, 132 Pac. 33, 48 L. R. A. (N. S.) 827.

The violation of the act requiring a red light visible at least two hundred feet to be attached to the rear of a motor vehicle, is of itself negligence:

Ebling v. Nielsen, 109 Wash. 355, 186 Pac. 887.

Regulation of automobiles with respect to lights. L. R. A. 1918B, 828; 11 A. L. R. 1226.

Neglect to comply with legal requirements as to lights as affecting right of operator or owner of automobile to recover for negligence. 14 A. L. R. 794.

§ 6335. Brakes—Number.

Every motor vehicle operated or driven upon the public highways of this state, shall be equipped with two sets of independently operated brakes, either of which shall be sufficient to control the vehicle at all times: Provided, that motorcycles shall only be required to have one

brake capable of controlling the same at all times. [L. '21, p. 270, § 23; Cf. L. '15, p. 394, § 22.]

Regulation of automobiles as to
safety devices. 1 L. B. A. (N. S.)
219.

Effect of defective brakes on lia-
bility for injury to driver. 14
A. L. B. 1339.

§ 6336. Signaling Device.

Every motor vehicle shall be provided with a suitable bell, horn or other signaling device which shall be rung or blown as a signal or warning to any person or whenever there is danger of collision or accident. [L. '21, p. 270, § 24; Cf. L. '15, p. 394, § 23.]

Cited in 107 Wash. 695.

§ 6337. Mirror Required.

Every owner or operator of any motor vehicle so constructed or loaded as to prevent an unobstructed view directly to the rear, used on the public highways of this state, shall equip such motor vehicle with a mirror or other device to enable the driver thereof to have such a clear and unobstructed view of the rear as will enable him to obey the "rules of the road" when overtaken by any other vehicle. [L. '21, p. 271, § 25. Cf. L. '17, p. 641, § 22.]

§ 6338. Hand and Arm Signals.

All vehicles operated on the highways of this state which are so constructed that hand and arm signals given by the driver are not visible at the rear of said vehicle, must be equipped with a suitable mechanical or electrical device approved by the secretary of state capable of giving unmistakable signals as to the intention of the driver to stop or turn such vehicle. [L. '21, p. 271, § 26.]

§ 6339. Rate of Speed.

It shall be the duty of every person operating a motor vehicle on the public highways of this state to drive the same in a careful and prudent manner. It shall be unlawful for any person to operate or move any motor vehicle at a rate of speed faster than thirty miles per hour, or, within any corporate limits of any city or town, at a rate of speed faster than twenty miles per hour, or, over or across any street intersection within the corporate limits of any city or town, or within one hundred yards of any schoolhouse, on school days between 8 o'clock in the morning and 5 o'clock in the evening, at a rate of speed faster than twelve miles per hour, or in any case at a rate of speed that will endanger the property of another or the life or limb of any person. It shall be unlawful to operate any motor-truck equipped with pneumatic tires over or along the highways of this state at a greater rate of speed than twenty-five miles per hour; or any motor-truck of a gross weight including load as hereinafter provided equipped with solid rubber tires at a greater rate of speed than the following:

4,000 pounds and under.....	25 miles per hour
Over 4,000 pounds and up to 8,000 pounds.....	20 miles per hour
Over 8,000 pounds and up to 12,000 pounds.....	18 miles per hour
Over 12,000 pounds and up to 16,000 pounds.....	16 miles per hour
Over 16,000 pounds and up to 20,000 pounds.....	14 miles per hour
Over 20,000 pounds and up to 24,000 pounds.....	12 miles per hour

It shall be unlawful to operate or drive any motor vehicle used for carrying passengers for hire and having a capacity for more than ten passengers at a speed faster than twenty-five miles per hour, on and over any unpaved highway. [L. '21, p. 271, § 27. Cf. L. '17, p. 638, § 16; L. '15, p. 394, § 24.]

Rate of Speed: See Remington's Digest, Mun. Corp., § 381; Hillebrant v. Manz, 71 Wash. 250, 128 Pac. 892; Ludwigs v. Dumas, 72 Wash. 68, 129 Pac. 903; Heath v. Seattle Taxicab Co., 73 Wash. 177, 131 Pac. 843; Anderson v. Kinnear, 80 Wash. 638, 141 Pac. 1151; Franey v. Seattle Taxicab Co., 80 Wash. 396, 141 Pac. 890; Mickelson v. Fischer, 81 Wash. 423, 142 Pac. 1160.

See, also, Luger v. Windell, 110 Wash. 22, 187 Pac. 407; Burlie v. Stephens, 113 Wash. 182, 193 Pac. 684.

A motorecyclist, struck by an automobile at a street crossing, is not guilty of contributory negligence as a matter of law in exceeding four miles per hour, at city street crossings "when any person is upon the same," where it appears that he was first at the intersection and there was no other person on the crossing at the time the automobile being some distance away: Barth v. Harris, 95 Wash. 166, 163 Pac. 401.

A law limiting the speed of automobiles in cities is more than a mere

rule of evidence as to negligence and creates a duty entering into the contract of carriage of passengers in a jitney bus, so that the repeal of the act by Rem. Code, section 3562-35, does not affect rights of action theretofore existing: Singer v. Martin, 96 Wash. 231, 164 Pac. 1105.

The statute limiting the speed of automobiles in cities may be invoked by a passenger in a jitney bus, as well as by pedestrians, where violation of the statute was the proximate cause of the injury: Singer v. Martin, 96 Wash. 231, 164 Pac. 1105.

See, also, Yuill v. Berryman, 94 Wash. 458, 162 Pac. 513; Barth v. Harris, 95 Wash. 166, 163 Pac. 401.

Speed regulations for automobiles, constitutionality of statutes and ordinances. 3 Ann. Cas. 945; 7 Ann. Cas. 551; 8 Ann. Cas. 437; 11 Ann. Cas. 728; Ann. Cas. 1916E, 1067; 1 L. R. A. (N. S.) 219; L. R. A. 1918D, 132.

§ 6340. Rules of the Road Enumerated.

It shall be the duty of every person using the highways of this state to observe the "rules of the road" as hereinafter prescribed:

(1) Vehicles and persons, driving or riding any animals proceeding in opposite directions shall pass to the right giving one-half of the road to each.

(2) Vehicles proceeding in the same direction on overtaking another vehicle or overtaking any person riding or driving any animal shall pass to the left: Provided, however, a variance in good faith from the rules herein relating to the turning to the left of a vehicle when overtaking another vehicle, or any person riding or driving an animal, going in the same direction where the exigencies of the situation permit, shall not subject the offender to arrest under the criminal provisions of this act; but it shall be unlawful for any person to pass any moving vehicle or animal overtaken unless he has a clear view ahead of not less than two hundred yards.

(3) The overtaking vehicle shall maintain its speed until clear of the vehicle or animal overtaken and the vehicle or animal being overtaken shall turn to the right and give one-half of the road, and shall not increase its speed while being passed.

(4) The signal of an intention to pass shall be given by one blast or stroke of the horn, bell, whistle, gong or other signaling device.

(5) Should the overtaking vehicle then not give way, three such blasts or signals shall be given, and upon the failure to comply therewith, the overtaking vehicle may at the next suitable place safe for both vehicles go by without further signal.

(6) Drivers, when approaching highway intersections, shall look out for and give right of way to vehicles on their right, simultaneously approaching a given point: Provided, however, that street and interurban cars and emergency vehicles shall have the right of way at all times at such highway intersections.

(7) Pedestrians on the public highways between the period from one-half hour after sunset to one-half hour before sunrise shall travel on and along the left side of said highway, and the pedestrians upon meeting an oncoming vehicle shall step off the traveled portion of the highway.

(8) It shall be the duty of every person operating or driving any motor or other vehicle, or riding or driving any animal along or over any public highway when approaching any curve of such highway where for any reason a clear view for a distance of three hundred yards cannot be had, to hold such vehicle under control and to give signals with frequent blasts or strokes of a horn, whistle, bell, gong or other signaling device, and to keep to the extreme inside of all curves to the right and upon the extreme outside of all curves to the left. [L. '21, p. 272, § 28. Cf. L. '19, p. 122, § 11; L. '15, p. 394, § 26.]

Cited in 95 Wash. 581; 96 Wash. 412; 104 Wash. 416.

It is not negligence per se to fail to observe this section, requiring automobiles to keep to the right of the center of street intersections in turning to the right: *Bogdan v. Pappas*, 95 Wash. 579, 164 Pac. 208.

Under this section it is negligence, which was the proximate cause of the accident, for the driver of a truck, already to the left of the center, to suddenly swerve to the left and strike the rear of an approaching auto that was at the extreme right of a level road fifty feet wide: *Paton v. Cashmere Warehouse & Storage Co.*, 104 Wash. 414, 176 Pac. 544.

It is not necessarily negligence per se to violate a law requiring vehicles going in the same direction to pass to the right: *Hartley v. Lasater*, 96 Wash. 407, 165 Pac. 106.

See, also, *Cloherly v. Griffiths*, 82 Wash. 634, 144 Pac. 912.

Use of Highway and Law of the Road, and Actions for Injuries: See *Remington's Digest*, High., §§ 51—60, and cases cited. See, also:

§ 52. Automobiles — Negligent Use — Violation of Statutes: *Ebling v. Nielsen*, 109 Wash. 355, 186 Pac. 887.

— Contributory Negligence — Evidence—Sufficiency: *Ebling v. Nielsen*, 109 Wash. 355, 186 Pac. 887.

— Violation of Traffic Laws: *Ebling v. Nielsen*, 109 Wash. 355, 186 Pac. 887.

§ 53. Meetings—Turning to Left: *Paton v. Cashmere Warehouse & Storage Co.*, 104 Wash. 414, 176 Pac. 544.

§ 55. Frightened Animals — Question for Jury: *Ross v. Rose*, 109 Wash. 273, 186 Pac. 892.

§ 57. Negligence—Meetings — Turning to Left: *Paton v. Cashmere Warehouse & Storage Co.*, 104 Wash. 414, 176 Pac. 544.

— Evidence — Collateral Facts — Admissibility: *McCreedy v. Fournier*, 113 Wash. 351, 194 Pac. 398.

§ 58. Contributory Negligence — Question for Jury: *Ross v. Rose*, 109 Wash. 273, 186 Pac. 892.

— Frightened Animals: *Ross v. Rose*, 109 Wash. 273, 186 Pac. 892; *Ebling v. Nielsen*, 109 Wash. 355, 196 Pac. 887.

— Collision—Contributory Negligence — Question for Jury: *Marton v. Jickrell*, 112 Wash. 117, 191 Pac. 1101.

§ 59. Instructions: *Ross v. Rose*, 109 Wash. 273, 186 Pac. 892; *Marton v. Pickrell*, 112 Wash. 117, 191 Pac. 1101.

— Instructions—Definition of Terms: *McCreedy v. Fournier*, 113 Wash. 351, 194 Pac. 398.

Use of Highway—Application of Law of the Road: See *Remington's Digest*, Mun. Corp., § 377; *Johnson v. Heitman*, 88 Wash. 595, 153 Pac. 331.

Liabilities for Injuries from Negligent or Other Wrongful Use, in General: See *Remington's Digest*, Mun. Corp., § 378; *Coffey v. Erickson*, 61 Wash. 559, 112 Pac. 643; *Gielens v. Fidelity Transfer & Storage Co.*, 63 Wash. 383, 115 Pac. 850, 2 N. C. C. A. 544.

Contributory Negligence: See *Remington's Digest*, Mun. Corp., § 383, and cases cited.

See, also, *Zuccone v. Main Fish Co.*, 104 Wash. 441, 177 Pac. 314; *Tyrell v. Legee*, 105 Wash. 438, 178 Pac. 467; *Stubbs v. Molberget*, 108 Wash. 89, 182 Pac. 936, 6 A. L. R. 318; *Clark v. Wilson*, 108 Wash. 127, 183 Pac. 103; *Walmsley v. Pickrell*,

109 Wash. 262, 186 Pac. 847; Nont v. Hunter, 109 Wash. 343, 186 Pac. 851; Crowl v. West Coast Steel Co., 109 Wash. 426, 186 Pac. 866; Noyes v. Katsuno, 111 Wash. 529, 191 Pac. 419; Burlie v. Stephens, 113 Wash. 182, 193 Pac. 684; Collins v. Nelson, 112 Wash. 71, 191 Pac. 819.

Contributory Negligence as Question for Jury: See Remington's Digest, Mun. Corp., § 391, and cases cited.

See, also, Westervelt v. Schwabacher, 104 Wash. 418, 176 Pac. 545; Stubbs v. Molberget, 108 Wash. 89, 182 Pac. 936, 6 A. L. R. 318; Clark v. Wilson, 108 Wash. 127, 183 Pac. 103; McClure v. Wilson, 109 Wash. 166, 186 Pac. 302; Noot v. Hunter, 109 Wash. 343, 186 Pac. 851; Crowl v. West Coast Steel Co., 109 Wash. 426, 186 Pac. 866; Olsen v. Peerless Laundry, 111 Wash. 660, 191 Pac. 756.

Proximate and Concurring Cause: See Remington's Digest, Mun. Corp., § 384, and cases cited.

See, also: Ross v. Smith & Bloxom, 107 Wash. 493, 182 Pac. 582; Reed v. Tacoma Railway & Power Co., 110 Wash. 334, 188 Pac. 409; Collins v. Nelson, 112 Wash. 71, 191 Pac. 819; Molitor v. Blackwell Motor Co., 112 Wash. 279, 191 Pac. 1103; Carlisle v. Hargreaves, 112 Wash. 383, 192 Pac. 894; Burlie v. Stephens, 113 Wash. 182, 193 Pac. 684.

Pleading and Evidence: See Remington's Digest, Mun. Corp., §§ 386—390, and cases cited.

See, also: Zuccone v. Main Fish Co., 104 Wash. 441, 177 Pac. 314; Moore v. Roddie, 106 Wash. 548, 180 Pac. 879; Allen v. Schultz, 107 Wash. 393, 181 Pac. 916, 6 A. L. R. 676; Schwalen v. Fuller & Co., 107 Wash. 476, 182 Pac. 592, 187 Pac. 366; Ross v. Smith & Bloxom, 107 Wash. 493, 182 Pac. 582; Stubbs v. Molberget, 108 Wash. 89, 182 Pac. 936, 6 A. L. R. 318; Clark v. Wilson, 108 Wash.

127, 183 Pac. 103; Saari v. Wells Fargo Express Co., 109 Wash. 415, 186 Pac. 898; Noyes v. Katsuno, 111 Wash. 529, 191 Pac. 419; Bulger v. Yamaoka, 111 Wash. 646, 191 Pac. 786; Olsen v. Peerless Laundry, 111 Wash. 660, 191 Pac. 756; Carlisle v. Hargreaves, 112 Wash. 383, 192 Pac. 894; Collins v. Nelson, 112 Wash. 71, 191 Pac. 819; Truva v. Good-year Tire & Rubber Co., 113 Wash. 413, 194 Pac. 386; Elmberg v. Pielow, 113 Wash. 589, 194 Pac. 549.

Instructions: See Remington's Digest, Mun. Corp., § 392, and cases cited.

See, also, Schwalen v. Fuller & Co., 107 Wash. 476, 182 Pac. 592, 187 Pac. 366; Ross v. Smith & Bloxom, 107 Wash. 493, 182 Pac. 582; Clark v. Wilson, 108 Wash. 127, 183 Pac. 103; Chilberg v. Parsons, 109 Wash. 90, 186 Pac. 272; Reames v. Heymansson, 109 Wash. 132, 186 Pac. 325; Crowl v. West Coast Steel Co., 109 Wash. 426, 186 Pac. 866; Bulger v. Yamaoka, 111 Wash. 646, 191 Pac. 786; Molitor v. Blackwell Motor Co., 112 Wash. 279, 191 Pac. 1103; Burlie v. Stephens, 113 Wash. 182, 193 Pac. 684.

Law of the road as to automobile and street-car traveling in same direction. *Ann. Cas.* 1913E, 1121.

Cutting corners as negligence. 6 A. L. R. 321.

Liability for crowding automobile off the road. 51 L. R. A. (N. S.) 453.

Duty of automobile driver to stop to avoid collision with pedestrian. 24 L. R. A. (N. S.) 557.

Rule of the road as affecting pedestrian injured by automobile. 38 L. R. A. (N. S.) 496.

Rights and duties of persons driving automobiles in highways. 13 *Ann. Cas.* 463; 21 *Ann. Cas.* 648; *Ann. Cas.* 1916E, 661.

§ 6341. Turning at Intersections of Streets, etc.

It shall be the duty of every person operating or driving any motor or other vehicle or riding or driving any animal along or over any public highway and approaching any intersection of a street, road or highway, with the intention of turning thereat to the right, to keep to the extreme right, and with the intention of turning thereat to the left to proceed to and beyond the center of the intersection before turning. And it shall be the duty of every such person about to turn from a standstill or while in motion to give a timely signal indicating the direction in which he intends to turn as follows: If he intends to turn to the left he shall extend his arm in a horizontal position for a reasonable length of time; if he intends to turn to the right he shall extend his arm with the forearm raised at right angles for a reasonable length of time; and every such signal shall commence at a point not less than fifty feet before the turn is made. And it shall be the duty of every person so operating or driving

any motor or other vehicle or riding or driving any animal along or over any public highway and intending to stop, to extend his arm and move it up and down in a vertical position for a reasonable length of time before stopping. Mechanical devices capable of producing signals as to the intention of the driver to stop or turn such vehicle and approved by the secretary of state may be used. [L. '21, p. 273, § 29.]

Mutual Rights as to Meetings, Crossings, and Passing: See Remington's Digest, Mun. Corp., § 379.—Reynolds v. Pacific Car Co., 75 Wash. 1, 134 Pac. 512; Hiscock v. Phinney, 81 Wash. 117, 142 Pac. 461, Ann. Cas. 1916E, 1044; Johnson v. Heitman, 88 Wash. 595, 153 Pac. 331; Barton v. Van Gesen, 91 Wash. 94, 157 Pac. 215; Clark v. Fotheringham, 100 Wash. 12, 170 Pac. 323; Yanase v. Seattle Taxicab & Transfer Co., 91 Wash. 415, 157 Pac. 1076; Yuill v. Berryman, 94 Wash. 458, 162 Pac. 513; Barth v. Harris, 95 Wash. 166, 163 Pac. 401; Adair v. Mc-

Neil, 95 Wash. 160, 163 Pac. 393; Jahn & Co. v. Paynter, 99 Wash. 614, 170 Pac. 132.

See, also, Zuccone v. Main Fish Co., 104 Wash. 441, 177 Pac. 314; Clark v. Wilson, 108 Wash. 127, 183 Pac. 103; Saari v. Wells Fargo Express Co., 109 Wash. 415, 186 Pac. 898; Stubbs v. Molberget, 108 Wash. 89, 182 Pac. 936, 6 A. L. R. 318; Schwalen v. Fuller & Co., 107 Wash. 476, 182 Pac. 592, 187 Pac. 366; Clark v. Wilson, 108 Wash. 127, 183 Pac. 103; Kane v. Nakamoto, 113 Wash. 476, 194 Pac. 381.

§ 6342. Passing—Precautions.

It shall be the duty of every person in charge of any vehicle or animal moving along and upon any public highway to keep such vehicle or animal as closely as practicable to the right hand boundary of such highway so as to allow more swiftly moving vehicles reasonably free passage to the left. And it shall be the duty of every person operating a motor vehicle upon any such highway, on receiving a signal given by raising the hand from a person riding, leading, or driving in the opposite direction any animal or animals to bring such motor vehicle immediately to a stop and remain stationary so long as may be reasonable, to allow such animal or animals to pass; and if traveling in the same direction as any such animal or animals, to use reasonable caution in passing the same; and in case any such animal appears to be badly frightened or the person operating such motor vehicle is signaled so to do, he shall cause the motor of such vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others. [L. '21, p. 274, § 30. Cf. L. '15, p. 395, § 27.]

See notes to § 6341.

Cited in 109 Wash. 276.

Whether there was compliance with the act as to the duty of an automobile driver on approaching frightened animals, is a question for the jury, where there was evidence that the auto approached a frightened horse upon a dangerous approach to a bridge, at a high rate of speed and making a great noise, causing the horse to plunge off the embankment: Ross v. Rose, 109 Wash. 273, 186 Pac. 892.

In an action for injuries sustained

through the frightening of plaintiff's horse in the negligent driving of an automobile at great speed making a great noise, it is proper to refuse to instruct that plaintiff's failure to signal defendant was contributory negligence precluding a recovery, since the signal is called for only when a full stop is required, and the statute made it the positive duty of the defendant to exercise precaution to prevent frightening the horse: Ross v. Rose, 109 Wash. 273, 186 Pac. 892.

§ 6343. Overtaking or Passing Electric Cars.

It shall be the duty of every person operating or driving any vehicle, when overtaking or passing any street-car or interurban car that has stopped at a street intersection, to bring such vehicle to a full stop before

passing such street-car or interurban car, and not to proceed while any person or persons are getting on or off or are about to get on or off said car, unless the driver of such vehicle can maintain a distance of at least six feet between said vehicle and the running board or lower step of such car. [L. '21, p. 275, § 31.]

Duty of Person Crossing Track to Stop, Look and Listen: See Remington's Digest, Street Railways, § 19; Smith v. Union Trunk Line, 18 Wash. 351, 51 Pac. 400, 45 L. R. A. 169; Traver v. Spokane St. R. Co., 25 Wash. 225, 65 Pac. 284; Roberts v. Spokane Street R. Co., 23 Wash. 325, 63 Pac. 506, 54 L. R. A. 184; Traver v. Spokane Street Ry. Co., 25 Wash. 225, 65 Pac. 284; Burian v. Seattle Elec. Co., 26 Wash. 606, 67 Pac. 214; Criss v. Seattle Electric Co., 38 Wash. 320, 80 Pac. 525; Niemyer v. Washington Water Power Co., 45 Wash. 170, 88 Pac. 103; Fluhart v. Seattle Electric Co., 65 Wash. 291, 118 Pac. 51; Slipper v. Seattle Elec. Co., 71 Wash. 279, 128 Pac. 233; Skinner v. Tacoma R. & Power Co., 46 Wash. 122, 89 Pac. 488; Beeman v. Puget Sound Traction, Light & Power Co., 79 Wash. 137, 139 Pac. 1087.

See, also, Johnson v. Seattle, 113 Wash. 487, 194 Pac. 417.

Drivers of Vehicles and Persons Therein: See Remington's Digest, Street Railways, § 20; Spurrier v. Front St. Cable Ry. Co., 3 Wash. 659, 29 Pac. 346; Christensen v. Union Trunk Line, 6 Wash. 75, 32 Pac. 1018; Redford v. Spokane Street Ry. Co., 15 Wash. 419, 46 Pac. 650; Coats v. Seattle Electric Co., 39 Wash. 386, 81 Pac. 830; Niemyer v. Washington Water Power Co., 45 Wash. 170, 88 Pac. 103; Davis v. Coeur d'Alene & Spokane R. Co., 47 Wash. 301, 91 Pac. 839; O'Brien v.

Washington Water Power Co., 79 Wash. 82, 139 Pac. 771; Bowden v. Walla Walla Valley R. Co., 79 Wash. 184, 140 Pac. 549; Arpagaus v. Washington Water Power Co., 86 Wash. 83, 149 Pac. 346; Snowdell v. Seattle Elec. Co., 54 Wash. 323, 103 Pac. 3; Wilson v. Seattle, Renton etc. R. Co., 55 Wash. 651, 104 Pac. 1112; Henry v. Seattle Elec. Co., 55 Wash. 444, 104 Pac. 776; Keefe v. Seattle Elec. Co., 55 Wash. 448, 104 Pac. 774; Denny v. Seattle, Renton etc. R. Co., 60 Wash. 426, 111 Pac. 450; Nappli v. Seattle, Renton etc. R. Co., 61 Wash. 171, 112 Pac. 89; Pantages v. Seattle Electric Co., 63 Wash. 159, 114 Pac. 1044; O'Brien v. Washington Water Power Co., 71 Wash. 688, 129 Pac. 391; Bardshar v. Seattle Elec. Co., 72 Wash. 200, 130 Pac. 101; Johnson v. Washington Water Power Co., 73 Wash. 616, 132 Pac. 392.

See, also, Blanchard v. Puget Sound Traction, Light & P. Co., 105 Wash. 226, 177 Pac. 822; Devitt v. Puget Sound Traction, Light & Power Co., 106 Wash. 449, 180 Pac. 483; Heath v. Wylie, 109 Wash. 86, 186 Pac. 313; Nabours v. Seattle, 113 Wash. 557, 194 Pac. 800.

Duty of person driving automobile as to persons on street-cars. 21 Ann. Cas. 655; Ann. Cas. 1916E, 673.

Pedestrian's rights and duties with respect to automobile in highway. 4 Ann. Cas. 400.

§ 6344. Racing on Public Highways.

The racing of motor vehicles on the public highways is hereby forbidden: Provided, however, local authorities may designate and set aside certain portions of the public highways for limited periods to be used for speed trials or speed contests, but only in case the entire distance is fully and sufficiently patrolled. [L. '21, p. 275, § 32. Cf. L. '15, p. 394, § 25.]

§ 6345. Compliance with Local Regulations.

It shall be the duty of every person operating or driving any motor or other vehicle along or over any narrow way in any park, pass or defile, to fully comply with all regulations requiring vehicles to proceed in one direction only as the sign-boards and regulations upon such narrow ways, passes and defiles shall indicate. The direction in which all vehicles shall so proceed may be determined by the park commissioners in parks and by the county commissioners or other legally constituted authorities with respect to narrow passes and defiles within their respective jurisdictions, and when so declared shall be so conspicuously marked with signs as to indicate the rules and regulations in regard thereto and the direction in which all vehicles shall so travel. [L. '21, p. 275, § 33.]

§ 6346. Standing Unsecured upon Public Highway.

It shall be unlawful for any person using any motor vehicle upon any public highway of this state to leave the same standing unsecured or without having its motive power, if any, so secured that the same cannot be operated so as to move the vehicle without some act on the part of the owner or operator or other person. [L. '21, p. 276, § 34.]

§ 6347. Standing on Traveled Portion of Highway.

It shall be unlawful for any person to leave any vehicle standing upon the main traveled portion of any highway of this state: Provided, that this provision shall not apply to any vehicle so disabled as to prohibit the moving of the same. And it shall be unlawful for any person to leave any disabled vehicle standing on any traveled portion of any highway of this state at any time between one-half hour after sunset and one-half hour before sunrise without having a red light displayed on the rear end of such vehicle at the side thereof nearest the center of the highway. [L. '21, p. 276, § 35.]

§ 6348. Use of Gong or Siren Whistle.

It shall be unlawful for any person to use on any motor vehicle any gong or siren whistle unless such vehicle is used as an ambulance or is operated by a police department, fire department, or patrol wagons, ambulances, fire patrols, fire engines, and fire apparatus shall, in all cases, with due regard to the safety of the public, have the right of way, all provisions of this act to the contrary notwithstanding, but such right of way shall not protect the driver of any such vehicle from the consequences of the arbitrary exercise of such right or from liability for injuries willfully inflicted. [L. '21, p. 276, § 36.]

§ 6349. To Comply With Orders of Traffic Officers.

It shall be the duty of every person operating or driving any motor or other vehicle or any animal upon any public highway where any authorized officer, marshal, constable, or policeman displaying his star or badge is at the time discharging the duty of regulating and directing traffic in his locality, to obey all signals of such officer directing such driver to take a certain direction or to stop or to otherwise proceed for the safety of the public, and to comply with all orders of such officer. [L. '21, p. 276, § 37.]

Signal of traffic officer as affecting duty of travelers to exercise care. **L. B. A.** 1917B, 137.

§ 6350. Drivers of Vehicles for Hire to Stop at Track Crossings.

Drivers of all motor vehicles carrying passengers for hire on any of the public highways of this state outside the incorporated limits of any city or town, shall bring said vehicles to a full stop within fifty feet of any unguarded grade crossing of any railroad or interurban track before crossing the same. [L. '21, p. 277, § 38. Cf. L. '17, p. 641, § 23.]

§ 6351. Stopping to Render Aid in Case of Accident.

It shall be the duty of every person operating or driving any motor or other vehicle or riding or driving any animal upon the public high-

way and coming in contact with any pedestrian, vehicle or other object on such highway, to stop and render such aid and assistance as may be required, and in case of injury to any person or damage to any vehicle or property, it shall be the duty of the driver of either vehicle, or any occupant thereof, to furnish the driver of the other vehicle or any occupant of such vehicle or any witness to the accident, or in case of an injured pedestrian to such pedestrian or witness, the license number of his vehicle, the true name and address of the owner, the name and address and the license number of the driver, and the name and address of each occupant of such vehicle; and it shall likewise be the duty of any witness of any such accident to furnish to the driver or occupant of any such vehicle or to any other person concerned in said accident, upon request, his name and address; and it shall be unlawful for either party to a collision, whether resulting from a mistake in judgment or arising from accident, to move away from the place of such collision without complying with this section. None of the information required by this section to be given shall be construed as fixing liability or fault or negligence of either party, but shall be a means of identification of the facts and circumstances only. [L. '21, p. 277, § 39. Cf. L. '15, p. 395, § 28.]

§ 6352. Report by One Causing Accident.

It shall be the duty of every person operating or driving any vehicle upon the public highway, within twenty-four hours after causing injury to any person or damage to any vehicle or property, to report the same to the chief of police or mayor of the city or town, or to the sheriff of the county in which the accident or collision occurred, giving the information obtained as provided in the preceding section. [L. '21, p. 278, § 40.]

§ 6353. Speed—Power of Cities or Towns.

No city council or other governing authorities of any city or town shall have the power to pass or enforce any ordinance, rule or regulation requiring a slower rate of speed than that specified in this act at which vehicles may be operated along and over the public highways of such city or town or regulating the use of roads, streets and highways thereof contrary to or inconsistent with the provisions of this act; and all such ordinances, rules and regulations now in force are hereby declared to be void and of no effect: Provided, however, that on any portion of any road, street or highway where on account of sharp curvature, highway construction or repairs, excessive traffic, or other permanent or temporary causes, it is deemed inadvisable for vehicles to operate at the maximum speed allowed by this act, the governing authorities of such city or town, or the county commissioners on highways outside cities and towns, may regulate such speed by order, rule or regulation hereafter adopted: Provided, such order, rule or regulation shall regulate all vehicles alike, and shall not limit the speed in any case to less than ten miles per hour, and the governing authorities or the board of county commissioners shall cause to be posted at either end of such portion of said highways, signs of sufficient size to be easily readable, setting forth the speed allowed and stating by whose order said regulations are made, and thereafter it shall be unlawful for any person to violate any such order, rule or regulation.

[L. '21, p. 278, § 41. Cf. L. '19, p. 13, § 13; L. '17, p. 640, § 20; L. '15, p. 396, § 34.]

Cited in 95 Wash. 34; 101 Wash. 657, 658.

tions Thereof: See Remington's Digest, Mun. Corp., § 380 et seq., and cases cited.

Ordinances and Regulations and Viola-

§ 6354. Penalty for Violating Act.

Any person, who shall make falsely any statement herein required to be made or who shall obtain any license by any misrepresentation or deceit, or who shall display any number or license not authorized by law to be used, or who shall loan or permit to be used any license or number whether issued to him or to any other person, firm or corporation or who shall in any manner violate the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly, either by a fine or imprisonment or both such fine and imprisonment: Provided, that in no event shall the minimum fine be less than five dollars (\$5.00). [L. '21, p. 279, § 42; L. '19, p. 123, § 12; L. '17, p. 639, § 18; L. '15, p. 396, § 30.]

§ 6355. Disposition of Fines and Forfeitures.

Fifty per cent of all the fines and forfeitures for violations of the provisions of this act outside of incorporated cities and towns shall be paid to the current expense fund of the county wherein collected; twenty-five per cent thereof shall be paid to the permanent highway maintenance fund and the remaining twenty-five per cent thereof shall be paid to a special fund to be known as the "State Parks and Parkway Fund," which fund is hereby created in the state treasury. All fines and forfeitures collected for violation of this act within the limits of incorporated cities and towns shall be paid by the county treasurer to the treasurer of such incorporated city or town and by him placed to the credit of the street repair and maintenance fund of such incorporated city or town. [L. '21, p. 279, § 43. Cf. L. '17, p. 640, § 19; L. '15, p. 396, § 31.]

§ 6356. Scope of Act.

Nothing in this act shall be construed to curtail or abridge the right of any person to prosecute a civil action for damages by reason of injury to person or property resulting from the negligent use of the public highways by the driver or operator of any motor vehicle or its owner or his employee or agent, and the owner of such vehicle shall be equally liable for the negligent operation thereof, when at the time of such injury the vehicle was operated by the agent of such owner, or by any person employed by him for the purpose of operating such vehicle. [L. '21, p. 279, § 44. Cf. L. '15, p. 396, § 33.]

This section does not render a joint owner of an automobile liable for the negligence of his co-owner when driving the car for his own pleasure: *Hamilton v. Vione*, 90 Wash. 618, 156 Pac. 853; L. R. A. 1916E, 1300.

Where a driver of an automobile is employed to hold himself ready to drive

at all hours, the fact that he took a car to go to his supper and to return to the garage cannot relieve him of employment as agent of the owner; the question being one for the jury, under this section: *Moore v. Roddie*, 103 Wash. 386, 174 Pac. 648.

§ 6357. School Signs.

There shall be constructed and maintained within one hundred (100) yards of each approach to each schoolhouse in the state, a conspicuous wooden or suitable sign with the words "School, slow down" painted thereon in letters of the following dimensions:

DESCRIPTION OF SCHOOL SIGN.

The size of the board shall be 15 inches by 27 inches over all, with a black border on the outer edges one-fourth inch in width. The following directions shall be painted on the board in plain block letters in black on white background:

SCHOOL

SLOW DOWN.

The word "School" shall be written above the words "Slow Down." The size of the letters shall be four (4) inches in height, about two and three-eighths ($2\frac{3}{8}$) inches in width, and spaced approximately four (4) inches from center to center. The lines forming the letters shall be one-half inch in width.

The size of the letters in the words "Slow Down" shall be three (3) inches in height, about one and three-fourths ($1\frac{3}{4}$) inches in width, and spaced approximately two and three-fourths ($2\frac{3}{4}$) inches from center to center. The lines forming the letters shall be three-eighths ($\frac{3}{8}$) inch in width. The words "Slow Down" shall be underlined with a black line one-fourth ($\frac{1}{4}$) inch in width.

A margin of approximately two and one-fourth ($2\frac{1}{4}$) inches shall be left between the outer edge of the letters and the edge of the board. Said sign shall be constructed and maintained by the local authorities of the city or town in which any of said schoolhouses are situated and at the expense of said city or town. For all schoolhouses located outside of the limits of any town or city said sign shall be constructed and maintained by the county in which any of said schoolhouses are situated and at the expense of said county. [L. '21, p. 280, § 45. Cf. L. '17, p. 639, § 18.]

§ 6358. Signs at City or Town Limits.

It shall be the duty of the mayor and council or other governing authorities of every city or town to erect and maintain at the corporate limits of such city or town, on all paved highways crossing such limits, substantial wood or metal signboards placed at right angles to the highway and painted white and having thereon in black letters four inches high the following words and figures:

On the side nearest the city or town: "City limits of
(name of city or town)

30 miles per hour";

On the side away from the city or town: "City limits of
(name of city or town)

speed limit 20 miles per hour." [L. '21, p. 281, § 46.]

§ 6359. Partial Invalidity.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity

of the act as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional. [L. '21, p. 281, § 47; L. '19, p. 95, § 4.]

§ 6360. Director of Licenses to Assume Duties—Fees to State Treasurer.

The director of licenses, from and after the time when he shall be appointed and qualified and assume and exercise the duties of his office, shall exercise all the powers and perform all the duties by this act vested in and required to be performed by the secretary of state, except the receiving of fees and moneys which shall, from that time, be paid to the state treasurer who shall transmit his duplicate receipt therefor to the director of licenses. [L. '21, p. 282, § 48.]

§ 6361. Public Vehicle—Name of Department.

It shall be the duty of every public officer and department having charge of any automobile or other motor vehicle owned by any county, city, town or other public body in this state and used in the public business, except automobiles used by the sheriff's office, police department, constables and game-wardens, except automobiles engaged in police duty, to cause to be painted upon such automobile or other motor vehicle, in letters of contrasting colors, not less than two by two and one-half inches in size, the name of such county, city, town or other public body, together with the name of the department or office upon the business of which said automobile or other motor vehicle is used. [L. '21, p. 406, § 1.]

§ 6362. Violations.

Any person failing to comply with the provisions of this act, or any person driving or using any automobile or other motor vehicle, required to be marked under the provisions of this act, which is not so marked, shall be guilty of a misdemeanor. [L. '21, p. 407, § 2.]

CHAPTER III.

LICENSING OF OPERATORS OF MOTOR VEHICLES.

§ 6363. Definitions.

(1) "Motor vehicle" shall include all vehicles or machines propelled by any power other than muscular, used upon the public highways for the transportation of persons, freight, produce, or any commodity, except traction engines temporarily upon the public highway, road rollers or road making machines, and motor vehicles that run upon fixed rails or tracks.

(2) "Motor-truck" shall mean any motor vehicle designed or used for the transportation of commodities, merchandise, produce, freight, or animals.

(3) The word "operator" whenever used in this act shall be held to mean any person who operates or drives a motor vehicle. [L. '21, p. 322, § 1.]

State statute licensing automobiles as precluding imposition of municipal tax or license fee. **Ann. Cas.** 1914D, 483.

Validity of excise or license tax upon automobiles. 37 **L. R. A.**

(**N. S.**) 440; 52 **L. R. A.** (**N. S.**) 949; **L. R. A.** 1915D, 322.

Motorcycle as a motor vehicle within licensing statute. 21 **L. R. A.** (**N. S.**) 41.

§ 6364. Operators Under Fifteen Years of Age.

It shall be unlawful for any person under the age of fifteen years to operate or drive any motor vehicle, unless such person is accompanied by his or her parent or guardian: Provided, that on recommendation of the school directors of any district and the consent of the parents of any minor a special permit may be issued by the director of licenses permitting any child to drive an automobile for the purpose of attending school, the cost of such permit to be one-half of the regular license fee: Provided, that this shall not permit children to drive an automobile within cities of the first class. [L. '21, p. 323, § 2.]

§ 6365. Operators Under Eighteen Years of Age.

It shall be unlawful for any person under the age of eighteen years to operate or drive a motor-truck of the capacity of four tons or more. [L. '21, p. 323, § 3.]

§ 6366. Operators Under Twenty-one Years of Age.

It shall be unlawful for any person under the age twenty-one years to operate a motor vehicle while being used for the transportation of passengers for hire: Provided, that upon the application of any person to the director of licenses, the said director of licenses, may in his discretion grant a special permit to such person under the age of twenty-one years. [L. '21, p. 323, § 4.]

§ 6367. Driving License.

From and after August 1, 1921, it shall be unlawful for any person to operate or drive a motor vehicle without having first obtained and having in force a license so to do as provided in this act: Provided, however, that in case of emergency, to be determined by any sheriff, chief of police, police judge or judge of the superior court, said officer so determining such emergency may, upon the execution and delivery to him of an application for an operator's license as provided in section 6368 hereof and the delivery to him of a certified check or postoffice money order payable to the state treasurer for the prescribed license fee, issue to such applicant a temporary operator's license, effective immediately which shall terminate on the issue and delivery of the annual license provided for in this act, or on notice of the rejection of the application for such license, and upon delivery of such annual license to the applicant, or on notice of the rejection of the application therefor, such temporary license shall be surrendered and marked canceled across the face thereof by the officer so issuing same; but nothing in this act contained shall be construed as prohibiting any nonresident of this state over the age of fifteen years from operating a motor vehicle other than a motor-truck or motor vehicle used for the transportation of passengers for hire, without having first obtained and having in force a license so

to do as in this act provided, if such person shall have fully complied with the laws of the state of his residence respecting the licensing of motor vehicles and the operation thereof: Provided, that if such non-resident shall be convicted by any court of competent jurisdiction of violating any of the provisions of the laws of this state relating to motor vehicles or to the operation thereof he shall thereafter be subject to, and required to comply with all the provisions of this act: Provided, further, that any person over fifteen years of age, when accompanied by a license[d] operator may operate or drive a motor vehicle for a period not to exceed fifteen days for the purpose of receiving instructions necessary to secure an operator's license. [L. '21, p. 323, § 5.]

§ 6368. License Fee—Applications—Examinations.

(1) Every person over fifteen years of age desiring to drive or operate a motor vehicle upon the public highways of this state as an operator shall pay to the state treasurer a fee of one dollar and file with the state treasurer an application in writing so to do upon a blank to be provided for that purpose by the director of licenses. The application shall contain the name, age, weight, height, color of eyes, color of hair, place of residence and such other information as may be required by the director of licenses.

(2) In case such applicant at the time of filing such application shall have operated a motor vehicle for a period of ten days or over, such application shall be accompanied by certificate of two citizens of this state, stating that the applicant is an experienced careful driver of a motor vehicle and is free from any physical infirmities or personal habits which would tend to impair his ability safely to operate a motor vehicle under the laws of this state: Provided, that in case of a minor, such application shall also be approved by the father, mother, or legal guardian of the applicant, or by a judge of the superior court.

(3) It shall be the duty of the director of licenses to examine the papers in connection with each application and in case of doubt he may require such further examination under his direction as shall determine the applicant's fitness or unfitness to operate a motor vehicle. The director of licenses shall have power to issue a license to operate any motor vehicle or to operate only such motor vehicle as the license shall designate. [L. '21, p. 324, § 6.]

§ 6369. Procedure on Application.

Upon the receipt of any application for a license to drive or operate motor vehicles, accompanied by the required fee as provided in the preceding sections, it shall be the duty of the state treasurer to indorse on such application his duplicate receipt for the fee and to transmit the same to the director of licenses who, if the application be in proper form, shall issue to the applicant an operator's license, in such form as may be prescribed by the director of licenses, stating the name and place of residence, and a brief description of the licensee, which license shall be printed in black letters upon white paper or cardboard, and shall bear a serial number, and shall contain a blank for the signature of the licensee. Such license when issued shall be forwarded by mail

to the applicant to the address shown on the application. Such licenses to be valid must have indorsed thereon the signature of the owner thereof, and it shall be the duty of every person holding a license issued under the provisions of this act, while operating his motor vehicle under the authority of such license, to have such license in his personal possession or in such motor vehicle. Licenses issued under the provisions of this act shall be for a period of two years from August 1, 1921, and shall be renewed biennially thereafter. [L. '21, p. 325, § 7.]

§ 6370. Blank Forms of Licenses.

It shall be the duty of the director of licenses to furnish to the clerks of the superior courts, the justices of the peace, and the police judges of the various counties, cities and towns throughout the state, in such quantity as he shall deem necessary, blank forms of operators' licenses, printed on paper or cardboard of two colors respectively, namely blue and yellow, and containing blanks for the insertion of serial numbers and the signature of the licensee. [L. '21, p. 326, § 8.]

§ 6371. Surrender and Cancellation of License.

In case of the conviction of any person, holding an operator's license issued under the provisions of this act, for the violation of any of the motor vehicle laws of this state, or any of the provisions of this act, the court, judge or justice before whom the conviction is had shall have the power in his discretion, in addition to imposing any of the penalties provided by law, to require the defendant to surrender his operator's license forthwith to the court, and shall thereupon cancel such operator's license by writing across the face thereof the word "canceled" and dating and signing the same. The court shall thereupon issue to the defendant a duplicate of his license printed on blue paper or cardboard and bearing the same serial number as the license canceled, and shall require the licensee to subscribe his name thereto in the presence of the court, and shall immediately transmit the canceled license to the director of licenses; and in case of the conviction of any person holding an operator's blue license for the violation of any of the motor vehicle laws of this state, or the provisions of this act, the court, judge or justice before whom the conviction is had, shall have the power in his discretion, in addition to imposing such penalty as may be provided by law, to take up and cancel such operator's blue license and issue to the licensee an operator's yellow license, bearing the same serial number, and to require the licensee to subscribe his name thereon in the presence of the court, and to immediately transmit said canceled blue license to the director of licenses; and in case of the conviction of any person holding an operator's yellow license of any violation of the motor vehicle laws of this state, or the provisions of this act, the court, judge or justice before whom such conviction is had shall have the power in his discretion, in addition to imposing any penalty provided by law, to take up and cancel such operator's yellow license, and to immediately transmit said canceled license to the director of licenses. [L. '21, p. 326, § 9.]

§ 6372. Filing Canceled License.

It shall be the duty of the director of licenses, upon receiving any license canceled by a court, judge or justice under the provisions of the preceding sections, to file and keep the same in the records of his office. [L. '21, p. 327, § 10.]

§ 6373. Issuance of Duplicate License.

In the event of the loss or destruction of any operator's license issued under the provisions of this act, except by cancellation as provided in the preceding sections, the licensee may obtain a duplicate thereof upon filing with the state treasurer an affidavit stating the facts and the color and serial number of the licenses lost or destroyed, and paying a fee of fifty cents to the state treasurer. Upon the receipt of such affidavit accompanied by the proper fee, it shall be the duty of the state treasurer to indorse upon the affidavit his duplicate receipt of the fee and to transmit the same to the director of licenses, who, after verifying the color and number of the licenses held by the licensee by an examination of the records of his office, shall issue to the licensee a duplicate license bearing the same serial number and of the same color as that held by the licensee. [L. '21, p. 327, § 11.]

§ 6374. New License After Cancellation.

No person who shall have had an operator's yellow license canceled as provided in this act shall be entitled to have issued to him an operator's license, until the expiration of three months from the date of the cancellation of such operator's yellow license. [L. '21, p. 328, § 12.]

"This act" refers to this chapter.

§ 6375. "Highway Safety Fund."

The state treasurer shall, on the next business day after receiving any license, as provided in this act, pay the same into the state treasury into a special fund to be known as the "Highway Safety Fund," which fund is hereby created in the state treasury, and all expenses incurred in the enforcement of the provisions of this act shall be paid from moneys appropriated from the said highway safety fund. [L. '21, p. 328, § 13.]

"This act" refers to this chapter.

§ 6376. Disposition of Fines and Forfeitures.

One-half of all fines and forfeitures collected for violation of the provisions of this act outside of cities and towns of the first, second, third and fourth class, shall be paid into the current expense fund of the county wherein collected and the balance thereof shall be paid to the permanent highway maintenance fund of said county and all fines and forfeitures collected for violations of the provisions of this act in cities and towns of the first, second, third and fourth class shall be paid by the county treasurer to the treasurer of such city or town of the first, second, third or fourth class, and by him placed to the credit

of the street repair and maintenance fund of such city or town. [L. '21, p. 328, § 14.]

"This act" refers to this chapter.

§ 6377. False Statements in Application—Penalty.

It shall be unlawful for any person to make any false statement in any application for a license under the provisions of this act, or for the issuance of any duplicate of such license, or for any person holding a license issued under the provisions of this act to drive or operate any motor vehicle while intoxicated or under the influence of any narcotic drug or while mentally or physically disabled; any person violating the provisions of this section shall, in addition to the other penalties provided by law, forfeit his license. [L. '21, p. 329, § 15.]

"This act" refers to this chapter.

§ 6378. Violation of Act.

Every person violating or failing to comply with any provisions of this act shall be guilty of a misdemeanor: Provided, that any person operating or driving a motor vehicle upon the highways of this state after having his operator's yellow license canceled as provided in this act, shall be guilty of a gross misdemeanor. [L. '21, p. 329, § 16.]

"This act" refers to this chapter.

§ 6379. Highway Police.

It shall be the duty of the director of efficiency to appoint a sufficient number of highway police who shall have the power of peace officers for the purpose of enforcing all motor vehicle laws, rules and regulations. [L. '21, p. 329, § 17.]

"This act" refers to this chapter.

§ 6380. Partial Invalidity.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [L. '21, p. 329, § 18.]

"This act" refers to this chapter.

§ 6381. Powers and Duties Conferred.

The secretary of state shall have the power and it shall be his duty to exercise all the powers and perform all the duties imposed by this act on the director of licenses until such time as the director of licenses shall be appointed and qualify and assume and exercise the duties of his office. And the state highway commissioner shall have the power and it shall be his duty to exercise all the powers and perform all the duties imposed by this act upon the director of efficiency and the supervisor of highways until such director and supervisor are appointed and qualify and shall assume and exercise the duties of their offices. [L. '21, p. 329, § 19.]

CHAPTER IV.

TRANSPORTATION BY MOTOR VEHICLES.

§ 6382. [5562-37.] Motor Vehicles as Passenger Carriers in Cities of First Class.

It shall be unlawful for any person, firm or corporation, other than a steam, street or interurban railway company to engage in or carry on the business of carrying or transporting passengers for hire in any motor propelled vehicle along any public street, road or highway, within the corporate limits of any city of the first class, without having first obtained a permit so to do as hereinafter provided: Provided, that any street or interurban railway or other transportation company engaging in the business of transporting passengers for hire in any motor propelled vehicle except street-cars along any public street, road or highway in this state, shall come under the provisions of this act: Provided, further, that the provisions of this act shall not apply to carriers of United States mail. [L. '15, p. 227, § 1.]

Cited in 92 Wash. 438; 93 Wash. 615; 94 Wash. 355—357, 663; 95 Wash. 33, 109, 112; 96 Wash. 233, 240; 97 Wash. 322, 323; 98 Wash. 658, 659; 100 Wash. 216, 218; 101 Wash. 172, 209; 102 Wash. 484, 486.

An ordinance which requires the owner of each jitney bus to pay the sum of \$5 for each passenger seat capacity and \$4 for each driver's permit exacts a license or occupation tax: *Allen v. Bellingham*, 95 Wash. 12, 163 Pac. 18.

An ordinance requiring an annual license of \$5 for all vehicles carrying passengers for hire is not rendered void by Rem. Code, § 5562-34, authorizing licenses other than an occupation tax: *Spokane v. Knight*, 101 Wash. 656, 172 Pac. 823.

Jitney Permits, Statutory Provisions: See Remington's Digest, Mun. Corp., § 354; *State v. Seattle Taxicab & Transfer Co.*, 90 Wash. 416, 156 Pac. 837; *State v. Ferry Line Auto Bus Co.*, 93 Wash. 614, 161 Pac. 467; *Bartlett v. Lanphier*, 94 Wash. 354, 162 Pac. 532; *Allen v. Bellingham*, 95 Wash. 12, 163 Pac. 18; *Spokane v. Knight*, 101 Wash. 656, 172 Pac. 823; *Hadfield v. Lundin*, 98 Wash. 657, 168 Pac. 516, Ann. Cas. 1918C, 942; *Puget Sound Tr. L. & P. Co. v. Grassmeyer*, 102 Wash. 482, 173 Pac. 504.

See, also, *McDonald v. Lawrence*, 100 Wash. 215, 170 Pac. 576; *Cushing v. White*, 101 Wash. 172, 172 Pac. 229.

Under this section the principal and surety may be joined in one action, though the limit of the bond is prayed against the surety and more against

the principal: *Bankson v. Laflam*, 92 Wash. 437, 159 Pac. 369.

The provision in this section requiring certain carriers to give a surety bond before engaging in business, is germane to and sufficiently included within the title "an act relating to and regulating common carriers of passengers upon public streets, roads and highways": *State v. Seattle Taxicab & Transfer Co.*, 90 Wash. 416, 156 Pac. 837; *State v. Ferry Line Auto Bus Co.*, 93 Wash. 614, 161 Pac. 467.

Commission of Offense by Innocent Agent: See Remington's Digest, High., § 18; *State v. Ferry Line Auto Bus Co.*, 93 Wash. 614, 161 Pac. 467; *State v. Ferry Line Auto Bus Co.*, 99 Wash. 64, 168 Pac. 893.

Municipal regulation of taxicabs. Ann. Cas. 1914D, 735.

Proprietor of taxicab as common carrier. Ann. Cas. 1916D, 767; L. R. A. 1918F, 468.

Duty and liability of jitney bus operator to passengers. 4 A. L. R. 1500.

Validity of restrictions as to points at which jitney bus passengers may be taken on and discharged. 6 A. L. R. 110.

State or municipal regulation of jitney buses. Ann. Cas. 1916A, 1233; Ann. Cas. 1917C, 1051; Ann. Cas. 1918C, 946; L. R. A. 1915F, 840; L. R. A. 1916B, 1156; L. R. A. 1918B, 912; L. R. A. 1918F, 475.

Power of municipality over interurban vehicles used for hire. L. R. A. 1918B, 891.

§ 6383. [5562-38.] Secretary of State to Issue—Bond—License Fee.

Every person, firm or corporation other than a steam, street or interurban railway company, desiring to engage in the business of carry-

ing or transporting passengers for hire in any motor propelled vehicle over or along any public street, road or highway in any city of the first class and every street or interurban railway or other transportation company desiring to engage in the business of transporting passengers for hire in any motor propelled vehicle except street-cars, shall apply to the secretary of state for a permit so to do, and such applicant for each motor vehicle intended to be so operated shall deposit and keep on file with the secretary of state a bond running to the state of Washington in the penal sum of twenty-five hundred dollars, with good and sufficient surety company licensed to do business in this state as surety to be approved by the secretary of state, conditioned for the faithful compliance by the principal of said bond with the provisions of this act and to pay all damages which may be sustained by any person injured by reason of any careless, negligent or unlawful act on the part of said principal, his agents or employees in the conduct of said business or in the operation of any motor propelled vehicle used in transporting passengers for hire over or along any public street, road or highway, and shall pay to the secretary of state a fee of five dollars and thereupon such license shall be issued to the applicant. [L. '15, p. 228, § 2.]

Cited in 94 Wash. 357; 95 Wash. 112; 96 Wash. 240; 97 Wash. 322, 323; 98 Wash. 664.

§ 6384. [5562-39.] Rights of Action for Personal Injuries.

Every person injured by any careless, negligent or unlawful act of any person, firm or corporation receiving a permit under the provisions of this act, or his, their, or its agents, or employees in conducting or carrying on said business or in operating any motor propelled vehicle used for the carrying and transporting of passengers over and along any public street, road or highway, and his heirs, executors and administrators shall have a cause of action against the principal and surety upon the bond provided for in the preceding section for all damages sustained and in any such action the full amount of damages sustained may be recovered against the principal, but the recovery against the surety shall be limited to the amount of the bond and a surviving husband and child or children or if no husband, then the child or children shall have action for the death of the wife or mother caused by such negligence. [L. '15, p. 228, § 3.]

Cited in 95 Wash. 113, 116; 96 Wash. 240; 97 Wash. 322, 323.

Liability on Jitney Bonds: See Remington's Digest, Mun. Corp., § 354-1; Bartlett v. Lanphier, 94 Wash. 354, 162 Pac. 532; Bogdan v. Fappas, 95 Wash. 579, 164 Pac. 208; Salo v. Pacific Coast Casualty Co., 95 Wash. 109, 163 Pac.

384, L. R. A. 1917D, 613; Nelson v. Pacific Coast Casualty Co., 96 Wash. 43, 164 Pac. 594; Singer v. Martin, 96 Wash. 231, 164 Pac. 1105; Bruner v. Little, 97 Wash. 319, 166 Pac. 1166; McDonald v. Lawrence, 100 Wash. 215, 170 Pac. 576; Peters v. Casualty Co. of America, 101 Wash. 208, 172 Pac. 220.

§ 6385. [5562-40.] Penalty for Operating Without Permit.

Every person, firm or corporation, other than a steam, street or interurban railway company, engaging in the business of carrying or transporting any passengers for hire in any motor propelled vehicle along or over any public street, road or highway or carrying or transport-

ing any passengers for hire along or over any public street, road or highway in any city of the first class, and every street or interurban railway or transportation company engaging in the business of transporting passengers for hire in any motor propelled vehicle except street-cars, without having first obtained and having a permit so to do as in this act provided shall be guilty of a gross misdemeanor. [L. '15, p. 229, § 4.]

§ 6386. [5562-41.] Partial Invalidity.

If any part of this act be held invalid by any court, the remainder of this act shall nevertheless be valid. [L. '15, p. 229, § 5.]

§ 6387. Definitions.

(a) The term "corporation" when used in this act means a corporation, company, association, or joint stock association.

(b) The term "person" when used in this act means an individual, a firm or a copartnership.

(c) The term "commission" when used in this act means the public service commission of the state of Washington, or the director of public works or such other board or body as may succeed to the powers and duties now held by the public service commission.

(d) The term "auto transportation company" when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails used in the business of transporting persons, and, or, property for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town: Provided, that the term "auto transportation company," as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever in so far as they own, control, operate or manage taxicabs, hotel buses, school buses, motor-propelled vehicles, operated exclusively in transporting agricultural, horticultural, or dairy or other farm products from the point of production to the market, or any other carrier which does not come within the term "auto transportation company" as herein defined.

(e) The term "public highway" when used in this act means every street, road, or highway in this state.

(f) The words "between fixed termini or over a regular route," when used in this act, mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor-propelled vehicle, even though there may be departures from said termini or route, whether such departures be periodic or irregular. Whether or not any motor-propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route" within the meaning of this act shall be a question of fact and the finding of the "commission" thereon shall be final and shall not be subject to review. [L. '21, p. 338, § 1.]

§ 6388. Compliance With Act Necessary.

No corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any motor-propelled vehicle for the transportation of persons, and, or, property, for compensation on any public highway in this state, except in accordance with the provisions of this act. [L. '21, p. 339, § 2.]

§ 6389. Regulation of Auto Transportation by Public Service Commission.

The "commission" of the state of Washington is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every auto transportation company in this state as such to fix, alter and amend just, fair, reasonable and sufficient rates, fares, charges, classifications, rules and regulations of each such auto transportation company; to regulate the accounts, service and safety of operations of each such auto transportation company; to require the filing of annual and other reports and of other data by such auto transportation companies; and to supervise and regulate auto transportation companies in all other matters affecting the relationship between such auto transportation companies and the traveling and shipping public. The commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this act, applicable to any and all such auto transportation companies; and within such limits shall have power and authority to make orders and to prescribe rules and regulations affecting auto transportation companies.

The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which it shall be proven that such holder willfully violates or refuses to observe any of its proper orders, rules or regulations, suspend, revoke, alter or amend any certificate issued under the provisions of this section, but the holder of such certificates shall have all the rights of rehearing, review and appeal as to such order of the commission as is provided for in section 6392. [L. '21, p. 340, § 3.]

Jurisdiction of public service commission over jitney buses. 9 A. L. B. 1011.

§ 6390. Certificate of Public Convenience and Necessity.

No auto transportation company shall hereafter operate for the transportation of persons and, or, property for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under the provisions of this act a certificate declaring that public convenience and necessity require such operation; but a certificate shall be granted when it appears to the satisfaction of the commission that such person, firm or corporation was actually operating in good faith, over the route for which such certificate shall be sought on January 15, 1921. Any right, privilege, certificate held, owned or obtained by an auto transportation company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after

hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this act, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, and in all other cases with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require. [L. '21, p. 341, § 4.]

§ 6391. Liability and Property Damage Insurance.

The commission shall in the granting of certificates to operate any auto transportation company, for transporting persons, and, or, property, for compensation require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each motor-propelled vehicle used or to be used in transporting persons, and, or property, for compensation, in the amount of not to exceed five thousand dollars for any recovery for personal injury by one person and not less than ten thousand dollars and in such additional amount as the commission shall determine, for all persons receiving personal injury by reason of one act of negligence and not to exceed one thousand dollars for damage to property of any person other than the assured, and maintain such liability and property damage insurance or surety bond in force on each motor propelled vehicle while so used, each policy for liability or property damage insurance or surety bond required herein, shall be filed with the commission and kept in full force and effect and failure so to do shall be cause for the revocation of the certificate. [L. '21, p. 341, § 5.]

§ 6392. Applications, Complaints, Hearings, Appeals, etc.

In all respects in which the commission has power and authority under this act, applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review, to the superior court filed therewith, appeals or mandate filed with the supreme court of this state, considered and disposed of by said courts in the manner, under the conditions and subject to the limitations and with the effect specified in the public service commission law of this state. [L. '21, p. 342, § 6.]

"This act" refers to this chapter.

§ 6393. Penalty for Violation.

Every officer, agent or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any provisions of this act, or who fails to obey, observe or comply with any order, decision, rule or regulation, director, demand or requirement, or any part of provision thereof, is

guilty of a gross misdemeanor and punishable as such. [L. '21, p. 342, § 7.]

"This act" refers to this chapter.

§ 6394. Scope of Act.

Neither this act nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this Union except in so far as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress. [L. '21, p. 343, § 8.]

"This act" refers to this chapter.

§ 6395. Fee Required.

Every auto transportation company now operating or which shall hereafter operate in this state shall at the time of the issuance of such certificate, and annually thereafter on or between April 1st and April 15th of each calendar year, pay a minimum fee of ten dollars for each motor-propelled vehicle used by such company for the transportation of persons and if the passenger seating capacity of such vehicle exceeds eight passengers a further fee computed on the basis of fifty cents per passenger for such additional seating capacity shall be paid. For each motor-propelled vehicle used by any such company for transporting property for hire every such company shall pay a minimum fee of ten dollars at the time and in the manner aforesaid, and if the rated capacity of any such vehicle exceeds three tons, an additional fee computed on the basis of one dollar for each additional rated ton capacity shall be paid.

For each motor-propelled vehicle used by any such company for transporting both persons and property simultaneously, the fee shall be computed on the basis of either tonnage or passenger capacity, and the basis which will yield the greater revenue shall apply.

If the certificate herein referred to is issued after the month of April of any year, the fees paid shall be proportionate to the remaining portion of the year ending March 31st, but in no case less than one-fourth the annual fee.

In case of emergency, or unusual temporary demands for transportation, the fees for additional motor-propelled vehicles for limited periods shall be fixed by the commission in such reasonable amounts as may be prescribed by general rule or temporary order.

All sums collected hereunder shall be turned over by the commission to the state treasurer within thirty days after their receipt and by him credited to the public service revolving fund. [L. '21, p. 343, § 9.]

"This act" refers to this chapter.

§ 6396. Partial Invalidity.

If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portion of this act. [L. '21, p. 344, § 10.]

"This act" refers to this chapter.

§ 6397. Effect of Act.

This act shall not repeal any of the existing law or laws, relating to motor-propelled vehicles, their owners or operators, or requiring compliance with any condition for their operation. [L. '21, p. 344, § 11.]

"This act" refers to this chapter.

CHAPTER V.**CONTROL AND MANAGEMENT OF COUNTY ROADS.**

Franchises and rights in: See *infra*, §§ 6430—6440.

§ 6398. [5575.] County Commissioners to have General Supervision.

The boards of county commissioners of the several counties in the state shall have general supervision over the roads in their respective counties. They must cause to be opened and worked such roads as are necessary for public convenience, which have been laid out and established according to law; levy such taxes for road and bridge purposes as are by law provided for; order and direct road supervisors especially in regard to work to be done on particular roads in their districts; in their discretion cause to be erected and maintained on such public roads as they may designate, guide-posts, properly inscribed; in their discretion let out by contract to the lowest bidder, the construction or improvement of any road or bridge on the public roads, when the expense of such construction or improvement will exceed the sum of fifty dollars; remove any road supervisor for inefficiency or neglect of duty or malfeasance in office; order such warrants drawn on the county treasurer and payable out of the funds to the credit of any district as are necessary to pay for labor performed in said district under the direction of the road supervisor, except such work as may be performed by residents of the district in payment of road poll tax or property road tax as hereinafter provided. [L. '90, p. 619, § 3; 1 H. C., § 1936; L. '93, p. 149, § 3.]

For former laws on this subject see L. '54, pp. 341—357; L. '55, pp. 48—52; L. '57, pp. 35—46; L. '59, pp. 7—18, and L. '59, p. 24, military roads; L. '60, p. 329; L. '63, pp. 509—520; L. '67, pp. 11—22; L. '68, pp. 5—17; L. '69, pp. 266—290; L. '71, pp. 31—34; L. '75, p. 117, §§ 1 and 24; L. '77, pp. 315—317; L. '79, pp. 49—61; Cd. '81, §§ 2970—3001; L. '81, pp. 9, 10; L. '83, pp. 40—42; L. '88, p. 195.

See *infra*, § 6447, and notes, laying out and opening county roads.

Cited in 7 Wash. 115; 20 Wash. 113; 22 Wash. 108; 34 Wash. 505; 38 Wash. 110; 45 Wash. 492; 50 Wash. 330; 60 Wash. 317; 68 Wash. 235; 85 Wash. 495; 106 Wash. 24, 25; 108 Wash. 426.

REGULATION AND USE FOR TRAVEL—Obstructions and Encroachments: See Remington's Digest, High., §§ 42—50, and cases cited.

Injuries from Defects or Obstructions: See Remington's Digest, High., §§ 61—68, and cases cited. See, also:

§ 61. Duty of County—Sidewalks: Bullock v. Yakima Valley Transportation Co., 108 Wash. 413, 184 Pac. 641, 187 Pac. 410.

§ 62. Negligence—Proximate Cause—Evidence—Sufficiency: Dillabough v. Okanogan County, 105 Wash. 609, 178 Pac. 802.

—Obstructions—Lights and Barriers—Question for Jury: Brengman v. King County, 107 Wash. 306, 181 Pac. 861.

—Negligence—Failure to Erect Barrier or Warning Sign—Evidence—Sufficiency: Wessels v. Stevens County, 110 Wash. 196, 188 Pac. 490.

§ 64. Notice to County—Photographs—Admissibility: Bullock v. Yakima Valley Transportation Co., 108 Wash. 413, 184 Pac. 641, 187 Pac. 410.

— Injuries to Travelers—Notice of Defects: Mead v. Chelan County, 112 Wash. 97, 191 Pac. 825.

§ 65. Contributory Negligence: Dillabough v. Okanogan County, 105 Wash. 609, 178 Pac. 802.

— Apparent Dangers — Evidence — Sufficiency: Mead v. Chelan County, 112 Wash. 97, 191 Pac. 825.

§ 66. Duty of County—Sidewalks: Bullock v. Yakima Valley Transportation Co., 108 Wash. 413, 184 Pac. 641, 187 Pac. 410.

§ 67. Negligence — Evidence — Sufficiency: Dillabough v. Okanogan County, 105 Wash. 609, 178 Pac. 802.

— Lights and Barriers—Question for Jury: Brengman v. King County, 107 Wash. 306, 181 Pac. 861.

— Failure to Erect Barrier or Warning Sign—Evidence—Sufficiency: Wessels v. Stevens County, 110 Wash. 196, 188 Pac. 490.

Construction, Improvement and Repair, and Contracts Therefor: See Remington's Digest, Highways, §§ 31—36, and cases cited.

This section reposes a discretion with the commissioners to contract therefor with or without bids; and a contract exceeding \$50 is valid without being let to bids: Giffin v. King County, 50 Wash. 327, 97 Pac. 230.

A county is liable for negligence in failing to maintain county sidewalks in proper repair: Bullock v. Yakima Valley Transportation Co., 108 Wash. 413, 184 Pac. 641, 187 Pac. 410.

§ 6399. [5576.*] Road Districts.

The board of county commissioners shall, as often as they deem it necessary, but not oftener than once each year, form their respective counties or any part thereof into one or more suitable and convenient road districts, not exceeding nine in number, and cause a description thereof to be entered upon the county records: Provided, that the size and form of each road district shall be such as to permit personal oversight and management by one road supervisor. [L. '19, p. 390, § 1; L. '07, p. 679, § 1. Cf. L. '03, p. 224, § 7; and references to next section.]

Cited in 1 Wash. 484, 485; 7 Wash. 115; 20 Wash. 113, 264; 22 Wash. 108; 106 Wash. 25.

The board of county commissioners may make the whole county outside of cities one road district, under this section; "divide" being used in the sense

of create, in the absence of any minimum limit; as the act superseded any limitation by prior statutes making each county commissioner a commissioner of roads in his own district: Spokane, Portland & Seattle R. Co. v. Franklin County, 106 Wash. 21, 179 Pac. 113.

§ 6400. [5577.*] County Commissioner Ex-officio Road Commissioner.

Each county commissioner shall be ex-officio road commissioner of the several road districts in his commissioner district, and shall see that all of the orders of the board of county commissioners pertaining to roads in his district are properly executed: Provided, when in any county the members of the board of county commissioners are not elected by districts, it shall be the duty of the board of county commissioners, by proper order to be entered on its records, to divide such county into commissioners' districts to correspond with the number of members of such board, and to assign to each member of the board one of such districts, of which he shall be such road commissioner: Provided, that for time actually spent in the performance of their duties as road commissioners they shall be entitled to the same compensation as is provided by law for their services as county commissioners: Provided, however, that the compensation provisions of this act shall not apply to county commissioners whose annual salaries are fixed by law. [L. '21, p. 580, § 1; L. '90, p. 617, § 1; 1 H. C., § 1937; L. '93, p. 147, § 1.]

"This act" seems to refer to §§ 6398—6400, 6402 and 6403.

See infra, § 11116, boundaries of to conform to school districts.

Cited in 106 Wash. 25, 26.

§ 6401. [5578.*] Road Supervisors—Appointment, Compensation, etc.

The board of county commissioners may appoint from among the qualified electors in each county for such time as they may determine, with per diem compensation, to be fixed by the board, for time and labor actually performed, a sufficient number of road supervisors, to be determined by the board, who shall enter into bonds satisfactory to the commissioners: Provided, however, that in counties wherein any road district has a good roads association, the membership of which shall own not less than seventy-five per cent in area of the land contained within the district, then the road supervisor, for such district, shall be appointed from a list of not less than four names furnished by such association. [L. '19, p. 103, § 1. Cf. L. '15, p. 340, § 1. Cf. L. '01, p. 276, § 12; L. '03, p. 225, § 12; L. '07, p. 680, § 2.]

Cited in 72 Wash. 479.

Appointment, Qualification and Tenure of Office: See Remington's Digest, High., § 29; State ex rel. O'Connell v. Nelson,

7 Wash. 114, 34 Pac. 562; State ex rel. Griffith v. Newland, 37 Wash. 428, 79 Pac. 983.

§ 6402. [5579.] Supervisors—Bond and Oath of Office.

All road supervisors elected or appointed under the provisions of this chapter shall give their official bond in such sum as the board of county commissioners may fix, conditioned that they will faithfully perform all duties required by law or the orders of the county commissioners, and that they will account for all moneys received by them in their official capacity, and they shall take the usual oath of office. The bond and oath of office required to be filed by road supervisors shall be filed within twenty days after they receive notice of their election or appointment from the county auditor, and when such bond and oath of office is filed and the bond approved by the county auditor as clerk of the board of county commissioners, the county auditor shall furnish to each road supervisor a certificate that such bond and oath of office has been filed and the bond approved, and such certificate shall authorize the person to whom it is issued to perform the duties and exercise the powers of road supervisor for the district in and for which he has been elected or appointed. [L. '90, p. 618, §§ 2—4; 1 H. C., §§ 1938, 1939; L. '93, p. 148, § 2; L. '95, p. 422, § 13.]

All or parts of this section may be superseded, but portions are retained.

Cited in 7 Wash. 115.

§ 6403. [5580.] Duties of Supervisor.

The road supervisor must take charge of all the public roads in his district, and keep them clear from obstructions, and in good repair, and destroy or cause to be destroyed, at least once a year, all Canada, Chinese and bull thistles or other noxious weeds growing or being on any of the roads in his district; he shall have general supervision of all work ordered done in his district by the board of county commissioners, [and shall apply such labor as may be due the district from persons entitled to perform labor on the roads in such district in payment of such taxes as are provided may be paid in labor by residents of the district, in the manner most conducive to the interest of the district and in the way to get the

best results from such labor]. [L. '90, p. 62, § 5; 1 H. C., § 1940; L. '93, p. 150, § 4.]

See supra, § 2718, penalty for fast driving on road or bridge.

See supra, § 2719, penalty for using traction engines on highways.

See supra, §§ 2764, 2765, duty as to noxious weeds on private property.

See infra, § 9927, public nuisance to obstruct highway.

Cited in 20 Wash. 264; 34 Wash. 595; 45 Wash. 592.

Wash. 105, 80 Pac. 435; State ex rel. Spring Water Co. v. Monroe, 40 Wash. 545, 82 Pac. 888; Tukwila v. King County, 99 Wash. 439, 169 Pac. 824.

Authority, Powers and Proceedings:
See Remington's Digest, High., § 30;
Robertson v. King County, 20 Wash. 259,
55 Pac. 52; Lincoln County v. Fish, 38

See, also, Spokane, Portland & Seattle R. Co. v. Franklin County, 106 Wash. 21, 179 Pac. 113.

§ 6404. [5581.] Road Supervisors to Destroy Thistles on Highway.

It shall be the duty of each supervisor of roads in each road district under the same penalties, for noncompliance as prescribed in section 2760, to call out a sufficient number of laborers to cut down and destroy any Chinese or Canada thistles found growing in the public highways in his road district; said supervisor to have said thistles cut down and destroyed before the seed shall have matured, and said supervisor shall credit each and every person or laborer so called out with the amount of labor so performed at the rate of two dollars per day on his road tax: Provided, that the counties of Cowlitz, Skamania, Pacific, Clarke, and Wahkiakum shall not be included in the provisions of this chapter. [Cd. '81, § 2239; 1 H. C., § 2425.]

See supra, § 6403, duty of road supervisor to destroy Canada thistles.

The extent to which this section is superseded by later laws is not entirely clear.

§ 6405. [5582.] To Destroy Noxious Weeds.

Each road supervisor shall destroy all noxious weeds and prevent the same from going to seed, in the highways of his district and shall be paid therefor in the same manner as in doing other work upon the public highways. [L. '99, p. 75, § 7; L. '07, p. 161, § 9.]

See the two preceding sections.

See supra, §§ 2764, 2765, duty as to weeds on private property. See, also, note to § 2770.

See supra, § 2769, these duties by whom performed in cities and towns.

§ 6406. [5583.] Duties of Road Supervisors.

It shall be the duty of the road supervisor, under the direction of the county commissioners, to keep the roads and bridges in his district in as good repair as the funds available will allow, and keep all roads open for travel at all times, and make a detailed monthly report of all work performed in his district during the previous month to the board of county commissioners; examine and certify all bills for labor and material in his district; and perform such other duties as may be required by the commissioners for the proper maintenance of the highways. [L. '01, p. 276, § 13; L. '03, p. 225, § 13.]

§ 6407. [5584.] Meeting of Supervisors—Work Outlined.

The county engineer and the supervisors of the several road districts shall meet with the county commissioners on the first Tuesday of the

board's regular session in April, to outline the road improvements to be made. [L. '01, p. 276, § 14; L. '03, p. 225, § 14.]

"Engineer" substituted for "surveyor."

§ 6408. [5585.] Expenditure of Funds.

All the funds in the county treasury raised by the taxation herein provided shall be expended by the county commissioners and all road and bridge construction, improvements or repairs shall be made by the county commissioners in the following manner:

First. All road construction, improvement or repairs of which the estimated cost shall be under two thousand five hundred dollars, and all bridge construction, improvement or repairs of which the estimated cost shall be under five hundred dollars, may be done under the direction of the county commissioners and the county engineer.

Second. All road construction, improvement or repairs, of which the estimated cost shall be two thousand five hundred dollars or more shall be let by contract by the county commissioners on plans and specifications previously prepared by the county engineer under the direction of the board of county commissioners to the lowest and best bidder; calls for said bids to be made by publication in the official county paper for not less than three consecutive weeks prior to the time set by the county commissioners for the opening of bids: Provided, that in any county having no official county paper, such notice shall be given by posting for ten days a notice in three of the most public places in such counties. The county commissioners shall require a bond of the successful bidder for the full amount of the contract price of construction, improvement or repair of roads conditioned for the faithful performance of the contract according to law, and any requirements the county commissioners may impose at the time of advertising for bids. The board of county commissioners shall have the right to reject any and all bids, and in the event of the rejection of all bids, said board of county commissioners may in its discretion, by a unanimous vote, cause such road construction, improvement or repairs to be made by day labor or force account according to the plans and specifications: Provided further, that the board of county commissioners may in its discretion provide for the surfacing of any road with crushed rock, macadam, gravel or other material by day labor or force account without advertising for bids as herein provided.

Third. All bridge construction, improvement or repair, of which the estimated cost shall be five hundred dollars or more except in case of emergency as hereinafter provided, shall be let by contract by the board of county commissioners in the same manner as provided for road construction, improvements or repairs under this section: Provided further, that in the event of an emergency whereby the delay of advertising for and letting bids would endanger property and unduly cut off communication by travel over such bridge, such contract may be made and entered into without the publication of notice as herein provided.

Fourth. Each bidder shall deposit with his bid a certified check in an amount equal to five per cent of his bid. Should the bidder to whom the contract is awarded fail to enter into a contract with the commissioners and furnish the bond hereinbefore provided within five days after notice

of such award, the amount of said check shall be forfeited to the general road and bridge fund of the county. [L. '11, p. 308, § 1. Cf. L. '01, p. 276, § 15; L. '03, p. 225, § 15.]

Cited in 60 Wash. 317; 68 Wash. 211, 235.

When no emergency exists excusing the county commissioners from letting a bridge contract without competitive bids, within the contemplation of this section: *Green v. Okanogan County*, 60 Wash. 309, 111 Pac. 226.

§ 6409. [5586.] Payments Limited Until Work Completed.

No money shall be paid by the county commissioners to exceed seventy-five per cent of the value of any work done at any time until the entire work is completed by the contractor approved by the county engineer and accepted by the commissioners. [L. '01, p. 278, § 16; L. '03, p. 226, § 16.]

§ 6410. [5587.] Transfer of Funds to New District.

After the establishment of the districts as herein provided, the county treasurer shall transfer all funds to the credit of the several road districts now existing to the road and bridge fund of the respective district in which the present road districts are situated, and such newly created districts shall assume all liabilities and indebtedness of the present road districts situated within their respective limits. [L. '03, p. 227, § 17.]

§ 6411. [5588.] Disposition of Certain Road Taxes.

In all cases where the treasurer of any county in this state has heretofore collected, or may hereafter collect, taxes, penalty and interest levied and assessed for road purposes on the taxable property of any road district, or any portion thereof, which has been included within the limits of any municipal corporation organized subsequently to said road district, said funds realized from said taxes, penalty and interest so collected, or so much thereof as has been collected, from the taxable property within the territory subsequently included in a city or town, which funds shall not have been paid out or expended before the organization of said city or town shall, upon demand of said city or town, be paid over to said municipal corporation, and shall be applied by the authorities of the same for street purposes. [L. '97, p. 296, § 1.]

§ 6412. [5589.] Taxes Applied, How and to What Purpose.

The proceeds from all taxes provided by this act for any road district shall be applied, under the direction of the road supervisor of said road district, only to the building and maintaining of public roads and bridges within said road district: Provided, that when so decided by a majority vote of all of the electors of said road district, such part of said taxes as may be so decided may be expended in an adjoining road district. [L. '95, p. 420, § 5.]

CHAPTER VI.

LEVY AND COLLECTION OF ROAD TAXES.

§ 6413. [5590-1.] Levy — General Road and Bridge Fund — District Funds.

For the purpose of raising revenue for the construction, maintenance and repair of county roads, bridges and wharves the board of county com-

missioners shall annually at the time of making the levy for general county purposes make additional levies as follows: .

(a) A tax of not more than four mills on the dollar on all taxable property in the county, which tax shall be kept in a fund known as the "General Road and Bridge Fund," and shall be kept separate and distinct from any other funds of the county.

(b) A tax of not more than ten mills on the dollar on all taxable property in each road district previously established by the board, which tax shall be kept separate and distinct from other funds of the county in a fund for each road district known as "Road District No. — county": Provided, that the county treasurer of each county shall remit to the city or town treasurer of each incorporated city and town within such county, fifteen per cent of all money collected for the general road and bridge fund in such city or town, and said moneys so remitted shall be expended by the corporate authorities of such city or town on roads and bridges within said city or town connecting with roads leading out into the country known or designated as county roads. [L. '15, p. 545, § 1. Cf. L. '13, p. 476, § 1.]

TAXES, ASSESSMENTS AND WORK ON HIGHWAYS: See Remington's Digest, High., §§ 37, 38; Tacoma Land Co. v. Pierce County, 1 Wash. 482, 25 Pac. 904; Seanor v. County Commissioners, 13 Wash. 48, 42 Pac. 552; Denton v. Walla Walla County, 50 Wash. 77, 96 Pac. 824; Walla Walla County v. Oregon R. & Nav. Co., 40 Wash. 398, 82 Pac. 716. See, also, Spokane, Portland & Seattle R. Co. v. Franklin County, 106 Wash. 21, 179 Pac. 113.

§ 6414. [5590-2.*] General Expenditures—Limitations.

The expenditures from the general road and bridge fund shall be made only for the purpose of constructing, maintaining and repairing such county roads, bridges and wharves which are or will be main thoroughfares or lines of travel for all the inhabitants of the county, and for the purpose of purchasing, operating and maintaining machinery, quarries and gravel-pits used in such construction, maintenance and repair and all bridges herein mentioned shall include all bridges of over twenty (20) feet in length when constructed of wood or over ten feet when constructed of concrete in counties that have or may hereafter adopt township organization. [L. '17, p. 206, § 1. Cf. L. '13, p. 476, § 2.]

§ 6415. [5590-3.*] Expenditures from District Funds.

The expenditures from the road district funds shall be made only for the purpose of constructing, maintaining and repairing such roads, bridges and wharves as are situated within the road district and which shall be in the nature of branch roads or feeders to the main highways passing through the district, and for the further purpose of purchasing, operating and maintaining machinery and equipment used in such construction, maintenance and repair within the district. [L. '17, p. 206, § 2. Cf. L. '13, p. 477, § 3.]

§ 6416. [5590-4.] General Provisions Applicable.

All of the taxes provided for in this act shall be levied and collected by the same officers and in the same manner as taxes levied for the county current expense fund and shall be disbursed by the same officers and in the same manner as taxes levied for the county current expense fund ex-

cept that fifteen per cent of all taxes levied and collected for the general road and bridge fund within the corporate limits of any incorporated city or town shall be disbursed by the corporate authorities of such city or town as in section 6413 provided. [L. '15, p. 545, § 2. Cf. L. '13, p. 477, § 47.]

"Act" refers to this chapter.

§ 6417. [5590-5.] Indebtedness—Limit.

The board of county commissioners shall have no power to create a debt or incur any liability, or in any way bind the county for any of the purposes mentioned in sections 6414 and 6415, for any amount in excess of eighty per centum of the amount levied in the fiscal year for either the general road and bridge fund or any of the district road and bridge funds, unless after deducting such eighty per centum there is cash in the particular fund against which the liability is incurred: Provided, however, that in case of an unforeseen catastrophe which could not have been anticipated at the time the estimates were computed for such fiscal year, the board of county commissioners shall have authority, after passing a resolution setting out the facts, to issue warrants, which together with the cash on hand, will be sufficient to take care of the particular case, but the amount of such warrant indebtedness shall be included in the levy for the fund against which such warrants are drawn made for the next succeeding fiscal year. All contracts, authorizations, allowances, payments and liabilities to pay, made or attempted to be made in violation of this act shall be void and shall never be the foundation or basis of a claim against a county, and all officers of such county are charged with notice of the condition of the treasury of said county and the extent of the claims against the same. All county commissioners, county auditors, county treasurers and any other officers authorizing or aiding to authorize, or auditing, or allowing any claim or demand upon or against such county, or any fund thereof, in violation of any of the provisions of this act, shall be liable in person and upon their several official bonds to the county of which they are officers, or to the person or persons, corporation or corporations, damaged by such illegal authorization to the extent of his or its loss by reason of the nonpayment of the claim. [L. '13, p. 477, § 5.]

§ 6418. [5590-6.] Warrants—Validation.

All warrants outstanding issued prior to January 1, 1913, by any county of the state against either the general road and bridge fund or any district road and bridge fund are hereby validated in so far as such warrants are invalid because of the fact that the board of county commissioners did not have authority to create any indebtedness for road and bridge purposes. [L. '13, p. 478, § 6.]

§ 6419. [5590-7.] Special Indebtedness Fund.

In any of the counties which, on the first day of January, 1913, had a warrant indebtedness in any of the road and bridge funds there is hereby created a special indebtedness fund which shall be designated as follows: "Special General Road and Bridge Indebtedness Fund, —"

County," and "Special District Road and Bridge Fund of District No. —, — County." All warrants outstanding on the 1st of January, 1913, shall be transferred to and paid out of the special indebtedness funds hereby created. All uncollected taxes levied for the year 1912 and prior years, either for general road and bridge purposes or district road and bridge purposes, shall be credited as they are collected to the special indebtedness fund or the fund for which such taxes were levied. [L. '13, p. 478, § 7.]

§ 6420. [5590-8.] Indebtedness—Special Levies.

At the time of making the levy in October, 1913, for road and bridge purposes, the board of county commissioners of each county which on the first day of January, 1913, had any outstanding warrants against the general road and bridge fund, or any district road and bridge fund, shall make a levy of six mills on the dollar on all the taxable property in the county or district for each special indebtedness fund hereby created, or so much thereof as shall be necessary to pay the warrants with accrued interest in each indebtedness fund. The board of county commissioners shall continue to make such special levies in each succeeding year until all of the warrants in each special indebtedness fund are paid. When all of the warrants in each indebtedness fund are paid, with accrued interest, such fund shall be extinguished and the surplus, if any, together with all credits accruing thereto, shall be transferred to the regular general road and bridge fund or district road and bridge fund. [L. '13, p. 479, § 8.]

§ 6421. [5590-9.*] Validation of Warrants and Obligations.

If the officials of any county in this state have issued or paid any warrants upon or incurred any obligations against any of the road funds during the fiscal years of 1913, 1914, 1915 and 1916, which are in violation of section 6417, said warrants and unpaid obligations in the order of the time that they were issued, paid and incurred are validated. [L. '17, p. 193, § 1. Cf. L. '15, p. 480, § 1.]

§ 6422. [5590-10.*] Payment of Validated Warrants.

The county treasurer is authorized to pay the warrants heretofore or hereafter issued on said obligations out of any cash in the particular fund and the balance, if any, of said warrants may be paid out of the 1916 levy, but the amount of such latter payments shall be added to the obligation incurred during the year 1917 in determining when eighty per centum of the tax levy for the fiscal year has been expended, and in case there shall not be sufficient money in any such fund derived from the 1916 levy to pay said balance, then and in that event, any balance remaining unpaid may be included in and paid out of the 1917 levy. [L. '17, p. 193, § 2. Cf. L. '15, p. 480, § 2.]

CHAPTER VII.

PURCHASE OF QUARRIES FOR COUNTY ROAD BUILDING.

§ 6423. [5603.] Right to Acquire—Condemnation.

The board of county commissioners of any county of this state may, out of the general road and bridge fund, acquire, by gift, purchase or condemnation, quarries of suitable road-building material and land containing deposits of suitable road-building gravel. In the event the county commissioners shall deem it expedient to acquire by condemnation, quarries of suitable road-building material or land containing deposits of suitable road-building gravel as contemplated by this chapter, then and in such case the proceedings to be taken shall be in accordance with the provisions of Chapter X of this title, providing for viewing, laying out, surveying and establishing county roads so far as such provisions shall be applicable: Provided, however, that the board of county commissioners of any county, in the name of such county shall have the power to commence proceedings under and pursuant hereto, of its own initiative and without the petition of any freeholders. [L. '07, p. 24, § 1; L. '09, Ex. Sess., p. 55, § 1.]

See *infra*, § 6852 et seq., quarries for state road building.

§ 6424. [5604.] Purchase of Machinery—Disposal of Surplus Product.

Said board of county commissioners are also authorized to purchase and operate, out of the general road and bridge fund, or district road fund, rock-crushing appliances and machinery, and all crushed rock and gravel not directly used or needed by such county in the construction, alteration, repair or maintenance of county roads may be sold at actual cost of production by said county commissioners to any person, firm or corporation, to be only used, however, in the construction, alteration, repair or maintenance of county roads, or used in the construction, alteration, repair or maintenance of any street or streets of any city or town in said county which directly connect with any county road. Provided, however, that the board of county commissioners of any county may sell and dispose of any surplus crushed rock or gravel at actual cost of production to any city or town of such county, to be used in the construction or improvement of any street, parkway, boulevard or public place of such city or town. [L. '07, p. 24, § 2.]

§ 6425. [5605.] Disposition of Proceeds.

All proceeds of sale of crushed rock or gravel shall be paid into the general road and bridge fund or district road fund depending upon whether such quarries or gravel beds have been acquired and operated out of said respective funds. [L. '07, p. 25, § 3.]

CHAPTER VIII.

ACCEPTANCE OF RIGHTS OF WAY.

§ 6426. [5607.] Right of Way—Acceptance by Commissioners.

The boards of county commissioners in their respective counties in this state are hereby authorized and empowered to accept the grant of

rights of way for the construction of highways over public lands of the United States, not reserved for public uses, contained in section 2477 of the Revised Statutes of the United States, and said rights of way shall not be less than thirty feet in width nor more than sixty feet in width as said boards of county commissioners shall determine and such acceptance shall be by resolution of such county commissioners spread upon the records of their proceedings: Provided, that nothing herein contained shall be construed to invalidate the acceptance of such grant by general public use and enjoyment, heretofore or hereafter had. [L. '03, p. 155, § 1.]

Cited in 51 Wash. 648, 649, 654; 76 Wash. 276.

Construction of This Section: See Remington's Digest, Highways, § 2; Smith v. Mitchell, 21 Wash. 536, 58 Pac. 667, 75 Am. St. Rep. 858; Okanogan County v. Cheetham, 37 Wash. 682, 80 Pac. 262, 70 L. R. A. 1027 (overruled in McAllister v. Okanogan County, 51 Wash. 617, 100 Pac. 146, 24 L. R. A. (N. S.) 764).

Grants in Aid of Particular Improvements: See Remington's Digest, Pub. Lands, § 33-1; Stofferan v. Okanogan County, 76 Wash. 265, 136 Pac. 484.

Necessity and sufficiency of acceptance of grant of right of way over public land for highway.
L. R. A. 1917A, 355.

§ 6427. [5608.] Former Acceptances Ratified.

The action heretofore of boards of county commissioners in their respective counties purporting to accept the grant of such rights of way for the construction of highways, is hereby approved, ratified and confirmed and all such highways shall be deemed duly laid out county roads and such boards of county commissioners may at any time by recorded resolution cause any of such highways to be opened and improved for public travel. [L. '03, p. 156, § 2.]

Cited in 76 Wash. 276.

CHAPTER IX.

FRANCHISES AND RIGHTS IN HIGHWAYS.

§ 6428. [5609.] Tram Roads—Commissioners may Grant Franchise for.

The county commissioners of the several counties of this state may grant to persons, companies or corporations the right to build and maintain tram roads upon the public highways under such regulations and conditions as said county commissioners may prescribe. [L. '01, p. 192, § 1.]

Franchises on state roads, see *infra*, §§ 6835, 6836.

§ 6429. [5610.] Limit of Space of Highway to be Used.

Such tram road shall not occupy more than eight feet of the public highway upon which the same is built and shall not be built upon the track of travel nor in such way as to interfere with the public travel upon such public highways: Provided, that nothing contained in this act shall be construed to prevent county commissioners from granting franchises for electric railways upon public highways. [L. '01, p. 192, § 2.]

"Act" refers to this and the preceding section.

§ 6430. [5611.] Franchise for Water-pipe Lines.

The county commissioners of the several counties in this state may grant to persons, companies, or corporations the right to lay down, maintain and operate in, along and upon any and all of the streets, alleys, public places and public highways within their respective counties, without the limits of incorporated cities and towns, pipes and conduits for the purpose of conducting water and maintaining and operating water systems for public or private purposes, under such regulations and conditions as such county commissioners may prescribe: Provided, that no such grant or franchise shall be made for a period exceeding twenty-five years, and in all cases shall contain a provision that in the event the territory covered by the grant shall at any time during the franchise period be included within any incorporated city or town the authorities of said city or town shall have the right, to be exercised in their discretion, to acquire by purchase or condemnation any or all of such pipes, conduits and water systems at a price to be based upon the reasonable value of same at that time without any additional value for the franchise, or any unexpired period thereof, and upon such acquirement the said grant or franchise shall immediately terminate. [L. '07, p. 600, § 1.]

This section supersedes or affects the next section as far as water-pipes are concerned.

See *infra*, § 11488, water companies must acquire franchises from cities.

§ 6431. [5612.] Grant of Franchises on Public Roads.

The county commissioners of the several counties in the state of Washington are hereby authorized and empowered to grant franchises to persons or corporations to use the county roads and streets in their several counties outside of the incorporated towns and cities for the construction and maintenance of waterworks, gas-pipes, telephone, telegraph and electric light lines: Provided, that hereafter on application being made to the board of county commissioners for any such franchise, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county and in at least one conspicuous place on the roads or streets or parts thereof for which application is made, at least fifteen (15) days before the day fixed for such hearing, and by publishing a like notice three (3) times in some daily newspaper published in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five (5) days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time by the order of the board. If, after such hearing, the board shall deem it to be for the public interest to grant such franchise in whole or in part, the board may make and enter the proper order granting the franchise applied for or such part thereof as the board deems to be for the public interest, and may

require any such utility and its appurtenances to be placed in such location on or along the roads or streets as the board finds will cause the least interference with other uses of the roads or streets. Any person or corporation constructing or operating such utility on or along such county road or county street shall be liable to the county for all necessary expense incurred in restoring such county road or county street to a suitable condition for travel. This act shall be construed as an addition to existing laws and shall not limit powers or rights which may be exercised under existing laws: Provided, that no franchise shall be granted for a period of longer than fifty years: Provided further, no exclusive franchise or privilege shall be granted. [L. '05, p. 210, § 1.]

"Act" in this and the following section refers to §§ 6431—6433.

See note to previous section.

See *infra*, §§ 9034, 9038, 9039, 9175, franchises in cities.

Cited in 55 Wash. 196, 198, 201.

§ 6432. [5613.] Prior Grants Declared Valid.

Any and all grants, rights, privileges, franchises or powers heretofore made or attempted to be made, given or granted by the board of county commissioners of any county of this state, when such board was in regular or special session, and when the action of such board is shown by its records, to any person or corporation, to erect, construct, maintain or operate an electric railway or poles, pole lines, wires or any other matter or thing for the furnishing, transmission, delivery, enjoyment or use of electric energy; electric power, electric light, and telephone connection therewith, or any other matter or thing relating to said matters and things or either of them, or to lay or maintain pipes for the distribution of water, or gas, in, upon, along, through or over public roads and highways, or any public road or highway, outside the limits of incorporated cities and towns, be and they are hereby confirmed and declared to be valid to the extent that such road or highway has been, prior to the passage of this act, actually occupied by the bona fide construction and operation of such utility and no farther. [L. '05, p. 211, § 2.]

Cited in 55 Wash. 197.

This and the next section refer to grants made outside of city limits at the time of the attempted grant, and is not limited to franchises granted in ter-

ritory still under control of the county commissioners at the time of the passage of the act: *Spring Water Co. v. Monroe*, 55 Wash. 195, 104 Pac. 202.

§ 6433. [5614.] Granting of Certain Franchises Confirmed.

Said rights, power and grants so made or attempted to be made and hereby confirmed, shall have and be of the same force and effect as if the county commissioners in any county of this state, prior to the time of giving or granting said rights, privileges and franchises, had been specifically authorized and empowered to give and grant the same. [L. '05, p. 212, § 3.]

§ 6434. [5615.] Part of Highways may be Reserved for Bicycles and Pedestrians.

The board of county commissioners of any county may set aside and reserve part of any public road or highway in their respective counties

for the exclusive use of bicycles and pedestrians, or pedestrians only. The part so reserved shall not be less than four feet in width, and the improvement thereof shall be done under the direction of said board. [L. '15, p. 347, § 1. Cf. L. '97, p. 89, § 1.]

Cited in 34 Wash. 596.

§ 6435. [5616.] Penalty for Trespass upon.

Any person who shall drive any stock upon, or drive, propel or move any vehicle except a bicycle upon the part of such road or highway so set apart; or in any way obstruct or damage the same; or shall ride a bicycle upon the same when the same has been set aside for the use of pedestrians only, shall be guilty of a misdemeanor. [L. '15, p. 348, § 2. Cf. L. '97, p. 89, § 2.]

§ 6436. [5617.] Fines Collected, Disposition of.

All fines collected for violations of the provisions of the last two sections shall be paid into the "General Road and Bridge Fund" of the county where such misdemeanor is committed. [L. '15, p. 348, § 3. Cf. L. '97, p. 89, § 3.]

§ 6437. [5619.] Shade Trees—Right to Plant on Highways.

Any person or company wishing to plant and cultivate shade or ornamental trees on the public highways of the state of Washington may lawfully do so by planting the same in the said highways at a distance not greater than ten (10) feet from the lines dividing the land owned by them from the said highways when the said roads have a legal width of sixty (60) feet or more at a distance not greater than eight (8) feet from said dividing lines when said roads have a legal width of less than sixty (60) feet: Provided, that such trees shall not be lawfully planted where the entire width of the road is required for public use by reason of heavy cuts, fills, slopes or grades. [L. '03, p. 221, § 1.]

§ 6438. [5620.] Hedge Fences Along Highways.

It shall be lawful for any person or company to plant hedge fences on the line dividing their property from public highways and to use temporarily a strip of said highway not exceeding eight (8) feet in width for the protection and cultivation of such hedges and to maintain temporary fences within said strip for a period not exceeding four (4) years after the said hedges have been planted. [L. '03, p. 222, § 2.]

§ 6439. [5621.] Protection by Supervisors.

It is hereby directed to be the duty of road supervisors and overseers to protect trees and hedges now growing or which may be hereafter planted in the public highways of the state when such trees and hedges are located in conformity with the provisions of this act. [L. '03, p. 222, § 3.]

"Act" refers to §§ 6437—6440.

§ 6440. [5622.] Injury or Destruction—Penalty.

Willful injury to or destruction of shade or ornamental trees or hedges in or along the line of any public highway in the state of Wash-

ington is hereby declared to be a misdemeanor and the perpetrators of such injury shall be liable for each tree so injured or destroyed, to a fine not less than five dollars (\$5) nor more than fifty dollars (\$50) or to imprisonment in the county jail for not more than sixty (60) days or to both such fine and imprisonment. [L. '03, p. 222, § 4.]

§ 6441. County Toll-bridge Franchises.

Boards of county commissioners are hereby authorized to grant franchises to persons or corporations for the construction, operation and maintenance of toll-bridges, outside of incorporated cities and towns, over and across streams within their respective counties, and over and across streams which are boundaries of counties. [L. '19, p. 226, § 1.]

Necessity of franchise for taking tolls on bridges. 37 L. E. A. 715.

§ 6442. Terms of Franchise.

Such franchise shall be granted for any period not exceeding fifty years, and shall be upon such terms and conditions as the commissioners shall require. The franchise shall specify and require the following:

(1) The kind and character of the bridge to be erected and the time within which the work must be undertaken and completed.

(2) The tolls to be charged, which shall in all cases be reasonable and just and subject to regulation and change by the public service commission of the state of Washington after a hearing.

(3) That such bridge may, at the option of any county or counties, be taken over at any time after the completion thereof, upon payment to the owners of the franchise of the reasonable value of the structure at the time of the sale.

(4) That all public service corporations shall when feasible and practicable be entitled to use such bridge upon paying a reasonable fee therefor.

(5) That the person or corporation owning the bridge shall at all times keep the same and all approaches thereto in good repair and condition, and shall deposit a good and sufficient bond in a reasonable sum to be fixed in said franchise, conditioned to save and keep the county harmless from all damages by reason of the operation and maintenance of said bridge and approaches.

(6) That the franchise shall be subject to forfeiture for failure of the owners to comply with all the terms and conditions of the franchise; that upon forfeiture or termination of the franchise the bridge shall become the property of the county or counties granting the franchise.

(7) That said bridge shall be kept open at all times for public travel.

(8) That the state military forces and United States military forces shall be privileged to use said bridge at all times free of charge. [L. '19, p. 226, § 2.]

§ 6443. Boundary Streams, Joinder of Counties.

Where the stream to be bridged is a boundary between two counties, the county commissioners of both such counties shall join in granting the franchise; and where such bridge is taken over by such counties, each

county shall pay for such bridge in proportion to the amount of taxable property in the respective counties. [L. '19, p. 227, § 3.]

§ 6444. Notice of Granting Toll Franchise.

No franchise shall be granted hereunder until notice shall have been given by the county commissioners of the counties involved in the official newspaper of the county, published for four consecutive weeks, that the commissioners will on a day specified in said notice consider the proposition of granting such franchise. [L. '19, p. 227, § 4.]

§ 6445. Purchase by County.

County commissioners are authorized to purchase a bridge constructed under the provisions of this act at any time after the completion thereof. [L. '19, p. 228, § 5.]

§ 6446. Cost and Maintenance Accounts to be Filed.

It shall be the duty of every person, firm or corporation granted a franchise under the provisions of this act to keep an accurate account of the costs of such bridge and upon the completion thereof same shall be verified by such person or some officer of the corporation having knowledge of the facts, and filed with the county auditor. Such person or corporation shall also keep an accurate account of the amount expended in keeping such bridge in repair and for the operation and maintenance thereof and of the revenues received from the operation thereof and shall, on or before the first day of February of each year, file such statement for the preceding calendar year verified by such person, or some officer of the corporation having knowledge of the facts, with the county auditor. [L. '19, p. 228, § 6.]

CHAPTER X.

LAYING OUT AND OPENING COUNTY ROADS.

§ 6447. [5623.] Established by County Commissioners.

County roads shall be laid out and established by order of the county commissioners of the proper counties on the application of householders in the manner provided in this act. [L. '95, p. 82, § 1.]

"This act," see *infra*, §§ 6458 to 6472.

Query: Whether this act was superseded by the act of 1911, §§ 6448—6457.

Cited in 19 Wash. 357, 573; 25 Wash. Wash. 630; 102 Wash. 396; 110 Wash. 652; 67 Wash. 236; 76 Wash. 273; 98 507; 111 Wash. 544.

§ 6448. [5623-1.] Laying Out.

County roads shall be laid out and established by order of the county commissioners of the proper county in the manner hereinafter provided. [L. '11, p. 305, § 1.]

Cited in 101 Wash. 264; 110 Wash. 478, 479.

Powers of Local Authorities: See Remington's Digest, Highways, § 12; Lewis County v. Hays, 1 W. T. 109; State ex rel. Schroeder v. Superior Court, 29 Wash. 1, 69 Pac. 366; Selde v. Lincoln County, 25 Wash. 198, 65 Pac. 192.

See, also:

Permanent Highways—Authority to Open New Road—Statutes—Construction: Gregory v. County Commissioners, 110 Wash. 476, 188 Pac. 761.

— Notice and Resolution—Departure in Plans—Diversion of Funds—Powers of County Board: Thompson v. Pierce County, 113 Wash. 237, 193 Pac. 706.

Jurisdiction and Review by Certiorari: See Remington's Digest, High., § 21; King County v. Neely, 1 W. T. 241; State ex rel. Pagett v. Superior Court, 47 Wash. 11, 91 Pac. 241; State ex rel. Murhard Estate Co. v. Superior Court, 49 Wash. 392, 95 Pac. 488; State ex rel. Havercamp v. Superior Court, King County, 101 Wash. 260, 172 Pac. 254.

§ 6449. [5623-2.] Resolution.

When deemed advisable that a road be established, the board of county commissioners shall, at a regular meeting, by unanimous vote pass a resolution and enter same on the minutes of the board, which resolution shall describe the terminal points of such proposed road and the width and general course of same. The resolution need not set forth the manner of construction, the cost, nor describe the several tracts or parcels of land through which the same shall run. The resolution shall declare that the laying out and establishment of the road is considered a public necessity and shall direct the county engineer to make an examination of the proposed route of said road as hereinafter provided. [L. '11, p. 305, § 2.]

Cited in 101 Wash. 265.

§ 6450. [5623-3.] Engineer's Duty.

The county engineer shall make an examination of the proposed route of such road and, if necessary, a survey of same. If, however, after an examination, he deems the same to be impracticable, he may so report to the board of county commissioners without making a survey, or he may examine or survey any other route that would subserve that purpose, and make a report thereon. [L. '11, p. 305, § 3.]

Cited in 101 Wash. 265.

§ 6451. [5623-4.] Petition of Householdors.

In addition to the method hereinabove provided, ten or more householders of the county residing in the vicinity of a proposed road may petition the board of county commissioners for the establishment of such road. Such petition shall describe the terminal points of said road and the general course of same. [L. '11, p. 306, § 4.]

Cited in 108 Wash. 61.

This section does not require that the petition state that the petitioners are householders, and where it was signed by ten or more residents and taxpayers and evidence was taken and acted upon, it

will be presumed that the county commissioners were satisfied that they were householders: State ex rel. McPherson Bros. Co. v. Superior Court, 108 Wash. 58, 182 Pac. 962.

§ 6452. [5623-5.] Bond.

If the board of county commissioners so order the petition shall be accompanied by a bond in the penal sum of three hundred dollars (\$300) payable to the county, executed by one or more persons as principal or principals, with two or more sufficient sureties, and conditioned that the petitioners will pay into the county treasury the amount of all costs and expenses incurred in examining and surveying the proposed road and in the proceedings in case the road shall not be established, or in case the application is for the purpose of changing the road for the benefit of the land owner or owners, and no such change shall be made until such cost bill has been paid and the road graded. When the cost is assessed against the principal petitioner, the clerk of the board of county commissioners

shall file the cost bill with the county treasurer, who shall proceed to collect the same. Before considering the petition the board may require the petitioners to secure waivers for the right of way from the land owners, and, in such case, before an examination or survey is ordered, the waivers shall be filed with the board of county commissioners. [L. '11, p. 306, § 5.]

Cited in 101 Wash. 261.

§ 6453. [5623-6.] Examination by Engineer.

Upon the filing of said petition and said bond, if required, the board of county commissioners shall examine and approve same and if found sufficient shall direct the county engineer to make an examination and survey, as provided for in section 6450. [L. '11, p. 306, § 6.]

§ 6454. [5623-7.] Warrants for Awards—Deposit—Decree.

At the time of the hearing on the establishment of said road as provided for by law, the board of county commissioners shall direct the auditor to draw warrants in favor of the record owner or owners of said property appropriated in said proceeding for the amount of the award made by the board for the appropriation thereof. The auditor shall cash said warrants if the same be not accepted by said owner or owners by the time said petition to condemn is filed with the clerk of the superior court as provided for by law and shall deposit said moneys in court for the use and benefit of said owner or owners. If said warrants be accepted by said owner or owners, or if said money be withdrawn from the registry of the court, the county shall be entitled to a decree of appropriation vesting full title to the property in the county. [L. '11, p. 306, § 7.]

§ 6455. [5623-8.] Right of Way may be Condemned.

If any award of damages is not accepted at the time of said hearing it shall be deemed rejected, and the board must then, by order, direct proceedings to procure the right of way to be instituted in the superior court of the county by the county attorney of the county in the manner provided by law for the taking of private property for public use. [L. '11, p. 307, § 8.]

Cited in 110 Wash. 478, 479.

Taking property for highway purpose as constituting public use. 14 Ann. Cas. 906; Ann. Cas. 1912D, 1006; 22 L. R. A. (N. S.) 99.

Interest in land acquired for highway by condemnation as easement or fee. 20 Ann. Cas. 570; Ann. Cas. 1918A, 808.

§ 6456. [5623-9.] Condemning Gravel-beds and Stone Quarries.

Counties shall have the right in the manner provided for in this act, to condemn land or other property for the purpose of securing gravel-beds, stone quarries or other material suitable for the construction, building or repair of county roads, and shall have the right to condemn the right of ways to reach such property and to gain access thereto. The proceedings shall be the same as provided for herein for the establishment and condemnation of county roads. [L. '11, p. 307, § 9.]

§ 6457. [5623-10.] Widening County Roads.

The county shall have the right, in the manner provided for in this act, to condemn land and other property for the purpose of widening county roads already established, to any width allowed by law, and to condemn land and other property for the purpose of changing the course or location of roads already established. [L. '11, p. 307, § 10.]

§ 6458. [5624.] Petition to Board.

Applications for the laying out and establishing or changing of any county road shall be by petition in writing to the board of county commissioners, signed by at least ten householders of the county residing in the vicinity of the proposed road. [L. '95, p. 82, § 2.]

Cited in 47 Wash. 14; 76 Wash. 273.

§ 6459. [5625.] Petition, Contents of.

Such petition must set forth the terminal points of the proposed road; the course, the width, which shall not be less than thirty feet nor more than one hundred feet, and that the proposed road is practicable and will be of general use and public utility. [L. '95, p. 82, § 3.]

Cited in 47 Wash. 13.

§ 6460. [5626.] Bond Required—Waivers for Right of Way.

Such petition must be accompanied by a bond in the penal sum of three hundred dollars payable to the county, executed by one or more of such petitioners as principal or principals with two or more sufficient sureties, and conditioned that the petitioners will pay into the county treasury the amount of all costs and expense incurred in examining and surveying the proposed road and in the proceeding, in case the road shall not be established, or in case the application is for the purpose of changing the road for the benefit of the land owner or owners, and no such change shall be made until such cost bill has been paid and the road graded. When the cost is assessed against the principal petitioner the clerk of the board of county commissioners shall file the cost bill with the county treasurer who shall proceed to collect the same. The board may require that waivers for the right of way be secured by the principal petitioner, before an examination or survey is ordered, said petition, bond, and waiver shall be filed with the clerk of the board of county commissioners. [L. '95, p. 83, § 4; L. '01, p. 200, § 1.]

Cited in 47 Wash. 11, 12, 15, 16; 101 Wash. 261.

Commissioners or Viewers: See Remington's Digest, High., § 15; State ex rel. Ames v. Gasch, 9 Wash. 226, 37 Pac. 427; State ex rel. Pagett v. Superior Court, 47 Wash. 11, 91 Pac. 241.

§ 6461. [5627.] Examination and Survey.

The board when in session, shall consider such petition and bond, and if not rejected they shall, if such petition contains substantially the matters and things required by law, and that the said bond is sufficient, file said petition, bond and waivers with the county engineer, who shall make examination and if necessary, a survey of the proposed road. If, however, after an examination he deem the same impracticable he may so

report to the board of county commissioners without a survey, or he may examine or survey any other route which would subserve the same purpose and make a report thereon. [L. '01, p. 201, § 2. Cf. L. '95, p. 83, § 5.]

"Engineer" substituted for "surveyor" in this chapter.

Cited in 38 Wash. 690; 47 Wash. 14; 101 Wash. 264.

Location of Road: See Remington's Digest, High., § 17; Megrath v. Nickerson, 24 Wash. 235, 64 Pac. 163; Flint v. Horsley, 25 Wash. 648, 66 Pac. 59; State ex rel. Murhard Estate Co. v. Superior

Court, 49 Wash. 392, 95 Pac. 488; State ex rel. Haverkamp v. Superior Court, King County, 101 Wash. 260, 172 Pac. 254.

See, also, Chelan County v. Nevarre, 38 Wash. 684, 80 Pac. 845.

§ 6462. [5628.] Selection of Route—Waiver or Specification of Damages.

In selecting the route the engineer shall take into consideration the general road system, the grade, cost of construction, maintenance, utility, convenience, inconvenience, and expense which will result to individuals as well as the public, if such roads shall be established, and opened or changed. He shall as far as possible, cause notice of the route of the road as far as surveyed to be given to each resident owner, lessee, occupant or owner's agent of lands over which said road passes. He shall receive from each person interested in such land, who will give the same, a statement in writing signed by such person and file the same with his report, and (1) consenting that such road shall be established as surveyed and waiving all claims to damages on account thereof; or (2) claiming damages on account of the establishment or opening of such road, and specifying the amount so claimed. [L. '01, p. 201, § 3. Cf. L. '95, p. 83, § 6.]

"Engineer" substituted for "surveyor" in this chapter.

§ 6463. [5629.] Engineer's Report—Contents.

When the examination or survey is completed the engineer shall report in writing to the board of county commissioners (1) his opinion as to the necessity of the road, and whether the same ought to be established and opened; (2) the terminal points, general course and length of the road; (3) his recommendation as to the width of the proposed road; (4) the names of persons interested in lands over which the proposed road passes, who consent to the establishment of the same, and waive all claims to damages; (5) the names of all persons interested in said lands who refuse their consent, and the amount of damages claimed by each; (6) an estimate of damages to each tract of land of nonconsenting persons interested in such tract of land, and in determining such damages it shall be the duty of the surveyor to estimate the benefits and damages accruing to any person by reason of establishing or changing such road, and the sum estimated as benefit must be deducted from the sum estimated as damages for the amount of damages to such person or land; (7) a description of each tract of land over which such road passes, with the name and place of residence or address of the owners, lessees, claimants or encumbrancer if known, of each of said tracts of land, and the quantity of area of land to be taken from each of said tracts; (8) the probable cost of the construction of the road, including all necessary bridges, culverts, clearing, grubbing and grading; (9) such other facts, matters and

things as he may deem of importance to be known by the board of county commissioners. [L. '01, p. 202, § 4.]

"Engineer" substituted for "surveyor" in this chapter.

§ 6464. [5630.] Waivers, Damage Claims, etc., to be Filed With Report.

The engineer shall file with his report the written consent and waivers of claims to damages by persons interested in the lands affected by the establishment of said road, and the claims for damages procured as provided in this act. [L. '01, p. 203, § 5. Cf. L. '95, p. 85, § 8.]

"Engineer" substituted for "surveyor" in this chapter.

"This act," see §§ 6447, 6458 to 6472.

§ 6465. [5631.] Map of Road and Field-notes to be Filed.

If a survey is made of the proposed road the engineer shall file a correctly prepared map of said road laid out and surveyed, which map must show the tracts of land over which said road passes with the name of the owner if known, of each tract written thereon, and the engineer shall also file therewith his field-notes of such survey. [L. '01, p. 203, § 6. Cf. L. '95, p. 85, § 9.]

"Engineer" substituted for "surveyor" in this chapter.

Cited in 47 Wash. 11, 12, 15.

§ 6466. [5632.] Wages Paid.

The chainmen, rodmen, axmen, flagmen, and all necessary assistants employed in such survey to assist the county engineer, shall be paid such salary for their services as the board of county commissioners shall determine upon, to be paid out of the proper fund of the county. [L. '11, p. 342, § 1. Cf. L. '95, p. 85, § 10.]

§ 6467. [5633.] Notice to Owners, How Given.

The board of county commissioners at their next meeting after the filing of the report of the viewers [engineer], or at the time when the same is filed, if then in session, must fix a time for the hearing of the report, and must cause notice of such hearing to be given to the owners, lessees and encumbrancers of the land to be taken for such road, who have not consented to the establishment of the road and waived their claims to damages therefor, which notice shall be given as follows: If such owners, lessees and encumbrancers reside or are present within the county, then by serving upon them personally within the county a written notice at least twenty days before the time set for said hearing, setting forth the time and purpose of such hearing; and if any of said owners, lessees or encumbrancers are absent from said county, or for any reason cannot be served personally therein, such notice shall be given, as to them, by posting written notice of the time and purpose of such hearing, one at a conspicuous place on the land or left at the residence of the owner, lessee or encumbrancer, as the case may be, and one at a conspicuous place at the courthouse of the county, at least twenty days before the time set for said hearing. [L. '95, p. 85, § 11.]

"Engineer" substituted for "surveyor" in this chapter.

Cited in 21 Wash. 643; 47 Wash. 15, 16; 67 Wash. 237; 101 Wash. 264, 265; 102 Wash. 396; 110 Wash. 513. **Consent of Land Owners and Notice:**
See Remington's Digest, High., § 14;
Wagner v. Mahrt, 32 Wash. 542, 73 Pac.

675; State ex rel. Davies v. Superior Court, King County, 102 Wash. 395, 173 Pac. 189.

See, also, State ex rel. Cation v. Superior Court, 110 Wash. 506, 188 Pac. 546.

§ 6468. [5634.] County Commissioners to Determine Damages and Establish Roads.

On the day fixed for said hearing or to which such hearing may be postponed or adjourned, the said board, upon due proof to the satisfaction of the board, made by affidavit, of the service or posting of notice of the hearing, as by this act required, shall proceed to the hearing of said report, and shall examine the same, together with the map and the petition, the written claims for damages, the written consent and waivers of damages, and all other papers on file in the proceedings, and shall hear and consider all testimony and documentary evidence adduced for or against the establishment of the road, or as to the amount of damages which should be awarded in any case, and shall, at that time or as soon thereafter as may be, declare by order the decision of the board—(1) As to whether the road shall be established in accordance with the report of viewers [engineer], or otherwise, or at all, and if the decision of the board be that the road shall be established, and if all persons interested in the lands to be taken have consented to the establishment of said road and have waived their claims to damages therefor, the said board shall, at the same time, make an order finally establishing the road, and shall order that the same be opened in the manner provided by law. If the decision of the board be that the road shall be established, and if any of the persons interested in the lands to be taken therefor shall not have consented to the establishment of the road, or waived their claims for damages therefor, or shall claim damages therefor, said board shall, at that time, by order, declare the amount of damages awarded by such board to each of such persons, and shall order the amount of such award to be set apart in the treasury out of the proper fund, to be paid to the proper owner or claimant upon his showing or establishing his right thereto, and if the awards be accepted the board of county commissioners shall make an order finally establishing such road, and directing that the same be opened in the manner provided by law. [L. '95, p. 86, § 12.]

“Engineer” substituted for “surveyor” in this chapter.

See note to § 6464.

Cited in 25 Wash. 205; 47 Wash. 15, 16; 67 Wash. 239; 101 Wash. 265; 110 Wash. 509; 111 Wash. 544.

The fact that viewers appointed by the county commissioners to survey a road in pursuance of a petition therefor continue the survey beyond the limits set by the petition would give no authority to the county to establish a road beyond the point named in the petition: Megrath v. Nickerson, 24 Wash. 235, 64 Pac. 163.

Under §§ 6458—6478, the county commissioners have no authority, upon the hearing of an adverse report thereon, to order the establishment of a road along another route and reaching a different terminal than the one viewed,

surveyed and reported upon by the viewers: Flint v. Horsley, 25 Wash. 648, 66 Pac. 59.

The writ of prohibition will not issue to restrain the superior court from entertaining an appeal from the order of a board of county commissioners establishing a county road, since there is an adequate remedy by appeal from the judgment of the superior court: State ex rel. Zent v. Neal, 30 Wash. 702, 71 Pac. 647.

An objection that county commissioners did not acquire jurisdiction of a proceeding to open a county road cannot be considered on appeal where it was not raised in the pleadings and the entire record of the proceedings before the

board is not brought up on appeal: *Carlson v. County Commissioners*, 38 Wash. 616, 80 Pac. 795.

The refusal of the board to establish a road upon petition therefor does not present a question which the superior court can review on appeal, since that court cannot take cognizance of cases requiring the exercise of other than purely judicial power: *Selde v. Lincoln County*, 25 Wash. 198, 65 Pac. 192.

Collusion between county commissioners and a railroad company in locating a proposed county road cannot be shown by the fact that the railroad company desired the location agreed to for its own purposes, where there was no evidence of improper influence or inducement: *State ex rel. Murhard Estate Co. v. Superior Court*, 49 Wash. 392, 95 Pac. 488.

Upon certiorari to review an adjudication of public use in a proceeding to

condemn land for a county road, the supreme court cannot review the preliminary proceedings had before the board of county commissioners for the establishment of the road, where the board had acquired jurisdiction of the persons and property; nor in such a case can they review the awarding or ascertainment of damages: *State ex rel. Pagett v. Superior Court*, 47 Wash. 11, 91 Pac. 241.

Under this section, providing that upon due proof "made by affidavit" of the service of notice of proceedings for the establishment of a county road, the board of county commissioners shall proceed to a hearing, the board proceeds without jurisdiction where the only proof of service was the unverified return of the sheriff: *State ex rel. Cation v. Superior Court*, 110 Wash. 506, 188 Pac. 546.

§ 6469. [5635.] Rejection of Awards and Subsequent Procedure.

If any award of damages is not accepted within thirty days from the date of the award, it shall be deemed rejected, and the board must then, by order, direct proceedings to procure the right of way to be instituted in the superior court of the county by the county attorney of the county, in the manner provided by law for the taking of private property for public use, and to that end are hereby authorized to institute and maintain in the name of the county the proceedings provided in sections 921 to 936 of this code, and when under such proceedings the right of way is procured, said board shall declare the road finally established, and shall order that the same be opened in the manner provided by law. [L. '95, p. 87, § 13.]

Cited in 21 Wash. 644; 67 Wash. 239; 92 Wash. 198; 111 Wash. 544.

Under this section and section 6777, *infra*, the state may proceed under sec-

tions 921—936, *supra*, without hearings and notices for the establishment of county roads: *State v. Superior Court*, 111 Wash. 542, 191 Pac. 413.

§ 6470. [5636.] Tender of Award.

Before causing condemnation proceedings to be instituted in the superior court as hereinbefore provided, it shall be the duty of the county commissioners to tender to each person interested in the land to be appropriated for the public highway as hereinbefore provided, such amount as in the judgment of such county commissioners such person is justly entitled to, and in case a tender cannot be made by reason of the absence of such nonconsenting land owner or person whose property is taken or damaged as hereinbefore provided, a warrant shall be drawn in the name of the county auditor, who shall cash the same and deposit said cash with the clerk of the court of the county wherein the road to be laid out and opened is located. [L. '95, p. 87, § 14.]

Cited in 111 Wash. 544.

§ 6471. [5637.] Award, How Paid.

The warrant hereinbefore provided for shall be drawn upon the general road and bridge fund: Provided, however, that if there is not

sufficient money in said fund at any time to pay any warrant so drawn in full, said county commissioners shall provide a special fund for the purpose of paying such warrants, and shall cause such warrants to be drawn on such special fund. [L. '95, p. 87, § 15.]

The issuance of a warrant upon the county treasurer for compensation for lands appropriated by the county for road purposes is a sufficient compliance with the constitutional provision when

there are funds in the treasury out of which such warrant can be paid: Smith's Petition, In re, 9 Wash. 85, 37 Pac. 311, 494.

§ 6472. [5638.] Duty of Treasurer.

Whenever any warrant is drawn upon said general road and bridge fund for the purposes herein specified, it shall be the duty of the clerk of the board of county commissioners to notify the county treasurer of the date and the amount of such warrant, and in case the said warrant is not accepted by the person to whom it is tendered, at the time of tender, the county treasurer shall set apart from the general road and bridge fund, a sum sufficient to pay such warrant with one year's interest thereon at the rate of eight per cent per annum, and said fund shall be kept intact until the claim of damages of the person in whose favor said warrant is drawn has been settled either by agreement or condemnation proceedings as hereinbefore provided. [L. '95, p. 87, § 16.]

§ 6473. [5639.] Review and Resurvey Where Road has Become Uncertain.

When the place of beginning or true course of a county road shall be uncertain by reason of the removal of any monument or marked tree by which such road was originally designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested landholders of the county to review and find the line of the road, and if they deem it necessary, a competent surveyor to survey the same; and the reviewers and surveyor, after taking the oath required in section 6462, shall view and survey said road, and the same correctly mark throughout as in the case of new roads, and shall make a return of the survey and a plat of the road to the commissioners, who shall cause the same to be recorded as in other cases; and from thenceforth the road, surveyed as aforesaid, shall be considered a highway. [L. '90, p. 599, § 18; 1 H. C., § 1957.]

The present force of this and the next section seems doubtful.

"Section 6462" substituted for "section 6" of the act of 1895, which, as amended, now requires no oath or viewers.

Cited in 27 Wash. 502.

§ 6474. [5640.] Refusal to Act as Viewer.

If a person appointed by the county commissioners as a viewer, reviewer, or surveyor of any road refuse or neglect to perform the duties required by this act, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding fifteen dollars, to be recovered by action by any person suing for the same before a justice of the peace within the district wherein the person so appointed and refusing or neglecting may reside; and the recovery shall be paid without

delay by the justice of the peace or constable collecting the same to the treasurer of the county, taking his receipt therefor; and the county commissioners shall cause all fines which shall be paid into the county treasury under the provisions of this title to be expended on roads and bridges within the county. [L. '90, p. 601, § 27; 1 H. C., § 1969.]

This section now seems obsolete except as applicable to the last preceding section.

§ 6475. [5641.] Change of Road Through Private Lands—How Made.

If any person through whose land a county road is or may be established shall be desirous of turning the road through any other part of his land, he may, by notice and petition agreeably to the provisions of this act, apply to the commissioners of the county while in session, to permit him to turn the road through any other part of his land, on as good ground, and without increasing the distance to the injury of the public; and, upon the receipt of such petition, the commissioners shall appoint a surveyor and three disinterested freeholders of the county as viewers of the road, who shall proceed to view and survey the ground over which the same is proposed to be turned, and to ascertain the distance which it will be increased by such proposed alteration, and make a report in writing, stating the several distances so found, together with their opinion as to the utility of making the alteration. [L. '90, p. 599, § 19; 1 H. C., § 1958.]

Cited in 5 Wash. 475; 45 Wash. 592.

§ 6476. [5642.] Report of Freeholders—When Road will be Changed—Costs.

If the freeholders report to the commissioners that the prayer of the petitioner is reasonable, and that the alteration will not place the road on the worse ground, or materially increase the distance to the injury of the public, they shall, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and if in their opinion the same will be just and reasonable, declare such new road a public highway, and make a record thereof, and at the same time vacate so much of the old road as is rendered necessary by the new; and the person desiring the alteration shall pay all the costs of the view, survey, and return, unless the commissioners are satisfied that the alteration is of sufficient advantage to the public to cause the same to be paid by the county. [L. '90, p. 599, § 20; 1 H. C., § 1959.]

§ 6477. [5643.] Road on County Line—Procedure to Establish.

When it becomes necessary to establish a road on a county line, the inhabitants along such line may petition the commissioners of their respective counties for a view of such road in the manner provided in this act, and the commissioners of each of the counties interested shall appoint two discreet landholders as viewers, who, or a majority of them, shall meet at the time and place named in the order of the commissioners of the oldest county interested, who shall appoint a surveyor, and the viewers and surveyor shall also be a jury for the assessment of damages, and shall in all respects be governed by the last preceding section, and shall make their report in writing for or against such road to the commissioners of

the counties concerned, and the commissioners, upon receiving such report, shall in all respects be governed by this act. [L. '90, p. 600, § 21; 1 H. C., § 1960.]

§ 6478. [5644.] Order Opening Road shall be Made, When.

If on receiving such report there is no legal objection thereto, and the commissioners of all the counties interested are of opinion that such road, if opened, would be of public utility, they shall order the same to be opened in the manner pointed out by this act. [L. '90, p. 600, § 22; 1 H. C., § 1961.]

§ 6479. [5645.] Width of Roads Within State.

All county roads hereafter laid out and established shall not be less than thirty nor more than sixty feet wide, to be determined by the viewers [engineer] as hereinafter provided, except that when the road is upon the state line the county commissioners may determine the width, not less than fifteen nor more than thirty feet of land to be taken in this state. [L. '90, p. 593, § 1; 1 H. C., § 1962.]

"Hereinafter," this being § 1 of the act. The provisions referred to precede it in this volume.

Cited in 13 Wash. 50; 26 Wash. 159.

The public has a right to a highway of legal width, when: *Vancouver v. Wintler*, 8 Wash. 378, 36 Pac. 278, 685.

A county road sixty feet wide, in the absence of an order of the commissioners, prescribing a less width, was established under the road law of 1895 (Laws '95, p. 7), where such commissioners caused to be entered in the "road book," required to be kept by them as a public record, a petition for such road, the report of viewers thereon, a descrip-

tion of the road and the adoption of the view made, though no formal order was made declaring the road to be opened: *Sumner v. Peebles*, 5 Wash. 471, 32 Pac. 221, 1000.

Where, at the time a county road was ordered, the law required its width to be sixty feet, title acquired by prescriptive use extends to the full width and is not limited to the ten to fifteen feet actually used by the public: *West Marginal Way, Seattle, In re*, 109 Wash. 116, 186 Pac. 644.

§ 6480. [5646.] Width of Road on State Line.

The commissioners of any county through which a county road has been established upon a line of the state may, upon petition and notice as hereinbefore provided, determine the width, not less than fifteen nor more than thirty feet, of the land within the county to be used for the road. [L. '90, p. 600, § 23; 1 H. C., § 1963.]

§ 6481. [5647.] County and State Line Roads—How Opened and Kept in Repair.

When a road is located and ordered to be opened on any county or state line, as provided in this act, the viewers [engineer] appointed to locate, establish, and report damages shall assign a sufficient number of persons to open such road and keep the same in repair, dividing the road in such manner that the persons so assigned may work under the orders of the overseer of the road district to which they belong; and the supervisors and persons so assigned shall be governed by the provisions herein contained. [L. '90, p. 601, § 24; 1 H. C., § 1964.]

§ 6482. Highways Passing Outside of County.

That whenever a state or county highway shall have been or shall hereafter be established within any county, and such highway shall cross the boundary of such county and again enter such county, it shall be lawful for the authorities of the county within which the major portion of such highway is established to expend the funds of such county in the construction and maintenance of that portion of the highway lying outside the county, in the manner provided by law for the expenditure of county funds for the construction and maintenance of highways lying within the county. [L. '21, p. 748, § 1.]

§ 6483. County Roads Over and Along Dikes.

The board of county commissioners of any county shall have the power to establish county roads over, across or along any dike maintained by any diking, or diking and drainage district, in the manner provided by law for establishing county roads over or across private property, and shall determine and award the damages, if any, to the district and to the owners of the land upon which the dike is constructed and maintained: Provided, that every such road shall be so constructed, maintained and used as not to impair the use of the dike. [L. '21, p. 490, § 1.]

§ 6484. Proceedings to Procure Right of Way.

If any award of damages is not accepted in the manner provided by law, it shall be deemed rejected, and the board, by order, shall direct proceedings to procure the right of way to be instituted in the superior court of the county by the prosecuting attorney of the county in the manner provided by law for the taking of private property for public use, and to that end the board is hereby authorized to institute and maintain in the name of the county such proceedings as against the diking, or diking and drainage district, and the owners of any land on which the dike is located that have failed to accept the award of damages made by the board. [L. '21, p. 490, § 2.]

§ 6485. [5648.] Highways Across Stream.

All highways, crossing[s], or ending on any river, creek, or stream shall be open the same width down to and across said river, creek, or stream as it is before it reaches said stream. [L. '86, p. 103, § 1; 1 H. C., § 1965.]

§ 6486. [5649.] Passageway Under Road.

The passageways for stock under any road shall be covered with suitable plank, not less than sixteen feet in length, and it shall be lawful for the fences of either side to converge to the bridge over said passageway. The said passageway shall be kept securely covered by the person who owns the adjoining lands, and shall be kept in repair by said owner. The approaches to the bridges over said passageways shall also be kept in good repair by said owner. [L. '86, p. 103, § 2; 1 H. C., § 1966.]

§ 6487. [5650.] Destruction or Injury to Road—Procedure in Case of.

When a county road is injured or destroyed by the washing of any lake, river, or creek, or by any washing or sliding of land occasioned by natural drainage, the supervisor of the road district in which such injury or loss of road has occurred, upon petition of any six freeholders of the district, shall call to their aid a competent surveyor, and proceed to examine such road; and if, upon such examination, the commissioners, or a majority of them, are satisfied that such road has been destroyed or so much injured that the public good requires an alteration of the same, they shall proceed to alter and lay out so much of the new road as may supply the several parts of the road thus destroyed or injured. [L. '90, p. 602, § 29; 1 H. C., § 1971.]

§ 6488. [5651.] Claim for and Assessment of Damages.

If a person through whose lands any such alteration or new road is laid out feels injured thereby, he shall make application to the overseer of his road district at the time of making the alteration on his premises, to assess and determine, according to the provisions of the last preceding section, the compensation to be made in money for the property sought to be appropriated, and how much less valuable, if any, the premises will be rendered by the alteration of the road; thereafter the road overseer shall make report to the county commissioners, who shall appoint three reviewers to inspect, assess, and report the amount of damages sustained in the premises, and the clerk and commissioners of the proper county shall be governed in the reception and recording of such report in all respects as is prescribed in this act in cases of new roads. [L. '90, p. 602, § 30; 1 H. C., § 1972.]

§ 6489. [5652.] Roads on Section Lines—How Opened.

When notice has been given and a road has been petitioned for as hereinbefore provided, and the petition calls for a road wholly on section lines, and where there are no damages claimed, and evidence filed that the route is practicable, the county commissioners may grant the road without reviewing or surveying the same. [L. '90, p. 603, § 33; 1 H. C., § 1975.]

§ 6490. [5653.] Monuments, Where to be Placed.

The county commissioners shall cause monuments of stone to be placed at the beginning and terminus of all roads established under this act. [L. '90, p. 603, § 34; 1 H. C., § 1976.]

§ 6491. [5654.] Order to Open Road, When to be Executed.

No order of the county commissioners for the establishment of a county road, or for the alteration or vacation, in whole or in part, of a state or county road, or changing the width of a county road, shall be executed until twenty days have elapsed after the entry of such order in the record of the commissioners, and no order shall issue to open any county road until fifteen days after the same has been established, at which time the clerk of the board may issue such order by direction

of the commissioners, unless an appeal has been perfected. [L. '90, p. 603, § 35; 1 H. C., § 1977.]

Cited in 71 Wash. 317.

§ 6492. [5655.] Highway Plat-book.

If the same, or what is equivalent thereto, has not heretofore been done, the county auditor shall within six months after this act takes effect, cause every public road in his county, the legal existence of which is shown by the records and files of his office, to be platted in a book to be obtained and kept for that purpose, and to be called the "highway plat-book." Each township shall be platted separately, on a scale of not less than four inches to the mile, and such auditor shall have all changes in or additions to the highways, legally established immediately entered upon said plat-book, with appropriate references to the files in which the papers relating to the same may be found. [Cd. '81, § 3047; 1 H. C., § 2030.]

See supra, § 4149, county engineer to keep highway plat-book, which may supersede this section.

§ 6493. [5656.] Validation of Certain Claims for Road Work.

The boards of county commissioners of the several counties of the state of Washington are hereby authorized to audit and allow without interest all claims against such county for the survey, laying out, or construction of any road now used by the public and for which no compensation has ever been allowed, such survey, laying out, or construction having been made or done pursuant to chapter 98, page 237, of the Session Laws of 1893. [L. '99, p. 23, § 1.]

Cited in 67 Wash. 236.

CHAPTER XI.

ROADS BY USER.

§ 6494. [5657.] Certain Roads Declared Highways.

All public roads and highways in this state that have been used as such for a period of not less than seven years, and are now so used, where the same have been worked and kept up at the expense of the public, are hereby declared to be lawful roads and highways within the meaning and intent of the laws now existing governing public roads and highways in this state. [L. '90, p. 733, § 1; 1 H. C., § 2022.]

See infra, § 8407, meandered rivers, etc., deemed public highways.

Cited in 23 Wash. 540; 37 Wash. 122; 39 Wash. 276; 46 Wash. 204; 57 Wash. 615, 616; 72 Wash. 199, 200; 76 Wash. 273, 275; 78 Wash. 239.

Adverse Use Under This Section: See Remington's Digest, High., §§ 1—3; Seattle v. Smithers, 37 Wash. 119, 79 Pac. 516; Peterson v. Baker, 39 Wash. 275, 81 Pac. 681; Vogler v. Anderson, 46 Wash. 202, 89 Pac. 551, 123 Am. St. Rep. 932, 9 L. R. A. (N. S.) 1223; Fitts v. Pierce County, 78 Wash. 238, 138 Pac. 885.

Evidence of Adverse Use, Under This Section: See Seager v. Baldwin, 72 Wash. 197, 130 Pac. 114.

See, also, Remington's Digest, High., § 9.

Notwithstanding an enjoyment of a somewhat devious passageway for a long term of years over open unenclosed land, no prescriptive rights are acquired by the public or those inconvenienced thereby until circumstances induced the owner to cultivate or use it, unless it is shown that the public use was adverse for the

prescriptive period: *Brandt v. Orrock*, 106 Wash. 593, 181 Pac. 35.

Highways established by prescription. 57 *Am. St. Rep.* 744; 11 *L. B. A.* 55.

User through mistake of other than authorized location as creating highway. 3 *Ann. Cas.* 142.

§ 6495. [5658.] Informalities shall not be Construed to Vacate Road.

No informalities in the records in laying out, altering, establishing, or vacating any public road or highway, such as contemplated in the last preceding section, now existing on file in the offices of the various county auditors of this state, shall be construed to invalidate or vacate such public roads or highways. [L. '90, p. 733, § 2; 1 H. C., § 2023.]

CHAPTER XII.

LEGALIZING OF COUNTY ROADS.

§ 6496. [5659.] Board to Order Resurvey, Plat and Record of Roads in Certain Cases.

Where by reason of the loss or destruction of the field-notes of the original survey, or in case of defective survey or record, or in case of such numerous alterations of any county road since the original location and survey that its location cannot be accurately defined by the papers on file in the proper county auditor's office, or where, through some omission or defect, doubts may exist as to the legal establishment or evidence of establishment of any county road or highway, the board of county commissioners of the proper county may, if they deem it necessary, order such highway, or any part of a county road used and traveled by the public, to be resurveyed, platted, and recorded as hereinafter provided. [L. '81, p. 11, § 1; Cd. '81, § 3041; 1 H. C., § 2024.]

Compare L. '77, pp. 325, 326.

Cited in 106 Wash. 515, 516.

The provisions of this chapter with reference to the determination of damages to owners of land through legalization of county roads according to resurveys thereof was superseded by Const., Art. I, § 16, forbidding the taking of private property unless the compensation be first

made or paid into court, which requires that the damages be determined in a judicial proceeding in a court of record wherein the property owners are brought in by appropriate original process: *Duncan Township v. Stayr*, 106 Wash. 514, 180 Pac. 476.

§ 6497. [5660.] Copy of Field-notes and Plat to be Filed—Approval of Survey.

A copy of the field-notes, together with a plat of any highway or county road surveyed under the provisions of the preceding section, shall be filed in the office of the county auditor, and thereupon he shall designate a day at a regular term of the board of county commissioners, not less than twenty days from the publication of said notice, upon which said board will, unless good cause be shown against so doing, approve of such survey and plat, and order them to be recorded as in cases of the original establishment of a county road. [L. '81, p. 11, § 2; Cd. '81, § 3042; 1 H. C., § 2025.]

§ 6498. [5661.] Notice of Hearing to be Published—Form of Notice.

At least twenty days before the day fixed by the auditor, as above provided, a notice in which shall be inserted the name of each resident

owner or occupier of said land lying on the portion of road sought to be legalized, or abutting on the line or survey, shall be published four successive weeks in some newspaper published in the county, if any such there be, or by posting the same in five public places in the vicinity of said survey, which notice may be in the following form:—

“C D, — resident on that portion of the county road used and traveled as such for — years, commencing at, — in — county, running thence (Name distance and in general terms points of location), and terminating at —, has been resurveyed, and the board of county commissioners will, at their next term, hear and determine whether the road herein described and included in said survey shall be ordered as a lawful county road and public highway, and objections thereto, or claims for damages, must be filed in the auditor's office on or before the first day of the — term, A. D. 18—, or the road hereinabove described will be declared a county road and public highway.”

A B, County Auditor.

[L. '81, p. 11, § 3; Cd. '81, § 3043; 1 H. C., § 2026.]

Cited in 106 Wash. 515, 517.

§ 6499. [5662.] Hearing—Appraisement of Damages.

If no objections or claims for damages are filed on or before the first day of the term fixed for hearing the same, the board of county commissioners shall proceed to declare that such road included in said survey is a lawful county road. If objections are made to the establishment of the highway, or claims for damages are filed, three disinterested freeholders shall be appointed to appraise the damages, the report of whom shall be made to the next term of the county commissioners' court. [L. '81, p. 12, § 4; Cd. '81, § 3044; 1 H. C., § 2027.]

§ 6500. [5663.] Allowance of Damages—In What Cases Refused.

No claim for damages will be allowed to any person who did, upon the original location of said road, receive damages, or who, or whose grantor, applied for or assented to such road passing over said land, or who, when making settlement upon the tract by him occupied, found the said road in public use and traveled. The appraisers will report any and all acts of the owners of said land or their grantors which show compensation, dedication, or assent to such land being used as a public highway. The board may increase, diminish, or refuse to allow any damages; to which order the parties may appeal, within three months. [L. '81, p. 12, § 5; Cd. '81, § 3045; 1 H. C., § 2028.]

Cited in 106 Wash. 518, 519.

Duncan Township v. Stayer, 106 Wash. 514, 180 Pac. 476.

An appeal lies only to review the question of damages, under this section:

§ 6501. [5664.] Objections, How Disposed of—Approval and Record—Evidence.

In case objection shall be made in writing by any person claiming to be injured by the survey made, the board of county commissioners shall have full power to hear and determine upon the matter, and may, if deemed advisable, order a change to be made in the survey. Upon the final determination of the board, or in case no objection be made

at the term named in the notice of the survey, they shall approve of the same, and cause the field-notes and plat of the county road to be recorded, as in case of the establishment and alteration of highways, and thereafter such records shall be received by courts as conclusive proof of the establishment and lawful existence of such county road and public highway, according to such survey and plat. [L. '81, p. 12, § 6; Cd. '81, § 3046; 1 H. C., § 2029.]

§ 6502. [5665.] Expenses Paid by County.

The expenses incurred by the provisions of this chapter shall be paid out of the county funds not otherwise appropriated. [L. '81, p. 12, § 8; Cd. '81, § 3048; 1 H. C., § 2031.]

CHAPTER XIII.

VACATION OF COUNTY ROADS.

§ 6503. [5666.] County Road may be Vacated—Petition.

When a county road, or a part thereof, is considered useless, and ten freeholders residing in the vicinity of said road may petition the board of county commissioners to vacate the same, such petition shall show the land owned by each petitioner, and shall also set forth that such road will be useless as a part of the general system, that the public will be benefited by its vacation. Such petition shall be accompanied by a bond in the penal sum of one hundred dollars, payable to the county, executed by one or more of such petitioners as principal or principals, with two or more sureties, and conditioned that the petitioners will pay into the county treasury the amount of all costs and expenses incurred in the examination, report, and all other proceedings pertaining to such petition or vacation. [L. '01, p. 190, § 1. Cf. L. '90, p. 601, § 25; 1 H. C., § 1967.]

• Vacation of road by acts of public authorities. 26 L. R. A. 821.

§ 6504. [5667.] Hearing of Petition—Surveyor's Report and Opinion.

The county commissioners when in session shall consider such petition and bond and if not rejected shall file the same with the county surveyor with instructions to examine said road and make a report in writing on the same. The surveyor shall include in his report his opinion as to whether the road should be vacated, whether the same is in use or has been in use, whether it will be advisable to preserve the same for a general road system in the future, whether the public will be benefited by the vacation and all other facts, matters and things which will be of importance to the board of county commissioners, and also file his cost bill. [L. '01, p. 190, § 2.]

§ 6505. [5668.] Hearing of Report—Notice.

The board when in session shall fix a date for hearing the said report and shall cause notice of said hearing to be published in the county official newspaper and posted in a conspicuous place on said road, at least twenty days before the day set for hearing as follows: If the road be one mile or less than one mile long there shall be one notice

posted near each end of said road; if said road be more than one mile long there shall be one notice posted near each end and one notice on each mile of said road. [L. '01, p. 190, § 3.]

§ 6506. [5669.] Action on Report and Petition.

On the day set for hearing of said report the commissioners shall consider the same, together with the petition, and any objection that may be made to vacating the road, and if the road may be useful as a part of the general road system it shall not be vacated, but if the public will be benefited by the vacation then the commissioners may vacate the road or any portion thereof, and not otherwise; if the commissioner shall determine to vacate the road, or any part thereof, they shall, on payment of all costs by the principal petitioner declare the road vacated and make a record of the same. [L. '01, p. 191, § 4.]

Cited in 71 Wash. 317.

§ 6507. [5670.] Costs and Expenses—Statement of, Filed.

The clerk of the board of county commissioners shall make a statement in writing of all costs and expenses incurred in the proceedings and file the same with the county treasurer who shall proceed to collect the same. [L. '01, p. 191, § 5.]

§ 6508. [5671.] No Vacation Unless Properly Ordered.

No public road or highway or part thereof shall be vacated or cease to be a public highway until so ordered by the proper board of county commissioners, or by operation of law, or judgment of a court of competent jurisdiction. [L. '01, p. 191, § 6.]

Cited in 71 Wash. 317.

§ 6509. [5672.] Approval of Plat, not a Vacation.

The approval of any plat by the board of county commissioners or mayor and common council of any municipality shall not vacate any street, public road, or highway covered by such plat or over which such plat is laid. [L. '01, p. 191, § 7.]

§ 6510. [5673.] Vacation of County Road by Nonuser.

Any county road, or part thereof, which has heretofore been, or may hereafter be authorized, which remains unopen for public use for a space of five years after the order is made or authority granted for opening the same, shall be, and the same is hereby vacated, and the authority for building the same barred by lapse of time: Provided, however, that the provisions of this section shall not apply to any highway, street, alley, or other public place dedicated as such in any plat, whether the land included in said plat be within or without the limits of any incorporated city or town, nor to any land conveyed by deed to the state or to any town, city or county for roads, streets, alleys or other public places. [L. '90, p. 603, § 32; 1 H. C., § 1974; L. '09, p. 188, § 1.]

Cited in 45 Wash. 590, 592, 593; 65 Wash. 371, 372; 71 Wash. 316; 72 Wash. 491; 76 Wash. 144, 148; 79 Wash. 324; 80 Wash. 276; 81 Wash. 99; 92 Wash. 694; 98 Wash. 634; 99 Wash. 138.

When a county road is opened for public use, within the meaning of this section: Clark v. Seattle, 71 Wash. 316, 128 Pac. 670.

See, also, Remington's Digest, Highways, § 3; State v. Horlacher, 16 Wash. 325, 47 Pac. 748; Brokaw v. Stanwood, 79 Wash. 322, 140 Pac. 358; Mason County v. McReavy, 84 Wash. 9, 145 Pac. 993; Hamp v. Pend Orielle County, 102 Wash. 184, 172 Pac. 869.

This section is only a statute of limitations, and has no application where the road has not been kept up at public expense: State v. Seattle, 57 Wash. 602, 107 Pac. 827, 27 L. R. A. (N. S.) 1188.

Nonuser of Part of Road: See Remington's Digest, High., § 28-1; State ex rel. Atkinson v. Dunlap, 49 Wash. 385, 95 Pac. 321; Horton v. Okanogan County, 98 Wash. 626, 168 Pac. 479.

Erection of Gates, Bars or Other Structures: See Remington's Digest, High., § 28-2; Mohr v. Pierce County, 65 Wash. 370, 118 Pac. 321, 119 Pac. 747.

Use of Highway for Other Purposes by Abutting Owner: See Remington's Digest, High., § 28-3; Holm v. Montgomery, 62 Wash. 398, 113 Pac. 1115, 34 L. R. A. (N. S.) 506.

Vacation—In General: See Remington's Digest, High., §§ 26, 27; Burrows v. Kinsley, 27 Wash. 694, 68 Pac. 332; Wagner v. Mahrt, 32 Wash. 542, 73 Pac. 675; Clark v. Seattle, 71 Wash. 316, 128 Pac. 670; Hull v. Stevenson, 19 Wash. 572, 53 Pac. 669. But see, supra, §§ 12, 20, 22.

Abandonment—Failure to Open: See Remington's Digest, High., § 28; Mur-

phy v. King County, 45 Wash. 587, 88 Pac. 1115; Mohr v. Pierce County, 65 Wash. 370, 118 Pac. 321, 119 Pac. 747; Cheney v. King County, 72 Wash. 490, 130 Pac. 893; Brokaw v. Stanwood, 79 Wash. 322, 140 Pac. 358; Clark v. Seattle, 71 Wash. 316, 128 Pac. 670; Smith v. King County, 80 Wash. 273, 141 Pac. 695.

Where a street had been opened and used, the fact that a portion of it, a steep declivity of irregular shape, evidently intended to give access to the water at that point, had never been used as a street, does not vacate such portion by nonuser, under this section: Olson Land Co. v. Seattle, 76 Wash. 142, 136 Pac. 118.

This section has no application to and does not affect private rights of easement acquired by deed by an abutter upon a street in a dedicated plat: Van Buren v. Trumbull, 92 Wash. 691, 159 Pac. 891, L. R. A. 1917A, 1120.

A dedicated street in a plat outside the limits of an incorporated city or town is a "county road" within this section, and therefore subject to abandonment by failing to open it to public travel for the space of five years after the dedication, as provided in the act: Tamblin v. Crowley, 99 Wash. 133, 168 Pac. 982.

Abandonment of road by nonuser or otherwise than by acts of public authorities. 26 L. R. A. 449.

CHAPTER XIV.

BRIDGES ON COUNTY ROADS AND NAVIGABLE STREAMS.

§ 6511. [5674.] Commissioners to Appropriate Money to Build Bridges.

The board of county commissioners of the several counties in this state are hereby authorized to apply, in their discretion, any road money in the county treasury, not otherwise appropriated, toward defraying the expenses of building or repairing bridges on any of the county roads within their respective counties. [L. '69, p. 289, § 71; L. '79, p. 68, § 69; Cd. '81, § 3033; 1 H. C., § 2068.]

It is doubtful whether this and the next two sections are not superseded by the subsequent legislation on the same subject.

Cited in 20 Wash. 113.

The county is liable for the personal injuries resulting from a defective

bridge: Kirtley v. Spokane County, 20 Wash. 111, 54 Pac. 936.

§ 6512. [5675.] Method of Construction.

Whenever any bridge is to be built, by any county in this state the estimated cost of which shall exceed the sum of two hundred dollars, the board of county commissioners shall advertise for sealed bids, said bids to be accompanied by plans, specifications and strain diagrams for the same, said advertisement to be published for three successive weeks in the official newspaper of the county, if a weekly, and

twenty days if a daily paper. With each bid shall be deposited a bond, with a penalty equal to ten per cent of the amount of such bid, conditioned that said bond shall be forfeited to the county if the party making said bid shall fail or neglect to enter into written contract and give the requisite bond within five days from date of award. Upon the day and hour appointed by said board, to receive said sealed bids, the said board shall proceed to open said bids and award the contract to the party whose bid in their judgment, is the lowest and best. If in their judgment one is required, said board may appoint a superintendent, whose duty it shall be to superintend the construction of such bridge: Provided always, that said board of county commissioners, in its discretion, may reject any or all bids. [L. '69, p. 289, § 72; L. '79, p. 68, § 70; Cd. '81, § 3034; 1 H. C., § 2069; L. '86, p. 173, § 1.]

See note to last section.

§ 6513. [5676.] Bridge at Boundary of Adjoining Counties.

Whenever it shall be deemed necessary by the board of county commissioners of any county of this state to erect or repair a bridge over any stream which is a boundary line between two counties, the board of county commissioners of said adjoining counties are hereby authorized to unite for the purpose of erecting or repairing such bridge; and when any person or persons interested shall apply in writing to the board of county commissioners of either of the counties interested, such board shall proceed to appoint three viewers, who shall, after being first sworn to well and faithfully perform their duties as such viewers, proceed to view the bridge proposed to be repaired, or the site designated for such new bridge, and make an estimate of the cost of such repairs or erection, and of their proceedings make due report to the commissioners, together with a plan and specification of such new bridge, or a statement of proposed repairs. If the board shall decide to appropriate the amount necessary for its erection or repairs, they shall submit such estimate of costs, together with the plan of such bridge or statement of repairs, to the county commissioners of the other county interested; and if said commissioners shall approve the same and agree to defray one-half of the whole sum estimated or appropriated, together with the one-half of the necessary cost of view, then the board of county commissioners, to which application was first made, shall proceed to appoint a superintendent, and build said bridge, or make said repairs, as provided for in this chapter, the one-half of the whole costs and expenses of which shall be a legal claim against and be paid by said adjoining county. [L. '69, p. 289, § 73; L. '79, p. 68, § 71; Cd. '81, § 3035; 1 H. C., § 2070.]

"This chapter": The first three sections of this chapter constitute chapter 223 of the Code of 1881. See note to § 6511.

Cited in 20 Wash. 113.

§ 6514. [5677.] Power of Commissioners to Erect Bridges Across Navigable Streams.

The power to erect bridges on public highways across navigable streams in this state is hereby granted to the boards of county commis-

sioners of this state, under the restrictions of this act. [L. '91, p. 378, § 1; 1 H. C., § 2071.]

Sections 6514, 6515, 6517—6520, constitute "this act."

§ 6515. [5678.] Commissioners may Join in Construction of Bridge Between Counties.

Where a navigable stream is the boundary line between counties, the boards of commissioners of such counties may join in the construction of a bridge upon such terms as may be agreed upon. [L. '91, p. 378, § 2; 1 H. C., § 2072.]

§ 6516. [5679.] Bridges, Joint Construction by Counties and Cities.

Any county within the state of Washington, by and through its county commissioners, and any city or town, by and through its legislative body, [and the state of Washington,] or any two of such bodies, be, and they are hereby authorized to join in paying for the construction of any bridge, trestle, or any structure which crosses any stream or body of water, when such bridge is a connection between any street or county road, or is a connection between any streets that form connections with county roads, when such stream or body of water is within or partly within such city or town: Provided, that nothing in this section shall affect pending suits or actions or rights or [of] parties thereto, but such suits or actions shall be determined as though this act had not been passed. [L. '01, p. 120, § 1; L. '09, p. 229, § 1.]

The bracketed words are included in this section [amendment of 1909], without mention of any such subject in the title of the act.

§ 6517. [5680.] Notice, How to be Given—Declaration of Necessity—Construction.

Whenever the county commissioners of any county or counties desire to erect a bridge on any public highway across a navigable stream, under the provisions of this act, said board or boards shall cause to be published a notice in a newspaper of general circulation in the county or counties, if such there be; and if there be no newspaper published in the county or counties, then by posting three notices, one in the locality of the place to be bridged, and two in the most public places in the county or counties; such notice shall contain the name of the stream to be bridged and the exact point where such bridge is to [be] erected, and the date when the said board will determine the public necessity for the building of said bridge: Provided, that when such bridge is to be built by two counties, the notice shall be published in both counties. At the time fixed in such notice the board of commissioners shall declare such public necessity by an order of record, which said order shall, in addition to the other facts, prescribe the width of the draw to be made, if any draw shall be considered necessary in such bridge, and also the length of span necessary to permit the free flow of water: Provided, that such bridges shall be so constructed as not to interfere with, impede, or obstruct the navigation of such streams. [L. '91, p. 378, § 3; 1 H. C., § 2073.]

"This act": See note to § 6514.

Cited in 60 Wash. 316.

This section was not superseded by sections 6398 and 6408, *supra*; nor affected by

the subsequent federal acts: *Green v. Okanogan County*, 60 Wash. 309, 111 Pac. 226.

§ 6518. [5681.] Appeal from Decision of Commissioners.

If any person or corporation shall feel aggrieved by the determination of said board, an appeal shall be allowed to the superior court of the county, which said court shall have jurisdiction to hear and determine all matters connected therewith. [L. '91, p. 379, § 4; 1 H. C., § 2074.]

§ 6519. [5682.] Bridge may be Free or Tolls may be Charged—Rates of Toll.

When a bridge shall be built on a navigable stream by one county or two counties it may be absolutely free, or tolls, sufficient to pay in whole or in part for the construction and to keep up the repairs thereof, may be charged; the rate to be fixed by the board of commissioners of the county in which the same is located, or if located in two counties, then by the boards of commissioners of the two counties; or if there be any disagreement between the boards as to imposing or removing tolls, or the rate, the matter in dispute shall be referred to the board of commissioners of some adjoining county for determination; and if the tolls are fixed or removed thereby, the same shall take effect on the tenth day from the date of such determination; said determination shall be final, and shall be communicated in writing to the clerks of said boards respectively. [L. '91, p. 379, § 5; 1 H. C., § 2075.]

See, also, *infra*, §§ 6596, 6597.

§ 6520. [5683.] Construction of This Act.

Nothing contained in this act shall be held to prevent cities and towns from erecting and maintaining bridges, either toll or free, within their corporate limits, or granting franchises for that purpose. [L. '91, p. 379, § 6; 1 H. C., § 2076.]

"This act": See note to § 6514.

See *infra*, §§ 8966, 9034, 9175, 9323—9330, bridges in cities.

§ 6521. [5684.] Duty of County Commissioners to Protect Bridges.

The county commissioners of the several counties in this state be authorized and required to pass such rules and regulations as will protect the bridges within their several counties, and preserve them from destruction or injury by fast riding, driving, and neglect: Provided, that this act shall not be so construed as to effect [affect] or extend to any bridge located within the limits of any incorporated town in said state. [L. '60, p. 331, § 1; 1 H. C., § 2077.]

"This act": This and the next two succeeding sections constitute "this act."

§ 6522. [5685.] Sufficiency of Notice.

It shall be sufficient notice for the purposes of this act to have a written or printed notice posted upon or near any bridge, prohibiting fast riding or driving, and giving the amount of fine for the violation of such rule. [L. '60, p. 332, § 2; 1 H. C., § 2078.]

See note to § 6521.

§ 6523. [5686.] Collection and Disposition of Fines.

All fines assessed pursuant to the provisions of this act may be collected by any citizen, upon complaint made to any justice of the peace in the county in which the bridge is located, and said fine shall go into the school fund of the county. [L. '60, p. 332, § 3; 1 H. C., § 2079.]

See note to § 6521.

CHAPTER XV.**BRIDGES ON INTERSTATE OR INTERCOMMUNITY ROADS AND TOLLS.****§ 6524. [5686-1.] Power to Construct.**

The state of Washington and all counties, cities and towns within the state are hereby authorized and empowered to join with each other or to aid the state of Washington, the federal government, or any adjoining county, city or town in this state, or to jointly or separately join with any adjoining state, county, city or town in the purchase, construction, control, operation and maintenance of any bridge or bridges over or across any river, stream or body of water being within or constituting the boundary line of the state or of any county therein. [L. '13, p. 168, § 1.]

The provisions of this act gives the state the management and control, through its highway board, of the construction of interstate bridges, where the state itself joins in the construction of the bridge, are not intended to apply to an interstate bridge constructed by a county of this state jointly with a county of an adjoining state: *Rands v.*

Clarke County, 79 Wash. 152, 139 Pac. 1090.

A statute authorizing the issuance of county bonds bearing interest at a rate not exceeding six per cent per annum, payable semi-annually, is sufficiently complied with by the issuance of bonds bearing interest at the rate of six per cent payable annually: *Rands v. Clarke County*, 79 Wash. 152, 139 Pac. 1090.

§ 6525. [5686-2.] Highway Board to Represent State—Joint Control.

Whenever the legislature of the state of Washington shall have made provision for the purchase or construction of a bridge or bridges, jointly with counties, cities or towns in this or adjoining states, the state highway board is hereby authorized and empowered to represent and act for and on behalf of the state of Washington for the purpose of carrying into effect the provisions of this act, and any other act making an appropriation for the purchase or the construction of a bridge or bridges, which come under the provisions of this act, and when the state of Washington joins in the purchase or construction of a bridge jointly with adjoining states or with the counties, cities, or towns of any adjoining states, or jointly with counties, cities, or towns in this state, the purchase or construction of such bridge or bridges shall be under the direction, control and management of the state highway board acting jointly with the public authority legally authorized to represent and act for such adjoining state, county or city, and when counties or cities in this state shall join with the state for the purchase or construction of a bridge built or to be built in this state, or on the boundaries thereof, the money or funds furnished or provided by such county or city shall be

expended under the direction, supervision and control of the state highway board, and under the provisions of this act. [L. '13, p. 168, § 2.]

See *infra*, § 10765, duties of highway board devolve upon state highway committee.
See *infra*, § 10893, state highway board abolished.

§ 6526. [5686-3.] Maps and Plans—Bids.

Whenever provision is made for the purchase or construction of a bridge, which comes under the provisions of this act, the state highway commissioner, upon being directed by the state highway board, shall confer with the legally authorized public authorities of any adjoining state or city or county or cities within this state, and acting jointly with such authorities make or cause designs, maps, plans, specifications, drawings, details, estimates, and all other requirements for full information with reference to the location and construction of such bridge to be made and shall determine the kind, character and dimensions of the bridge to be constructed, subject to the approval of the state highway board. That after the plans and specifications have been agreed upon by the public authorities, representing the respective states, counties, cities or towns interested, bids shall be advertised by giving such notice as the parties interested shall agree upon, provided, that in no event shall less than thirty (30) days' notice be given. The notice shall provide that the contract shall be let to the lowest responsible bidder, and that the authorities acting jointly in giving the notice reserve the right to reject any and all bids, and the notice shall state the proportion of the total amount to be paid by each. [L. '13, p. 169, § 3.]

§ 6527. [5686-4.] Contract for Construction.

Upon the final acceptance of the bid for the construction of a bridge, under the provisions of this act, the state highway board, acting jointly with the public authorities of any other state, county, or city, or county or city in this state, shall enter into a contract for the construction of the bridge and shall require the contractor to furnish a surety bond for the faithful performance of the contract, in such sum as shall be fixed by such joint authorities, and shall also require the contractor to furnish an additional bond in the sum to be fixed by the state highway board of Washington, conditioned as is provided in sections 1159 to 1161, inclusive, of this code, and shall file said last mentioned bond with the auditor of the state of Washington, which bond shall be approved by the attorney general. [L. '13, p. 169, § 4.]

§ 6528. [5686-5.] Clerical Assistance — Supervising Engineer — Payments, How Made.

The highway commissioner, when directed by the highway board, is hereby authorized to rent office rooms, purchase the necessary supplies and to employ clerical and engineering assistants necessary in making the preliminary arrangements, and during the construction of the bridge; the compensation of such employees to be fixed by the state highway board. The state highway board shall have authority to act jointly with the other public authorities interested in the construction of such bridge, to employ a supervising engineer to be in charge of the work of

the construction of the bridge, whose compensation shall be fixed by the state highway board, and the public authorities of any adjoining state, county or city, joining in the construction of the bridge. The payment of salaries of employees and all other expenses shall be deemed a part of the construction work, and shall, including payments on contract, be made only on vouchers approved by the state highway commissioner, and payable only out of funds provided therefor. [L. '13, p. 170, § 5.]

§ 6529. [5686-6.] County Indebtedness—Bonds.

Whenever the board of county commissioners of any of the counties of this state shall deem it for the interest of the county to engage in or to aid in the purchase or construction of any bridge or bridges, under the provisions of this act, and to incur indebtedness to meet the cost thereof and expenses connected therewith, and issue bonds of the county for the payment of such indebtedness or any thereof, such county is hereby authorized and empowered, by and through its county commissioners, to engage in or aid in any such work as aforesaid, and to incur indebtedness for such purpose or purposes to an amount which, together with the then existing indebtedness of such county, shall not exceed five (5) per centum of the taxable value of the taxable property in said county, as shown by the last previous assessment-roll thereof for state and county purposes, and to issue negotiable bonds of the county for all or any such indebtedness, and for the payment thereof, in the manner and form and as is provided in sections 5584 to 5591, inclusive, of this code, and other laws of this state which shall then be in force, and to make part or all in such payment in bonds or moneys derived from sale or sales thereof, or partly in such bonds and partly in such money, provided that said commissioners shall have first submitted the question of incurring such indebtedness to the voters of the county at a general or special election, and three-fifths of the voters voting upon the question shall have voted in favor of incurring the same. [L. '13, p. 170, § 6.]

See, also, *supra*, § 5591, county road and bridge bonds.

Cited in 79 Wash. 154.

§ 6530. [5686-7.] Bonds are for County Purposes.

Any and every such purpose as is mentioned in the foregoing section is hereby declared to be a county purpose, and the bonds or the money derived from the sale of the same shall be deposited with the proper state authorities, as directed by the state highway board, and expended under the provisions of this act, provided that any bonds or funds so deposited and not used for such purpose shall be returned to the county making the deposit. [L. '13, p. 171, § 7.]

See, also, *supra*, § 5575, bonds for county purposes.

§ 6531. [5686-7½.] Interest on Interstate Bridge Bonds.

Whenever any county of this state shall have issued negotiable bonds of the county for the purpose of constructing, or aiding in the construction of any bridge between such county and an adjoining state, under the provisions of chapter 56 of the Laws of 1913, and the money

derived from the sale of such bonds shall exceed the proportionate cost of the construction of such bridge, chargeable to such county, and the board of county commissioners of such county shall have failed, or shall in any year fail to levy an annual tax to pay the interest on said bonds whenever the same becomes due, and there shall be in the county treasury of said county moneys derived from the sale of said bonds in excess of the proportionate cost of the construction of such bridge, chargeable to such county, sufficient to pay the interest due on any of such bonds, the county auditor of such county is hereby authorized and empowered when authorized so to do by an order of the board of county commissioners of any such county, to draw his warrant upon the county treasurer for the purpose of paying such interest [and the county treasurer] is hereby authorized and empowered to pay such warrant out of any such excess funds in his hands derived from the sale of such bonds. [L. '15, p. 342, § 1.]

§ 6532. [5686-8.] City Assistance—Indebtedness—Bonds.

That whenever the city council of any incorporated city or town in this state shall deem it advisable to join with or aid in the purchase or construction of any bridge or bridges within or partly within the corporate limits of such city or town, under the provisions of this act, and to contract indebtedness to meet the cost thereof and expenses connected therewith, and to issue negotiable bonds of the city or town for the payment of such indebtedness or any part thereof, said city or town by and through its council is hereby authorized and empowered to engage or aid in the purchase or construction of such bridge or bridges or public work, as aforesaid, and to incur indebtedness for such purpose or purposes to an amount which together with the then existing indebtedness of such city or town shall not exceed five (5) per centum of the taxable value of the taxable property of such city or town, to be ascertained by the last assessment of such city or town for city or town purposes, previous to the incurring of such indebtedness, and to issue negotiable bonds of such city or town for all or any such indebtedness, and for the payment thereof in the manner and form, as is provided in section 9538 to 9547, of this code, inclusive, and other laws of this state which shall then be in force, and to make a part or all of such payments in bonds or money derived from sale or sales thereof, or partly in such bonds and partly in such moneys, provided that the council of said city or town shall have first submitted the question of incurring such indebtedness to the voters of said city or town at a special election held according to law, and three-fifths of the legal ballots cast on said question shall be in favor of incurring such indebtedness. [L. '13, p. 171, § 8.]

§ 6533. [5686-9.] Bonds are for Municipal Purposes.

That any and every such purpose as is mentioned in the last preceding section is hereby declared to be a strictly municipal purpose, and that the bonds, or the money derived from the sale of the same, shall be deposited with the proper state authorities, as directed by the state highway board, and expended under the provisions of this act, provided that any funds or bonds so deposited and not used for the purpose for

which they were deposited shall be returned to the city or town so depositing the same. [L. '13, p. 172, § 9.]

§ 6534. [5686-10.] State to Own Bridge.

That upon the purchase or construction of any bridge jointly or with any adjoining state, county or city, the same shall be accepted by the state highway board acting in conjunction with such public authorities of any adjoining state, county or city, joining in its construction, and the state shall own one-half of such bridge, and the same shall become the exclusive property of the state of Washington, and under the control and management of the state highway board. [L. '13, p. 172, § 10.]

§ 6535. [5686-11.] City and County may Join—Bonds.

That whenever it is deemed advisable by the common council of any city or town and the county commissioners of any county in this state to purchase or construct a bridge within or partly within such city or town, the council and commissioners are authorized and empowered to enter into an agreement for the construction of such bridge, upon such terms as may be mutually agreed upon, each contributing such sum toward the purchase or construction of the same as may be determined to be just and proper, and enter into contract for the construction of such bridge and to spend public funds thereon, and if deemed necessary may bond the county or city or town in the manner herein specified. The contracts for letting the same and notice given to bidders, and all other matters pertaining to the construction shall be governed by the laws in force governing the construction of bridges by county commissioners in the state of Washington, provided the payments to be made on the contract by the respective municipal corporations be made direct to the contractor. [L. '13, p. 173, § 11.]

Cited in 79 Wash. 155.

§ 6536. [5686-12.] Franchises—Powers of Public Service Commission.

The state highway board is authorized and empowered, acting jointly with any legally authorized body or public authority of any adjoining state, county or city joining in the construction of such bridge, to grant franchises for laying rails and the operation of electric street and suburban railways, and other public utilities, except steam railroads, and for the laying thereon and suspending therefrom pipes for the carrying of water, gas and other substance, and wires and cables for the conducting of electricity for telegraph, telephone, lighting, heating, power and other purposes, provided that no exclusive franchise shall be granted or given any person, firm or corporation for any use or purpose, but such bridge shall be for common use for all public service corporations or individuals, upon such terms as may be prescribed. That in the granting of any right, privilege or franchise to any person, firm or corporation for the use of said bridge for any purpose, the state highway board shall fix and prescribe the compensation to be paid for the use of such bridge, subject to the approval of the public service commission: Provided, that the rates, sums or amounts which shall be fixed in the franchise, granted to any person, firm or corporation shall be

subject to change, raised or lowered, at any time by the public service commission, or any other body possessing the same powers as is now possessed by the public service commission of the state of Washington, and new or different rates or charges fixed by the public service commission, acting jointly with the other public authorities herein mentioned: Provided further, that the powers and duties given to the public service commission by the laws of the state of Washington are extended to include any bridge which may have been built by the aid of the state of Washington, and which has become the property of the state of Washington under the provisions of this act. [L. '13, p. 173, § 12.]

Power of public service commission with respect to bridges used by street railways. 5 A. L. R. 65.

§ 6537. [5686-13.] Proceeds from Franchise Rights.

All moneys derived from any source from the use of such bridge by any persons, firm or corporation shall be paid into the public highway fund of the state of Washington. [L. '13, p. 174, § 13.]

§ 6538. [5686-14.] Powers of Highway Board.

That the state highway board is hereby given power and authority to do all acts and things necessary to carry out the provisions of this act, whether mentioned herein or not, and to construct, complete and maintain any bridge which may be authorized to be constructed under the provisions of this act. [L. '13, p. 174, § 14.]

See note to § 6525.

§ 6539. [5686-15.] Definitions.

The meaning of words and phrases used in this act shall, unless inconsistent with the context, be as follows: "Bridge" shall include public road, and shall include bridge, bridge approach, culvert or viaduct over the state boundary line, or over a stream, river or body of water within, at, or constituting the boundary line of the state or county. "Construct" shall include to build, repair, maintain, improve, or other like work. "Construction" shall include repair, maintenance, improvement, or other like work. "Public authorities" shall mean the county commissioners of the county or the constituted authorities of any county having control of roads and bridge construction or the council, when cities or towns are referred to. Words importing the plural number may be applied in the singular, and words importing the singular may be applied in the plural. [L. '13, p. 174, § 15.]

"This act," see the preceding sections of this chapter.

§ 6539½. [5686-16.] Franchises and Tolls on Interstate Bridges.

Whenever any bridge has been or may hereafter be constructed over any navigable river, stream or body of water which constitutes or forms the boundary line of this state, or any county therein, jointly with any state or county of an adjoining state, the county commissioners of the county of this state which has joined in the construction or has the control over any such interstate bridge with any adjoining county or state, shall have the power and authority to act concurrently and jointly with

any such adjoining county or state which has joined in the construction or which under the laws of such adjoining state has the control and operation of the same, and which has power under the laws of such adjoining state to act in conjunction with the county commissioners of any county in this state, to grant franchises to any company or corporation for the laying of rails on such interstate bridge and for the operation of electric, street and suburban railways and all other public utilities except steam railroads, and for laying thereon and suspending therefrom pipes for the carrying of water, gas and other substances and wires and cables for the conducting of electricity for telegraph, telephone, lighting, heating, power and other purposes; Provided, that no franchise except such as contain adequate common user provisions shall be granted or given any person, firm or corporation for any use or purpose, but such interstate bridge shall be for common use for all municipalities, public service corporations, or individuals upon such terms as may be prescribed. [L. '15, p. 49, § 1.]

§ 6540. [5686-17.] Limit of Franchises.

That all franchises granted by the county commissioners under the provisions of section 6539½ shall be granted for such term as the commissioners acting concurrently with the authorities in such adjoining county or state may determine, but in no event shall any franchise be granted for a longer period than twenty-five years. [L. '15, p. 50, § 2.]

§ 6541. [5686-18.] Tolls—Power to Fix—Joint Actions.

That whenever any interstate bridge has been constructed, or may hereafter be constructed, between any county in this state and an adjoining county or state over waters forming the boundary line of this state, the county commissioners of such county in this state which has joined in the construction of such bridge or has control over the same shall have the power, acting in conjunction and concurrently with the authorities having control of such interstate bridge under the laws of any adjoining county or state to charge and fix tolls for the transit over any such interstate bridge for all cars, street-cars, wagons, for the laying or suspending of pipes from said bridge for the carrying of water, gas or other substances, wires and cables for the conducting of electricity for telegraph, telephone, lighting, heating, power and other purposes, carriages, automobiles, trucks, vehicles, animals, foot-passengers or other passengers, and for any and all other purposes for which such interstate bridge may be used for both public and private purposes, and such tolls so fixed shall be reasonable and just and shall be apportioned between the county of this state and such adjoining county or state on the basis of the amount contributed toward the construction of such bridge between the county of this state and such adjoining county or state. [L. '15, p. 50, § 3.]

§ 6542. [5686-19.] Mode of Granting Franchises.

That franchises granted in section 6540, can only be granted at a joint meeting of the commissioners of the county of this state where such interstate bridge is located and the public authorities having such matters

in charge in such adjoining county or state, and before any franchise can be granted over such interstate bridge for any purpose public notice thereof must be given for at least once a week for four consecutive weeks in a newspaper of general circulation in the county to be designated by the public authorities having the matter in charge, in which such interstate bridge is located, giving the time and place when such application for such franchise will be heard and containing a notice that application has been made for the granting of the franchise for the purposes desired and that the same will be heard at the time and place stated. [L. '15, p. 51, § 4.]

§ 6543. [5686-20.] Regulation of Tolls.

That the tolls provided for in section 6541, shall be fixed at a joint meeting of the county commissioners of the county in which such interstate bridge may be located and the public authorities of any county or state having the authority to join in the fixing of tolls, and such tolls shall be reasonable and just, and the rates thus fixed shall continue for the period of one year unless otherwise changed, but such joint board shall have power to either lower or raise any such tolls, or tolls on any particular class herein mentioned, at any joint meeting of such board. [L. '15, p. 51, § 5.]

§ 6544. [5686-21.] Collection and Disposal of Tolls.

The county commissioners of any county in this state in which any such interstate bridge may be located shall provide for the collection of such tolls, and the board shall have power to do whatever is necessary to arrange for the collection of such tolls, but all tolls collected from any interstate bridge in this state shall be paid over monthly to the county auditor and by him transmitted to the county treasurer, and the person collecting the same shall make the same affidavit in relation to the collection of such tolls as is now required to be made by county officers in relation to fees collected by them. [L. '15, p. 52, § 6.]

§ 6545. [5686-22.*] Interstate Bridge Fund—Disbursements.

The moneys collected shall be kept by the county treasurer in a separate fund and shall be known as the interstate bridge fund and shall be used for the purpose of paying for the operating expenses of any such interstate bridge, and in case any such county is required to pay interest on any bonded indebtedness for the construction of such interstate bridge then to be applied upon the payment of such interest, the remainder of any such sum in the hands of the county treasurer may until June 1, 1921, be expended upon the public highways of the county for the permanent improvement or hard surfacing of the highways of the county under the direction and control of the county commissioners: Provided, that the moneys collected from such tolls can only be expended upon warrants drawn by order of the county commissioners, and the money used for permanent improvement of the highways shall be expended under the direction of the county commissioners and shall be used only for permanent improvement: Provided, further, that not more than one-fourth ($\frac{1}{4}$) of said remainder of said moneys may be expended so as to form con-

tinuous improved highways leading to the approach of the said interstate bridge and to this end such counties and the commissioners thereof are hereby authorized to use one-fourth ($\frac{1}{4}$) of the remainder of moneys aforesaid in the improvement of any arterial highway or highways leading to such interstate bridge within the limits of any incorporated city or town. [L. '19, p. 203, § 1. Cf. L. '15, p. 52, § 7.]

§ 6546. [5686-23.] Highway Board to Control Interstate Bridges Purchased.

The foregoing provisions of this act shall not apply to bridges located upon state highways and not originally constructed by any public authorities but acquired by the state or local subdivisions thereof by purchase jointly with adjoining states or local subdivisions thereof. Such interstate bridges upon state highways so acquired by purchase shall be controlled, operated and maintained by the state highway board jointly with the public authorities within any adjoining state having the control of any portion of such bridges. The income from, and expenses of operation and maintenance of, such structures shall be apportioned between the joint owners according to such arrangements as have been or may be made by the state highway board. Franchises for the use of such bridges by electric railways and other utilities shall be granted by the public service commission acting in agreement with the public authorities having control of the portion of such structures outside this state. Such franchise shall contain adequate common user provisions and shall not be exclusive and no franchise shall be granted for a longer period than twenty-five years. [L. '15, p. 52, § 8.]

§ 6547. Street Railways on Approaches to Interstate Bridges.

That whenever any interstate bridge has been or may hereafter be constructed over any navigable river, stream or body of water which constitutes or forms the boundary line of this state or any county therein jointly with any state or county of an adjoining state, and any portion of such interstate bridge or the approaches thereto are within the limits of any incorporated city or town within this state, the city council of any such city or town shall have the power and authority to grant, by resolution to the board of county commissioners of any county in this state joining in the construction or operation of any such interstate bridge or any other public authority of this state joining in the operation of any interstate bridge, the right to lay and maintain street railway tracks in such streets of any such city or town as may constitute a part of or be used in connection with the approach or approaches to any such interstate bridge, with the power and right to construct and erect the necessary poles and trolley lines to be used in connection with such tracks. [L. '17, p. 708, § 1.]

§ 6548. Manner of Laying Tracks.

That in granting the right to lay and maintain street-car tracks as provided in section 6547 such city or town may prescribe in such resolution the manner in which such street-car tracks may be laid and maintained. [L. '17, p. 708, § 2.]

§ 6549. Street Railway Tracks on Interstate Bridges—No Exclusive Franchises.

That whenever in the construction of any interstate bridge the public authorities constructing such bridge have as a part of the construction provided such bridge and the approaches thereto with street-car tracks and other conveniences for the use and operation of street-cars over such interstate bridge, and whenever any county or other public authority in this state joining in the construction or operation of such bridge has constructed and is maintaining street-car tracks and other conveniences for the use and operation of street-cars in any incorporated city or town of this state, as provided in section 6547, the board of county commissioners of any county in this state, or other public authorities of this state, joining in the construction or operation of any such interstate bridge or in the construction and maintenance of any street-car tracks in the streets and approaches to such bridge are authorized and empowered to grant to corporations, persons or municipalities operating over such interstate bridge or operating street-cars over the tracks on the approaches or streets used in connection therewith, the right to use such railway tracks on such terms as may be prescribed: Provided, that no franchise or right shall be given to any person, corporation or municipality for the exclusive use of any such tracks, but the right to operate over the same or any portion thereof shall be a common use for all municipalities, corporations or individuals desiring to use the same on such terms as may be prescribed. [L. '17, p. 709, § 3.]

§ 6550. Joint Franchise by Interstate Authorities.

In granting the right to use any street-car tracks constructed under the provisions of this act or the right to operate over the same to any person, municipality or corporation the public authorities granting such right may prescribe the terms and conditions under which such person, municipality or corporation may use or operate over the same, and may act jointly with any state or county of an adjoining state or county which has joined in the construction or operation of any such interstate bridge, in granting the right to use such tracks to persons, municipalities or corporations operating over such interstate bridge. [L. '17, p. 709, § 4.]

§ 6551. Interstate Bridge Commission.

That whenever any bridge has been or may hereafter be constructed over any navigable river, stream or body of water which constitutes or forms the boundary line of this state or any county therein jointly with any state or county of an adjoining state, the county commissioners and prosecuting attorney of the county of this state which has joined in the construction or has control over any such interstate bridge shall have power and authority to act concurrently and jointly with the public authorities having such matters in charge in any such adjoining county or state, and such joint body shall constitute an interstate bridge commission. [L. '19, p. 256, § 1.]

§ 6552. Powers Conferred.

Such interstate bridge commission shall have all of the powers now conferred upon county commissioners under the laws of the state of

Washington for the control of interstate bridges, the granting of franchises thereon and the collection and expenditure of tolls. [L. '19, p. 256, § 2.]

§ 6553. Rules and Regulations—Operation and Maintenance.

Such interstate bridge commission shall have power to prescribe rules and regulations for its own government, and times and places of meeting, and may make such provision as it may deem necessary for the keeping of records of its meetings and actions; shall have power and authority to pay all expenses of operation, repair and maintenance, and whatever power and authority may be necessary for the control and operation of any such interstate bridge and the payment of claims for the operation and repair of the same from the interstate bridge fund. [L. '19, p. 257, § 3.]

§ 6554. Disposition of Moneys Collected.

The net proceeds collected on account of the operation of any such interstate bridge shall be paid over monthly to the county auditor and by him transmitted to the county treasurer and shall be expended as provided by law. [L. '19, p. 257, § 4.]

CHAPTER XVI.

TURNPIKE ROADS.

§ 6555. [5687.] Power and Discretion of Commissioners to Appoint Viewers, etc.

The county commissioners of any county, when they become satisfied that the public interests of their county demand and justify special action for the improvement of the roads therein, may appoint three disinterested freeholders of their county as commissioners, to view, survey, and locate one or more roads, beginning at and leading from the county seat of the county, or such other and eligible points as may be deemed proper, and running by such direct and eligible route as they find best for the public convenience, and terminating at any point within or at the county line; but they are not authorized or required to construct or maintain any such road within the corporate limits of the town or city where the county seat is located, when, according to the last federal census, more than one thousand inhabitants are contained in such corporate limits. [Cf. L. '54, pp. 361, 362; L. '69, p. 328; L. '63, p. 530; L. '90, p. 612, § 1; 1 H. C., § 2032.]

§ 6556. [5688.] Roads, How to be Constructed.

The roads established and constructed under this chapter shall be opened not more than sixty nor less than forty feet wide, and at least sixteen feet in width shall be turnpiked with earth so as to drain freely to the sides, and raised with stone or gravel not less than ten nor more than sixteen feet in width, nor less than twelve inches thick in the center, and not less than eight inches at the outer edges of such bed of stone or gravel, well compacted together, in such manner as to secure a firm, even, and substantial road; but the commissioners may, in their discretion, cause the

road to be constructed wholly of earth, plank, or timber, when stone or gravel is not accessible to the line of the road; in no case shall the grade of ascent or descent on the road be greater than seven degrees; the road shall be well provided with all necessary side drains, wasteways, and under-draining to prevent overflowing or washing by water, and with substantial bridges or culverts at all crossings of watercourses; and such roads shall be free to the public for travel. [L. '90, p. 612, § 2; 1 H. C., § 2033.]

§ 6557. [5689.] Right of Way may be Secured, How.

The county commissioners may authorize the commissioners by them appointed to call to their assistance a competent surveyor or civil engineer, or both, at their discretion, with the necessary and proper assistance, and lay out, survey, and locate such turnpike road through or upon improved or unimproved lands on the best route between the points of beginning and termination, and to obtain by grant or take propositions for the purchase from the owners of land over which the road will pass, the right of way, and to take timber and other materials necessary to the construction and repair of the same. [L. '90, p. 613, § 3; 1 H. C., § 2034.]

§ 6558. [5690.] Condemnation Proceedings to Secure Right of Way.

When said commissioners and the owners fail to agree as to the amount of compensation, or when the owner is unknown, nonresident, or incapable of contracting, then the same shall be ascertained and adjusted by proceedings had in the name of the county commissioners, under the law providing for the appropriation of private property by [municipal] corporations; and the commissioners may authorize the viewers or commissioners by them appointed to locate the road upon the whole or any part of any state or county road heretofore laid out and established within the county, and to widen, alter, change, or vacate the same, or any part thereof, subject to the rules as to compensation for property appropriated as aforesaid. [L. '90, p. 613, § 4; 1 H. C., § 2035.]

**§ 6559. [5691.] Donation, etc., may be Required by Commissioners—
Separate Fund.**

Before determining upon the location or establishment of any such turnpike road, the county commissioners may require donations of money and agreements on the part of taxpayers of the county, subjecting their taxable property to taxation annually, to aid in the location and construction of the same during the term of years named, therein specified, which agreements shall be filed and recorded in the office of the county clerk, and from the time of such filing and recording shall operate as a lien upon the real estate of the several parties joining therein as donors for the purpose therein provided. All revenues derived from donations in money and taxation shall be kept and held as a separate fund in the county treasury, and shall be applicable only to the purposes of locating and constructing such turnpike roads; and if the commissioners determine not to establish and construct such road, then any money received as donations by taxation shall be returned. [L. '90, p. 613, § 5; 1 H. C., § 2036.]

§ 6560. [5692.] Restrictions upon Commissioners as to Levy of General Tax, etc.

The county commissioners shall not levy any general tax nor appropriate any money, except so far as may be necessary to pay the expense of preliminary surveys already commenced, or any other liabilities already incurred, to be expended in the construction of such turnpikes, without first submitting to the qualified voters of the county the question as to the policy of constructing such roads by general tax, which submission shall be made at any general election; and the county commissioners shall cause public notice of such vote to be given by publication in the official paper of the county, and also by causing handbills to be posted up at the usual place of holding elections in the county, at least fifteen days prior to such election. [L. '90, p. 614, § 6; 1 H. C., § 2037.]

§ 6561. [5693.] Election and Returns, Law Governing—Compensation.

The judges of such election in the several precincts and wards in any county in which such question is submitted and such notice is given, as aforesaid, shall open a poll for taking such vote, receive and count the ballots cast, and within three days thereafter return to the clerk of the board of county commissioners a full and correct abstract of the votes, and shall in all respects be governed by the laws regulating general elections, and be entitled to the same compensation for returning the poll-books, which shall be paid out of the county treasury on the order of the clerk of the board. And the poll-books so returned shall, within five days of the day of holding such election, be opened and the votes counted by the commissioners and the clerk of the board, and a correct statement of the result shall be kept by the clerk on file in his office for public inspection. [L. '90, p. 614, § 7; 1 H. C., § 2038.]

§ 6562. [5694.] Commissioners may Resubmit Question, When.

If at such election two-fifths of the votes so cast be against the policy of constructing such turnpikes, the commissioners shall not assess any tax for that purpose, but they may, on petition of not less than one hundred taxpayers of the county, again submit the same question, at any regular annual election, to the qualified voters of the county, notice of which shall be given and the election conducted in all respects in the manner prescribed in the two preceding sections. [L. '90, p. 614, § 8; 1 H. C., § 2039.]

§ 6563. [5695.] Taxes may be Levied and Bonds Issued for Construction, When.

If at any election three-fifths be found in favor of the construction of such turnpikes, the commissioners may proceed to levy taxes, issue bonds, and appropriate and expend money in the construction of such turnpike roads as, in their judgment, may be necessary to the public convenience and promotive of the public interest. [L. '90, p. 615, § 9; 1 H. C., § 2040.]

§ 6564. [5696.] Amount of Donations, etc., may be Levied, When and How.

When the county commissioners receive or require donations of money, or written agreements on the part of the taxpayers, subjecting their

taxable property to taxation annually, to aid in the location and construction of such roads, and a majority of the taxpayers within the boundaries of the road sign such subscription or agreement, the commissioners shall thereupon be authorized to levy the amount thereof upon the taxable property within the boundaries of the road, according to the benefits to said property, taking into consideration any assessments that have heretofore been made; and the boundaries of the road shall not be taken to include any property that does not lie within two miles of such contemplated improvement. [L. '90, p. 615, § 10; 1 H. C., § 2041.]

§ 6565. [5697.] Levy of Tax to Provide Permanent Fund for Road Purposes.

Upon the location and establishment of any such turnpike road by the county commissioners, and after an affirmative vote by the qualified voters, they may, for the purpose of aiding in the construction, and to provide a permanent fund for the maintenance and expense thereof, levy annually, in addition to other road taxes authorized by law, a tax for turnpike road purposes, of not more than four mills on the dollar of valuation on the taxable property in the county, and to continue such levy from year to year until the road or roads which have been commenced are completed. [L. '90, p. 615, § 11; 1 H. C., § 2042.]

§ 6566. [5698.] Commissioners may Issue County Bonds for Building Roads.

No such taxes shall be levied on any lands which have heretofore been assessed for the construction of any free turnpikes or improved road or roads already constructed, or in course of construction at the time of the levy of the tax, unless the amount of such assessment, and in such case such excess only shall be levied and collected; and for the purpose of raising the money necessary to meet the expenses of such improvement, the county commissioners may, if in their opinion the same be advisable, submit to the qualified voters of the county, at any general election, the question whether the county commissioners shall be authorized to issue bonds of the county for the purpose of building roads in accordance with the provisions of this chapter, and if three-fifths of the legal votes cast be in favor of the issue of such bonds, then the county commissioners may issue the bonds of the county, payable at such times as they deem advisable, not exceeding twenty years, with interest not exceeding six per cent per annum, payable semi-annually, and which bonds shall not be sold for less than their par value. [L. '90, p. 615, § 12; 1 H. C., § 2043.]

§ 6567. [5699.] Records of Road Matters to be Kept, and What to Contain.

The county commissioners shall cause to be kept by the clerk of the board a full record of all the proceedings in the location, establishment, and construction of the road, together with accurate accounts of receipts and expenditures of money, under the provisions of this chapter, and no money shall be drawn from the treasury except to pay liabilities already accrued, and then only in pursuance of orders caused by the commissioners whilst in session as a board, to be entered upon the record of their pro-

ceedings, and by orders drawn by their clerk upon the county treasury in favor of the persons to whom such money is due. [L. '90, p. 616, § 13; 1 H. C., § 2044.]

§ 6568. [5700.] Road Construction Work, How to be Let—Notice, etc.

The work of the construction of such roads shall be let publicly by the county commissioners to the lowest responsible bidder, after due notice given of such letting by publication in one or more newspapers published or of general circulation in the county, or by handbills, or both; for that purpose the commissioners shall cause the same to be divided into convenient sections, and each section numbered from the county seat or other point named as the place of beginning, toward the termination, and shall let the same by sections, with proper specifications of the various kinds of labor required on each section; and bidders shall be required to separately state their bids for each class of work, in such manner as the commissioners shall provide, and each contractor shall be required to give bond, with sufficient sureties, for the performance of his contract, payable to the county commissioners, for the use and benefit of the county, and with the necessary specifications and stipulations on the part of the contractor inserted therein. [L. '90, p. 616, § 14; 1 H. C., § 2045.]

§ 6569. [5701.] Payment for Work or Material, How to be Made.

In all cases the construction of such roads shall commence at the point of beginning, and no payment for work or material shall be made except upon estimates made by the surveyor or engineer employed by the commissioners, and by him duly certified, of work actually done or material actually furnished, or both, and after reserving such per cent as may be fixed by the parties to the contract, to guarantee performance of the same. [L. '90, p. 617, § 15; 1 H. C., § 2046.]

§ 6570. [5702.] Compensation for Services of Viewers and Surveyor.

The viewers, surveyor, or engineer, and their assistants, shall be entitled to receive the same compensation for their services required under the provisions of this chapter as is now allowed by law in the construction of state or county roads. [L. '90, p. 617, § 16; 1 H. C., § 2047.]

CHAPTER XVII.

TOLL ROADS.

§ 6571. [5703.] County Commissioners may Lease Public Roads.

Whenever a public road in any county in this state is or may hereafter be so located that there is little or no local labor along the line of said road, the board of county commissioners of the county where such road or any portion of the same is or may hereafter be located is authorized to lease such road or any portion of the same, to any person or corporation, to open, improve, and keep the same in repair for a period not exceeding ten years, with the right in consideration thereof to collect and receive tolls for travel thereon, in the manner provided in this chapter.

[L. '64, p. 26, § 1; L. '69, p. 285, § 54; L. '79, p. 64, § 52; Cd. '81, § 3016; 1 H. C., § 2048.]

See supra, §§ 6539½—6545, tolls on interstate bridges.

Compare Laws of 1863, pages 528—530, relating to private toll roads and bridges; parts of this act may still be in force.

Roads owned by private corporation: See next chapter.

§ 6572. [5704.] Notice of Intention to Lease Road to be Published.

Whenever it becomes expedient and lawful, under the provisions of this chapter, to lease a public road, or any specific section thereof, the board of county commissioners shall make an order to that effect, specifying therein the termini thereof, and directing the county auditor to cause the same to be published in some weekly newspaper of general circulation therein, for a period not less than four weeks, and in like manner to give notice therewith that sealed bids will be received at such auditor's office, for the leasing of such road until a particular hour of a certain day thereafter not more than ten days after the expiration of the publication of such order or notice. [L. '64, p. 27, § 2; L. '69, p. 285, § 55; L. '79, p. 65, § 53; Cd. '81, § 3017; 1 H. C., § 2049.]

§ 6573. [5705.] Bids must be Accompanied With Bond.

No bid shall be considered unless accompanied by a bond, executed by two or more sureties, in the sum of two thousand dollars, to be void upon condition that the bidder, if the lease is awarded to him, will, within ten days thereafter, enter into the contract for keeping the road, and give the bond to secure the performance thereof, as hereinafter provided. [L. '64, p. 27, § 3; L. '69, p. 285, § 56; L. '79, p. 65, § 54; Cd. '81, § 3018; 1 H. C., § 2050.]

§ 6574. [5706.] Execution of Lease—Bond of Lessee.

The contract for the lease shall be subscribed by the lessee and approved by the board of county commissioners and filed with the county auditor. At the time of filing the contract the lessee shall give a bond to the county in a sum to be fixed by the board of county commissioners, not less than two thousand nor more than ten thousand dollars, with two or more sufficient sureties, to be void upon the condition that the lessee will faithfully perform the contract in relation to such road, and comply with the provisions of this chapter concerning the same. [L. '64, p. 27, § 4; L. '69, p. 285, § 57; L. '79, p. 65, § 55; Cd. '81, § 3019; 1 H. C., § 2051.]

§ 6575. [5707.] Justification of Sureties on Lessee's Bond.

The sureties in the bond mentioned in the last section shall have the qualifications of bail upon arrest, and shall justify in like manner before the county commissioners or the clerk thereof. [L. '69, p. 286, § 58; L. '79, p. 65, § 56; Cd. '81, § 3020; 1 H. C., § 2052.]

§ 6576. [5708.] Condition in Which Road must be Kept.

A road leased under this chapter shall be cleared of standing timber and have a track for traveling, of the same width, and be kept in the same order, and the streams or other waters on the line thereof shall be bridged, or ferries established, and shall be made of such grade and of

such materials as the contract shall specify. [L. '69, p. 286, § 59; L. '79, p. 65, § 57; Cd. '81, § 3021; 1 H. C., § 2053.]

§ 6577. [5709.] Toll-gates and Collection of Toll.

No toll shall be collected for travel on such roads, except at a gate, nor unless a signboard be posted at such gate, in full view of the travel on the road, with the rates of toll plainly written or printed thereon. The lease shall specify the number of gates that may be placed on the road to which it relates, and the location thereof, and thereafter the number of such gates shall not be increased; but the board of county commissioners, upon the application of the lessee, may, at any time, for good reasons, authorize the lessee to change the location of such gates, or any of them. [L. '69, p. 286, § 60; L. '79, p. 66, § 58; Cd. '81, § 3022; 1 H. C., § 2054.]

See *infra*, § 6587 et seq., railway and other corporations may collect tolls on highways when.

See *infra*, § 6594, bridge toll collected by corporations when.

§ 6578. [5710.] Lease to Specify Rates—Refusal to Pay Toll—Illegal Toll—Penalty.

The rates of toll that the lessee may collect and receive shall be specified in the lease, and none other can be charged; and any person who shall pass through a gate upon such road without paying toll legally charged thereat, or when traveling on such road shall go around such gate with intent to avoid the payment of such toll, shall be liable to the lessee for three times the amount of such toll; and any lessee of such road who shall by himself, his agent or servant, collect or receive of any person illegal toll for traveling on such road, shall be liable to such person for three times the amount of such toll. [L. '69, p. 286, § 61; L. '79, p. 66, § 59; Cd. '81, § 3023; 1 H. C., § 2055.]

§ 6579. [5711.] Road Deemed Highway—Certain Persons Exempt from Toll.

A road leased, as provided in this chapter, is nevertheless to be deemed a highway, but no footman shall be required to pay toll for traveling on such road, nor shall any person while traveling from one portion of his farm to another, with or without any stock, or vehicle, or person in his employ, or in going to or returning from church, a funeral, or an election. [L. '69, p. 287, § 62; L. '77, p. 66, § 60; Cd. '81, § 3024; 1 H. C., § 2056.]

§ 6580. [5712.] Cancellation and Forfeiture of Lease.

The board of county commissioners has authority, upon the application of the lessee, to cancel or modify the lease, upon such terms as may be equitable and just, and the proper prosecuting attorney may maintain an action against the lessee, in the name of the county, to have such lease declared forfeited, whenever the lessee shall fail or neglect to comply with the provisions thereof, and of this chapter. [L. '69, p. 287, § 63; L. '79, p. 66, § 61; Cd. '81, § 3025; 1 H. C., § 2057.]

§ 6581. [5713.] Classes of Property Liable for Toll.

Tolls are only chargeable by the lessee upon the following items, or classes of person or property:—

1. Sheep and hogs;
2. Horses, mules, asses, or neat cattle, whether being used for draught or led or driven loose;
3. A person other than a footman, and not traveling in a vehicle;
4. A two-wheeled vehicle, loaded or unloaded;
5. A four-wheeled vehicle, loaded or unloaded. [L. '69, p. 287, § 64; L. '79, p. 66, § 62; Cd. '81, § 3026; 1 H. C., § 2058.]

§ 6582. [5714.] Criterion for Fixing Rates of Toll.

The rate of toll to be charged by lessee upon each item or class specified in the last section is as follows:—

1. The basis or unit of toll is the charge for a sheep or hog, to be known as a single toll;
2. For any animal described in subdivision 2 of such section, four such tolls may be charged;
3. For any person described in subdivision 3 of such section, ten such tolls may be charged;
4. For any vehicle described in subdivision 4 of such section, twenty such tolls may be charged;
5. For any vehicle described in subdivision 5 of such section, forty such tolls may be charged. [L. '69, p. 287, § 65; L. '79, p. 67, § 63; Cd. '81, § 3027; 1 H. C., § 2059.]

§ 6583. [5715.] Order to Specify Number of Gates—Bids to Specify Rate of Toll.

The order mentioned in this chapter shall specify the number of gates to be placed on the road, the material for the construction thereof, and the period for which the same is to be let. The bid shall specify the unit or rate of toll upon a sheep or hog which the bidder is willing to accept for keeping the road; and such bid shall be deemed a bid for tolls, as to the other items or clauses mentioned in this chapter, in the proportion of such unit or rate as specified in the last preceding section. [L. '69, p. 28, § 66; L. '79, p. 67, § 64; Cd. '81, § 3028; 1 H. C., § 2060.]

§ 6584. [5716.] Awarding Lease, etc.—Power of Commissioners.

Upon opening the bids, the lease shall be awarded to the lowest bidder, having due reference to the fact of which of them is best qualified for the undertaking. The board of county commissioners have the power and it is their duty to reject any or all bids, when there appears sufficient cause, and may subsequently reoffer and let the same. [L. '69, p. 288, § 67; L. '79, p. 67, § 65; Cd. '81, § 3029; 1 H. C., § 2061.]

CHAPTER XVIII.**ROADS OWNED BY PRIVATE CORPORATIONS.****§ 6585. [5717.] Appropriation of Roads, Streets, etc.**

When it shall be necessary or convenient in the location of any road herein mentioned to appropriate any part of any public road, street, or

alley, or public grounds, the county court [commissioners] of the county wherein such road, street, alley, or public grounds may be, unless the same be within the corporate limits of a municipal corporation, is authorized to agree with the corporation constructing the road, upon the extent, terms, and conditions upon which the same may be appropriated or used and occupied by such corporation, and if such parties shall be unable to agree thereon, such corporation may appropriate so much thereof as may be necessary and convenient in the location and construction of said road. [L. '69, p. 344, § 4; Cd. '81, § 2458; 1 H. C., § 1574.]

This section refers to any "railway, macadamized road, plank road, clay road, canal or bridge."

See § 10538, *infra*, for portions of the act more particularly applicable to railroad companies.

As to mode of proceeding to appropriate property, see §§ 921—936, *supra*.

Cited in 6 Wash. 385, 386; 7 Wash. 164; 49 Wash. 388; 62 Wash. 102.

This section does not authorize a railroad company to appropriate a part of a city street; but the sections apply only to road and toll companies occupying the street with the public, in view of section 6587: *State ex rel. Schade Brewing Co. v. Superior Court*, 62 Wash. 96, 113 Pac. 576.

A municipal corporation may grant a perpetual franchise for a right of way over its streets, but cannot make such change of grade as to effectually destroy such franchise: *Seattle v. Columbia & Puget S. R. Co.*, 6 Wash. 379, 33 Pac. 1048.

If a city has extended its streets over tide lands, such city is estopped to dispute the validity of the franchise granted a railway company, on the ground of a want of authority to grant the right of way, nor can it urge that the grant is void by reason of the failure to comply with the conditions of the grant when the ordinance has never been repealed and the city has permitted the company to continuously operate its road for several years: *Id.*

An abutting property owner may enjoin the unlawful construction of a railway in a street: *Schwede v. Hemrich Bros. Brewing Co.*, 29 Wash. 21, 69 Pac. 362.

An abutting owner who purchased his lot after the vacation of part of the street and the construction there of a railroad track, and acquiesced for years in the operation and improvement of the railroad, cannot object to the operation of the road as a public nuisance: *Kakeldy v. Columbia & Puget S. R. Co.*, 37 Wash. 675, 80 Pac. 205. A railroad company is estopped to deny that platted and dedicated streets of an addition extend across its right of way, where it had platted and dedicated its own addition showing such crossings, and had recognized the rights of the city in streets in other additions by paying the amounts assessed to its right of way for improvement of the streets: *Northern Pac. R. Co. v. Spokane*, 45 Wash. 229, 88 Pac. 135.

An order condemning a railroad right affecting a highway, requiring the petitioner to relocate and remove the highway within a limited time, will be modified, on certiorari, where there appears no necessity for such time limit: *North Coast R. v. Northern Pacific R. Co.*, 48 Wash. 529, 94 Pac. 112.

Condemnation of land for private road. 1 *Ann. Cas.* 188; 16 *L. R. A.* 81.

Grant of highway by city for a private purpose. 125 *Am. St. Rep.* 343.

§ 6586. [5718.] Appropriation must be Made With Reference to What Locality.

Whenever a private corporation is authorized to appropriate any public highway or grounds, as mentioned in the last section, if the same be within the limits of any town, whether incorporated or not, such corporation shall locate their road upon such particular road, street, or alley, or public grounds within such town, as the local authorities mentioned in the last section and having charge thereof shall designate; but if such local authorities shall fail or refuse to make such designation within a reasonable time when requested, such corporation may make such ap-

propriation without reference thereto. [L. '69, p. 344, § 5; Cd. '81, § 2459; 1 H. C., § 1575.]

Cited in 62 Wash. 103.

§ 6587. [5719.] May Collect Tolls on Highway, When.

Whenever such public highway or grounds are taken by a private corporation by agreement with the local authorities mentioned in the last preceding section, such corporation may place such gates thereon, and charge and receive such tolls thereat, as such local authorities may consent to by such agreement, and none others; but when the same is appropriated without such agreement, as provided in said section, such corporation shall not place any gate or other obstruction upon the public highway or grounds appropriated, nor charge or receive any toll from any person passing over or along the same. [L. '69, p. 344, § 6; Cd. '81, § 2460; 1 H. C., § 1576.]

See supra, § 6577 et seq., toll-gates and toll on leased roads.

Cited in 62 Wash. 103.

§ 6588. [5720.] Clearing and Cutting Road — Width of Road, Track, etc.

Any road other than a railroad, constructed by a corporation formed under this chapter, shall be cleared of standing timber for thirty feet in width of said road, and shall have a track in the center not less than sixteen feet wide, finished and kept in good traveling condition, except when the cutting on said road is six feet or more deep on either side, in which case such track need not be more than ten feet wide, with turnouts of sixteen feet in width for every quarter of a mile of such narrow track. [L. '69, p. 344, § 7; Cd. '81, § 2461; 1 H. C., § 1577.]

§ 6589. [5721.] Streams to be Bridged or Ferries Maintained.

All streams or other waters upon the line of such roads shall be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams or other waters, or if such stream or other water form the boundary between two counties, then the county court [commissioners] of either of said counties may authorize the corporation to place a ferry-boat upon such stream or other water, to be kept and run for such toll as the county court may prescribe, and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court may authorize such corporation to connect their road with a ferry now or hereafter established over such stream or other water, under the general statute in relation to ferries. [L. '69, p. 345, § 8; Cd. '81, § 2462; 1 H. C., § 1578.]

§ 6590. [5722.] Notice of Completion of Highway.

Whenever a road of any kind herein mentioned, other than a railroad, is completed, or any particular section of it, fit for public travel, the corporation shall give notice thereof, by publication in some newspaper of general circulation, along the line of such road or section, or by posting notices along such line in some conspicuous places, not less than five miles apart; and thereafter such road or section thereof is a common

highway, so that every person with his stock and vehicles of every description may travel thereon upon the payment of the tolls prescribed by the corporation, subject to the power of the corporation, by giving notice thereof in like manner, to suspend such right of travel upon all or any portion of such road, for a reasonable time, to enable it to make any necessary repairs or improvements thereon. [L. '69, p. 345, § 9; Cd. '81, § 2463; 1 H. C., § 1579.]

§ 6591. [5723.] Collection of Tolls—Location of Gates.

A corporation other than railroad shall only collect and receive toll on its road at a gate established thereon, and such shall be plainly and specifically printed or written upon a sign-board, posted at such gate, in plain view of the travel on the road; but such corporation shall not establish any gate within the limits of any town, whether incorporated or not, or within one-half mile of the limits of such town, except as specially provided in section 6587; but no person traveling on foot, or going in any manner or within any property from one part of his farm to another part, or going to or from church, funerals, or elections, is liable to pay for traveling upon such roads. [L. '69, p. 345, § 10; Cd. '81, § 2464; 1 H. C., § 1580.]

§ 6592. [5724.] Tolls, Failure to Pay, and Collection of Illegal—Liability.

Any person traveling upon any road herein mentioned, who shall pass through a gate thereon without paying the toll legally chargeable thereat, or who shall go round such gate with the intent to avoid the payment of such toll, shall be liable to the corporation for three times the amount thereof, and any corporation which, by its agents or servants, or in any manner, shall illegally collect any toll from any person traveling on such road shall be liable to such person for three times the amount thereof. [L. '69, p. 346, § 11; Cd. '81, § 2465; 1 H. C., § 1581.]

§ 6593. [5725.] Notice to be Given of Completion of Bridge.

Any bridge constructed by a corporation formed under this act, when completed and fit for public travel, and notice thereof is posted in some conspicuous place on such bridge, or by publication in some newspaper, as in the case of a road, is a common highway, within the meaning and subject to the conditions specified in section 6590, as to roads, and subject to the further power of the corporation to prescribe, by advertisement in some conspicuous place on such bridge, the rate of speed anyone may travel on such bridge. [L. '69, p. 346, § 12; Cd. '81, § 2466; 1 H. C., § 1582.]

"Act" refers to §§ 6585—6597, 10535, 10538 and 10539.

§ 6594. [5726.] Tolls, Collection and Liability for.

A corporation may collect and receive such tolls for crossing its bridge as may be plainly written or printed upon a sign-board, posted in some conspicuous place on such bridge, but no person not liable to pay toll on a road, as provided in section 6591, is liable to pay toll for crossing such bridge; and any person who shall pass over such bridge without paying the toll legally chargeable thereat, or any corporation which shall

illegally collect any toll from any person crossing such bridge, shall be respectively liable to each other for three times the amount of such toll, as provided in section 6592, in case of roads. [L. '69, p. 346, § 13; Cd. '81, § 2467; 1 H. C., § 1583.]

§ 6595. [5727.] To Keep Accounts and File With Auditor.

It shall be the duty of every incorporation organized for the construction of any macadamized road, plank road, clay road, or bridge, to keep an accurate statement on [or] account of the moneys expended by said corporation in the construction of any such road or bridge, and keeping the same in repair, including any sums paid for lands appropriated as necessary for said corporation, which statement or account shall be verified at the time of the annual meeting held for the election of directors, by the president of said corporation, or one of the directors thereof, to the effect that he believes the said account to be just and correct; and a copy of such verified account shall, within ten days after such annual election be deposited with the auditor of the county with whom the articles of incorporation are filed. Said incorporation shall also keep an accurate account of the tolls received for traveling upon said road or bridge, or of other profits accruing to said corporation, which accounts shall be verified in like manner, and a copy thereof deposited with said county auditor within ten days after such annual election. [L. '69, p. 347, § 15; Cd. '81, § 2469; 1 H. C., § 1584.]

§ 6596. [5728.] Toll Road or Bridge may Become Free, When.

At any time after the expiration of ten years from the time of taking tolls on any macadamized road, plank road, clay road, or bridge, it shall be lawful for the county court [commissioners] of any county through which any such road, or part thereof, shall pass, or in which said bridge may be situated, to pay to such corporation the amount of money expended by it in the construction of such road or bridge, and keeping the same in repair, and all other necessary expenses, including any sums paid for lands appropriated by such corporation, together with interest on said account and sums of money, at the rate of twenty per centum per annum, after deducting from said amount the tolls and other profits annually received by said corporation; and after the payment of the amounts expended in constructing and keeping in repair said road or bridge, and other necessary expenses incurred in and about the same, and interest thereon, less the amount received by such corporation, the said road or bridge shall become free for public travel. [L. '69, p. 347, § 16; Cd. '81, § 2470; 1 H. C., § 1585.]

See, also, *supra*, § 6519.

§ 6597. [5729.] County may Purchase Road or Bridge.

The foregoing section shall not be construed to prohibit said county court [commissioners] at any time before the expiration of said period of ten years from purchasing said road or bridge, for any sum that may be agreed upon by said county court [commissioners] and corporations. [L. '69, p. 384, § 17; Cd. '81, § 2471; 1 H. C., § 1586.]

CHAPTER XIX.

ROADS IMPROVED OR PAVED AT EXPENSE OF LAND BENEFITED.

See, also, next two chapters.

§ 6598. [5730.] County Commissioners may Establish, etc.

The commissioners of any county may, at any regular or called session, cause to be established, located and constructed, improved, straightened, widened, altered or relocated any public road or highway as herein provided, when the same is conducive to the public convenience or welfare. [L. '93, p. 301, § 1.]

Cited in 13 Wash. 54; 20 Wash. 40; 22 Wash. 107.

That portion of this chapter (L. '93, p. 301) providing for the appropriation of the right of way for the construction of county roads is unconstitutional, since it conflicts with Article I, § 16, of the Constitution, requiring damages for appropriation of land for such purposes to be ascertained by a jury, unless waived,

in a proceeding instituted for that purpose: *Seabor v. Board of County Commrs.*, 13 Wash. 48, 42 Pac. 552.

That portion of this chapter which provides for the improvement of county roads already located is valid, the provisions therefor not being dependent upon the sections of the act which are unconstitutional: *Id.*

§ 6599. [5731.*] Definition of Terms—Improvement Irrespective of Termini.

The word "improvement" as used in this chapter shall mean a road as contemplated to be improved under this chapter. The word "road" shall be construed to mean a public highway or thoroughfare. The words "territory (or property) particularly benefited" as used in this chapter shall be construed to include, in addition to the lands lying within two miles of either side of the center line of the improvement, all road districts or townships which will be subject to assessment for the improvement. The words "improvement boundary" as used in this chapter shall be construed to mean lines on either side of the road, following the meanders thereof, and two miles distant from, or within a two mile radius of any point on, the center line of improvement connected at the respective termini thereof by lines drawn at such angles respectively as will avoid the overlapping of the boundary by a new district, should the improvement of the highway be extended, and at the same time include all property lying within the distance aforesaid of any point on the center line of one or the other of the improvements: Provided, that when the center line of the improvement intersects the corporate boundary of a city or town the line connecting the termini of the side boundary lines shall follow the meandering of the city boundary in so far as said boundary shall come within said two mile limit: Provided, that any road district may build, regrade, or otherwise improve, in any manner, regardless of the termini thereof, and road or part thereof, within the limits of such road district, under the provisions of this act. Words used in the singular in this chapter shall include the plural and the plural shall include the singular. [L. '17, p. 238, § 1. Cf. L. '93, p. 301, § 2.]

Cited in 109 Wash. 184.

§ 6600. [5732.] Limitation on Construction.

No road improvement shall be located or commenced under this chapter unless the same has its beginning at the boundary limits of an incorporated city, or trade center located on a railroad or navigable body of water, or connect with a road or road system already improved under this chapter, or with a road which has been otherwise constructed of such a nature to permit of heavy freighting and rapid travel on the same at any time of the year. [L. '93, p. 301, § 3.]

Cited in 13 Wash. 54.

§ 6601. [5733.*] Description of Improved Road — Grade Per Cent — Drainage.

An improved road contemplated under this chapter shall be constructed as near as practicable along the center line of an established highway, and shall be uniformly graded to a width of not less than sixteen feet; the grade thereof shall not at any point, exceed five per cent: Provided, that where by reason of physical conditions it is not feasible or practicable to obtain a grade of five per cent, a grade of not to exceed ten per cent may be used; proper drains, culverts and bridges shall be constructed to convey off all surface and seepage water, and when the road is located along a hillside or incline, the drainage of the surface of the roadbed shall be toward the hillside or incline; a roadway shall be constructed upon the graded road in such manner and of such material as will permit of heavy freighting and rapid driving during any time of the year, and if such construction shall be of macadam, concrete, brick or other hard surface it shall not be less than sixteen feet wide. [L. '17, p. 239, § 2. Cf. L. '93, p. 302, § 4.]

§ 6602. [5734.] Costs.

The costs and expenses of the improvements made under this chapter shall be apportioned as near as may be to the corporations, companies, persons and property benefited thereby. [L. '93, p. 302, § 5.]

§ 6603. [5735.] Application to Commissioners.

Application for such improvement shall be made to the commissioners of the county, signed by two or more owners of lots or lands which will be particularly benefited thereby: Provided, that such petitioners shall appear by the assessment-rolls of the county to own property which will be particularly benefited, representing in value not less than ten thousand dollars for each mile of the improvement petitioned for, and the petitioners must represent property within the improvement boundary equivalent to not less than five thousand dollars for each mile of the proposed improvement. [L. '93, p. 302, § 6.]

§ 6604. [5736.] Petition to be Filed With Clerk of County Commissioners.

The petition shall be filed with the clerk of the board of county commissioners, and shall set forth the necessity of the improvement, and describe the route and termini thereof; and there shall be filed therewith a bond payable to the county with at least two good and sufficient sureties

in not less than one thousand dollars, conditioned for the payment of all costs if the prayer of the petition [petitioners] be not granted, or be dismissed for any cause. [L. '93, p. 303, § 7.]

§ 6605. [5737.*] Approval of Bond—Hearing on Petition—Dismissal.

If the bond be approved by the clerk of the board of county commissioners, he shall immediately deliver a copy of the petition to the commissioners, who shall fix a time and place for the hearing and consideration of said petition, which time shall be not less than fifteen nor more than sixty days from the date of filing the petition, and shall cause a notice of said hearing, stating the subject matter of said petition and the place and time of the hearing, to be published in the official newspaper of the county for two weeks immediately preceding the hearing, and proof of such publication, verified by the affidavit of the owner or publisher of said newspaper, shall be filed with the clerk of the board of county commissioners on or before the date of hearing, and pending said hearing the board of county commissioners shall cause the county engineer to make a preliminary survey of said proposed improvement, and an estimate of the cost thereof, and the engineer shall attend said hearing and report the estimated cost of said improvement, together with his recommendations as to the feasibility of said improvement, and his suggestions as to the nature and character thereof. If at the hearing the commissioners shall determine that the improvement asked for is not feasible, or that the costs thereof will be excessive, they shall dismiss the petition and the proceedings at the cost of the petitioners, and shall cause an itemized bill of costs to be made up by the clerk for their examination and approval, which shall include the per diem of the engineer, and all other costs necessarily incurred. If the commissioners find for the improvement they shall, by resolution entered in their journal, order said improvement. [L. '17, p. 239, § 3; L. '93, p. 304, § 11; L. '99, p. 169, § 1.]

§ 6606. [5738.*] Order for Improvement—Engineer's Plat and Schedule—Adoption.

If the improvement is ordered by the board of county commissioners, the board may require the county engineer to perform all engineering in connection with, and to supervise the construction of, said improvement, or may, at the request of the petitioners, employ a construction engineer for that purpose and fix his compensation, and such compensation shall be paid by the county.

Whenever the board of county commissioners shall pass a resolution ordering the improvement of a public highway under the provisions of this act, a certified copy thereof shall be transmitted to the county engineer, or construction engineer, appointed as aforesaid, who shall thereupon make the necessary surveys and prepare the profiles, maps, plans, specifications and an estimate of the cost of construction or improvement of the highway, or section thereof, described in the resolution making such recommendations concerning deviations from existing lines as he shall deem of advantage to obtain a shorter and more direct route or to lessen gradients, or to otherwise improve such highway.

Upon the completion of such profiles, maps, plans, specifications and estimate, a copy thereof shall be transmitted to the board of county commissioners, and upon the receipt of which, the board of county commissioners may pass a resolution adopting the same and that such highway, or section thereof, shall be improved under the provision of this act. The profiles, maps, plans, specifications and estimate as finally adopted by the board of county commissioners shall be filed in the office of the county engineer and shall become a permanent record of the county. The engineer shall also make and return a schedule and plat of all the lots and lands lying within the improvement boundary, which plat shall be drawn upon a scale sufficiently large to represent all the meanderings of the road proposed to be improved, and shall distinctly show the boundary lines of each lot or tract of land included in the improvement boundary, the name of the owner of each lot or tract of land as the same may appear upon the records in the office of the county auditor at the time, and an estimate of the total cost of the entire improvement proposed, which estimate shall include all fees and salaries estimated to be paid for locating, supervising and appraising, together with such other matters as the engineer may deem material. The profiles shall show the surface line, the grade line and the gradient fixed, and the engineer shall make and file with his report an itemized bill of all costs made in the discharge of his duty under this section, and shall file his report with the clerk of the board of county commissioners immediately after making the survey. [L. '17, p. 240, § 4. Cf. L. '93, p. 304, § 12; L. '99, p. 170, § 2.]

§ 6607. [5739.*] Appraisers—Oath and Duties—Benefits and Damages Estimated.

Immediately upon the filing of the engineer's report, the county commissioners shall appoint three disinterested appraisers, residing within the county, but not within the territory particularly benefited by the proposed improvement, whose duty it shall be to at once proceed to assess the benefits of such proposed improvement to the corporations, companies, persons and property particularly benefited thereby, and estimate the damages to property over or through which the road shall be established or relocated, and award the same to the owners thereof. Before entering upon their duties, the appraisers shall severally take and subscribe to an oath to impartially and, to the best of their knowledge and ability, perform the duties required of them, and file said oath with the clerk of the board of county commissioners. Said clerk shall thereupon and forthwith deliver into the hands of the appraisers the engineer's report upon the proposed improvement, and all maps, charts and schedules pertaining thereto, taking a receipt from said appraisers therefor. The appraisers shall thereupon proceed to actually view in person all lands as shall appear from the engineer's report to lie within the improvement boundary, and obtain from the duplicate assessment-roll of the county the total assessed valuation at the time of all property within the limits of any road district or township through or into which the proposed improvement is located. They shall then prepare a schedule, which shall set forth:

(1) The benefits assessed to the county for such improvement, shall be one-half of the whole estimated cost thereof;

(2) The benefits assessed to each road district or township through or into which the improvement is located, which assessment shall be equal upon all the assessed property in the road district or township according to the value thereof as shall appear upon the duplicate assessment-roll of the county at the time, and which benefits shall be one-fourth of the whole estimated cost of the improvement within the boundary of the road district or township.

(3) The benefits assessed to the lots and lands lying within the proposed improvement boundary, listing each tract of land assessed, giving the number of acres thereof, the owner as shall appear of record, the estimated valuation of each tract exclusive of improvement, and the benefit assessed thereto, and the total amount of benefits assessed to lots and lands shall be one-fourth of the whole estimated cost of the proposed improvement: Provided, that the lots or tracts of land within the improvement boundary whose natural outlet will not be in whole or in part over said road when improved, shall not be separately assessed under the provisions of this clause.

(4) A list of each tract or lot or portion thereof taken and damaged by the establishment or relocation of the road proposed to be improved and the lands contiguous or lying near thereto on which is located material necessary or available to be used in the construction of the proposed improvement, and of materials available for construction on contiguous or near lying lands, which list shall recite the number of acres of each of such lands so to be taken or damaged, and the amount of such contiguous or near lying materials estimated to be required, the owner thereof as shall appear of record, the estimated value thereof including improvements thereon, and the damages resulting therefrom, and the award made therefor. [L. '17, p. 242, § 5. Cf. L. '93, p. 305, § 13.]

Cited in 109 Wash. 184.

The provision in this section that one-half of the benefits of road improvements shall be assessed against the county and one-fourth against the road district or township is not affected by the fact that the act (§ 6622, *infra*), providing for payments in installments, was amended by Laws of 1919, p. 251, § 1,

without reference to its prior amendment in 1917; since the amendment in 1919 merely added an exception as to the time of payment of assessments of \$25 or less, in nowise altering the method of ascertaining the benefits: *State ex rel. McMillan v. Hills*, 109 Wash. 175, 186 Pac. 295.

§ 6608. [5740.*] Appraisers to File Report—Notice to Owners.

The appraisers shall, within sixty days after the date of entering upon their duties, file a report of their findings, together with the engineer's report and all other papers to them delivered, with the clerk of the board of county commissioners, which report shall contain a schedule and estimate of all property that will be damaged, or benefited, or both damaged and benefited by the proposed improvement. Such schedule and estimate shall be arranged in parallel columns, with appropriate headings, and shall show the description of the property, and if land, give legal subdivisions, section, township and range and number of acres; and if platted, the name of the plat and the lot and block number; the

name of the owner or owners or reputed owner or owners; the estimated gross damages that will be sustained by reason of the proposed improvement; the estimated gross benefits that will accrue; and the right-hand column of the schedule shall be sufficiently wide for the signature of the owner, and shall bear the heading: "I, the undersigned owner of the property opposite which I have signed my name, accept and agree to the estimated amount of benefits and damages that will accrue to my property by reason of the proposed improvement"; and the appraisers shall make and file with their report an itemized bill of all costs made in the proper discharge of their duties under this chapter; and in such bill the appraisers shall not charge for services in excess of six dollars per day for each appraiser for the time actually employed, and no extra compensation shall be allowed for mileage; upon the filing of such report the clerk shall without delay fix a date for the hearing of the reports of the engineer and appraisers; which date shall be not less than fifteen nor more than thirty days from the date of filing said reports, and shall prepare a notice in writing, directed to all owners of land, road districts or township, affected by the improvement, setting forth the pendency, substance and prayer of petition, and enumerating the township or road districts and the several sections of land, according to the United States survey, which shall lie wholly or partially within the proposed improvement district, and a tabular statement of the assessments of benefits and awards of damages as made by the appraisers in their report, and stating the time and place of the hearing thereon. Such notice shall be published in the official newspaper of the county for at least two consecutive weeks before the day set for the hearing, which publication shall be proved by the affidavit of the printer or publisher of such newspaper and filed with the clerk on or before the date of hearing. [L. '21, p. 635, § 1. Cf. L. '17, p. 243, § 6; L. '93, p. 307, § 14.]

§ 6609. [5741.*] Commissioners to Examine Assessment—Hearing.

On the date set for said hearing the board of county commissioners shall meet at the place designated in the notice, and shall first determine whether the required notice has been given. If they find that due notice has not been given, they shall continue the hearing to a day to be fixed by them and order the notice to be published as hereinabove provided. If it appear that due notice of such hearing has been given, the board of county commissioners shall proceed with the hearing on the report of the engineer and the appraisers, and any objections thereto, and may adjourn said hearing from time to time. [L. '17, p. 245, § 7. Cf. L. '93, p. 308, § 15.]

§ 6610. [5742.*] May Amend Appraisers' Report—Proceedings—Hearing, Change of Plans.

At said hearing the board shall hear all pertinent evidence, including any evidence offered concerning the probable cost of the improvement and the probable benefits to accrue therefrom, and may change, add to or modify, the plans for such improvement, and change the estimate of damages or benefits in any case, and may review, change and

modify any of the findings or estimates of the engineer or the appraisers, and may, in its discretion, employ another engineer to make separate findings on any or all of the matters hereinbefore required to be included in the report of the engineer and may adjourn said hearing and await such report. In case any change in the plans of the proposed improvements is made at said hearing, and such change will cause additional damages to any property, or will damage any property not damaged under the original plans, the engineer and appraisers shall prepare and file a schedule showing the estimated damages and benefits under such changed plans, and notice of the filing of such schedule shall be served upon the owners of the properties affected, and settlement made as hereinafter provided, and shall then confirm the same by resolution. [L. '21, p. 637, § 2; L. '17, p. 245, § 8; L. '93, p. 308, § 16.]

§ 6611. [5743.] Who may File Exceptions to Apportionment.

Any person, company or corporation party to the proceedings may file exceptions to the apportionment of benefits or compensation for damages at any time before the time set for the final hearing of the report and apportionment; the commissioners may hear testimony and examine witnesses upon all questions made by the exceptions, and for that purpose may compel the attendance of witness by subpoena, which the clerk of the superior court shall issue on demand; and their decisions on the exceptions shall be entered on the journal, and if they sustain the exceptions, the cost of hearing thereof shall be paid out of the county treasury, and if they overrule the same, such costs shall be taxed against the person, company or corporation filing the exceptions. [L. '93, p. 309, § 17.]

§ 6612. [5744.*] Acceptance of Damages—Owner's Deeds to County.

In case any owner of property to be taken or damaged, or taken and damaged, by the proposed improvement shall agree to accept the damages estimated by the appraisers, or as fixed by the board of county commissioners, the board of county commissioners shall direct the clerk of the board to prepare a deed to be approved by the engineer and the prosecuting attorney, conveying to the county, for the benefit of the proposed district, the property to be taken, and the right to damage property not taken. If the damages agreed upon are equaled or exceeded by the agreed estimated benefits, the grantors in the deed shall execute and deliver the same without consideration other than the right to have the damages offset against the benefits in the apportionment of the cost of the improvement as hereafter provided. If the damages agreed to are damages to property not benefited, or if such damages exceed the agreed benefits, the grantors in the deed shall execute and deliver the same upon the receipt of a warrant drawn by the county auditor, under the direction of the board of county commissioners, upon the general road and bridge fund of the county, for the amount of damages, or the amount of excess of damages over benefits, as the case may be. No such deed shall be accepted, either with or without consideration, until the title conveyed thereby has been approved by the prosecuting attorney. [L. '17, p. 246, § 9; L. '93, p. 309, § 18.]

Cited in 13 Wash. 63.

§ 6613. [5745.*] Condemnation Proceedings.

If at the conclusion of the hearing on the report of the engineer and appraisers, it shall appear to the board of county commissioners that the owner of any property to be taken or damaged by the proposed improvement, has not accepted and agreed to the damages estimated by the appraisers or fixed by the board, the board may, in its discretion, appoint an agent to secure acceptance and deeds from such owners, and shall, within a reasonable time, direct the prosecuting attorney of the county to institute proceedings in the superior court of the county in which the property affected is located, for the determination of the damages to be sustained and the condemnation of any property the title of which or the right to damage which has not been acquired, and shall direct the clerk of the board to furnish the attorney with a certified copy of such proceedings of the board as he shall require. [L. '17, p. 246, § 10. Cf. L. '93, p. 310, § 19.]

Cited in 13 Wash. 63.

§ 6614. [5746.*] Eminent Domain Conferred.

For the purpose of taking or damaging property for the purposes of this chapter, counties shall have and exercise the power of eminent domain and the mode of procedure therefor shall be as provided by law for the condemnation of lands by counties for public highways. [L. '17, p. 247, § 11. Cf. L. '93, p. 310, § 20.]

§ 6615. [5747.*] Verdict of Jury Determining Damages.

The jury in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: Provided, that the jury, in determining the amount of damages, shall take into consideration the benefits, if any, that will accrue to the property damaged by reason of the proposed improvement, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of benefits that will accrue. If it shall appear by the verdict of the jury that the gross damages exceed the gross benefits, judgment shall be entered against the county and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over the benefits, and for the costs of the proceedings, and upon payment of the judgment into the registry of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the county. If it shall appear by the verdict that the gross benefits as found by the jury equal or exceed the gross damages, judgment shall be entered against the county and in favor of the owner or owners for costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property appropriated in the county. The verdict and findings of the jury as to damages and benefits shall be binding upon the board of county commissioners, and the necessary amendments to comply therewith shall be made upon the schedule of damages and benefits prepared by the appraisers and filed with the board of county commissioners. [L. '17, p. 247, § 12. Cf. L. '93, p. 310, § 21.]

§ 6616. [5755.*] Construction—Call for Bids.

At any time after the expiration of five days from the entry of the resolution of the board of county commissioners ordering an improvement under the provisions of this act, the board of county commissioners may fix a time for the receiving and opening of sealed bids for the construction of the proposed improvement, and if in the opinion of the board of county commissioners the interest of the public will be advanced thereby, they may divide the improvement into sections of a more or less number of lineal feet, and call for bids on each of said sections, or they may call for bids for each kind of work to be done or material to be furnished, or any one or more of such kinds of labor and material, as they may believe to be advisable, but in every case all of the construction shall be performed by contract, duly awarded, as provided in this section. They shall cause notice to be given, as hereinafter provided, of the time and place of awarding contracts, and shall direct the engineer who made the survey and estimates, or other competent engineer, to attend at the time and place of opening bids. The board of county commissioners shall superintend and conduct the same, receive all bids for the construction of the improvement, and enter into agreements in the name of the county. The notice for bids shall state the location and general nature of the improvements to be done, and where the plans and specifications are filed for examination, and shall be signed by the clerk of the board of county commissioners by the order of the board. The notice shall be published for at least two consecutive weeks previous to the date of receiving and opening bids, in one or more daily or weekly newspapers published and of general circulation in the county, and in such other manner as the board may see fit to direct. [L. '17, p. 248, § 14. Cf. L. '93, p. 312, § 29.]

§ 6617. [5756.*] Check or Bond Accompanying Bid—Power to Reject.

Every bid shall be accompanied by a certified check for at least one-tenth of the amount bid, in case the bid is for one thousand dollars (\$1,000) or less, and for not less than one-twentieth of the amount bid in case the bid exceeds one thousand dollars (\$1,000), payable to the county, which check shall be forfeited to the county upon the failure of any successful bidder for a period of ten days after any contract is awarded to such bidder to execute a contract in writing to perform the work according to the plans and specifications, and furnish the bond required. No bid shall be received by the board of county commissioners unless the same was filed with the clerk of the board prior to the time fixed in the notice calling therefor, and at the time fixed all bids then received shall be immediately opened and publicly read. The board of county commissioners may reject any or all bids if in their judgment good cause exists therefor, or if the total amount of bids for the several items of construction for which bids were called for shall exceed the estimated cost of construction, but otherwise they shall award the contract or contracts to the lowest and best responsible bidder or bidders who shall give satisfactory evidence of ability to perform the contract or contracts. Bidders to whom contracts shall be awarded, shall execute for the benefit of the county, a surety bond to accompany each separate

contract, conditioned for the faithful performance of the contract, in a sum equal to the full amount of the contract. [L. '17, p. 249, § 15; L. '93, p. 313, § 30.]

§ 6618. [5757.*] Payments on Contracts.

When the amount of any contract is less than one thousand dollars (\$1,000) no payment shall be made thereon until the contract is fully completed to the satisfaction of the board. When partial payments are provided for in any contract, as each payment becomes due and before payment shall be made, the engineer in charge of the work shall file with the clerk of the board of county commissioners an estimate of the amount of work done or material furnished, and his certificate that such work has been done in all respects as required by the contract. If such estimate and certificate be approved by the board of county commissioners the clerk of the board shall as county auditor draw a warrant on the county treasurer in favor of the contractors for the amount due: Provided, that no partial payment made during the progress of the work shall exceed eighty per centum of the estimated value of the work done: And provided further, that before any final payment is made on any contract, the work shall first be examined by the engineer who prepared the estimate, or other competent engineer appointed by the board of county commissioners, and the engineer shall file his certificate with the clerk of the board of county commissioners that the work has been fully performed and completed in accordance with the contract. Upon the filing of such certificate of the engineer the board of county commissioners shall examine the work, and if the same is found to have been fully completed in accordance with the contract, shall by resolution entered in their minutes make final payment and direct the county auditor to draw his warrant on the county treasurer for the amount due. [L. '17, p. 250, § 16. Cf. L. '93, p. 313, § 31.]

Cited in 20 Wash. 44.

The provision of Rem. Code, § 5757, that the county auditor "thereupon" shall issue a warrant for the amount due, is a later provision, and supersedes the general statute, prohibiting the issue of any warrants until ten days after the allowance of the same, and requires immediate issuance of the war-

rant: State ex rel. Dahlquist v. Van Wyck, 20 Wash. 39, 64 Pac. 768.

Under the provision for partial payments on road contracts, the amount due becomes vested in the contractor upon the filing of the certificate and is ipso facto appropriated for his use: State ex rel. Dahlquist v. Van Wyck, 20 Wash. 39, 64 Pac. 768.

§ 6619. [5758.] Readvertising for Bids.

If, at the time of letting, satisfactory bids are not received for the whole or any part of the improvement, a future time and place shall be fixed for again receiving bids, notice of which shall be given and the same conducted in every manner as hereinbefore provided; or, if any contractor shall fail to perform his work or complete the same, the contract shall be relet in manner as hereinbefore provided. [L. '93, p. 314, § 32.]

Cited in 49 Wash. 294.

§ 6620. [5759.] County Engineer to Inspect Work.

It shall be the duty of the county engineer in charge of said work, if the county commissioners so direct, to inspect all work of construction

from time to time and see that the same is being done according to contract. [L. '99, p. 171, § 3; L. '93, p. 314, § 33.]

Cited in 20 Wash. 44.

§ 6621. [5760.*] Cost of Improvement—Collection.

There shall be included in the cost and expense of such improvement the estimated cost and expense of all engineering and surveying necessary for said improvement, ascertaining the ownership of the lots, tracts or parcels of land included in the improvement district, the cost of publishing notices required to be published, accounting and clerical labor, books and blanks expended or used in connection with said improvement.

When the appraiser's report shall be confirmed, the clerk of the board of county commissioners shall prepare, certify to and file with the county treasurer, an assessment-roll for each such improvement on which the estimated cost of such improvement shall be entered against the persons and property as shown on the schedule of appraisal, first deducting from any assessment against a person, company or corporation to whom awards of damages have been made the amount of the same, and in case of any excess of damages over the assessment, a warrant shall be drawn on the county treasurer in favor of the person, company or corporation to whom such damage has been awarded for the balance due after deducting the assessment.

From and after the filing of such assessment-roll with the county treasurer, the charge on the respective lots, tracts and parcels of land and other property for the purpose of special assessments on account of such improvement shall be a lien on the property assessed, paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for assessments for general taxes.

Each year when an installment is payable, the clerk of the board of county commissioners shall extend the amount of the same together with interest on the deferred payments at the bond rate upon such assessment-roll.

Special taxes shall be levied, become delinquent, and be collected as other general taxes sufficient to pay the next accruing portions of the cost and expense of any such improvement chargeable to the county and to the road district or township respectively, including interest thereon at the bond rate to the next annual installment payment date on such bonds. After delinquency the interest upon such special taxes shall be the same as upon general taxes.

No segregation shall be made so that the unpaid principal against any segregated description shall be less than twenty-five dollars, except upon payment thereof. [L. '21, p. 639, § 4. Cf. L. '93, p. 314, § 34.]

Validity of statute assessing cost of construction or repair of rural highway on land benefited. *Ann.*

Cas. 1913D, 550; 40 L. R. A. (N. S.) 73.

§ 6622. [5761.*] Payment in Installments.

When the petition shall so request, the portion of the cost of the improvement chargeable to the improvement district shall be paid for

in equal annual installments. The petition shall set forth "that the improvement be paid for on the — years installment plan," and the number of years shall not be more than ten. When the improvement is done under the provisions of this section the board of county commissioners shall by resolution direct the county treasurer to open an account to be known as "The — road improvement fund." The clerk of the board of county commissioners shall divide the total estimated cost of the improvement and apportion the same in accordance with the findings and report of the board of appraisers and those portions of the expense to be borne by the county, township or road district shall be levied and collected as other taxes, after the awarding of the contract for said improvement: Provided, that the board of county commissioners shall, if the petitioners so request, arrange that the portion of the expense to be borne by the road districts or townships be paid in not to exceed ten equal annual installments and the board may in its discretion provide that the portion of the expense to be borne by the county be paid in not to exceed ten equal annual installments, and shall divide that portion of the expense to be borne by the county, road districts or townships, and also the lots and land lying within the proposed improvement boundaries and found to be specially benefited, into as many equal parts as there are installments. In the event that the entire assessment upon any single tract or parcel of land, or contiguous tracts or groups of tracts belonging to the same owner is twenty-five dollars or less, such assessment shall be paid in cash and the terms of this act relating to the payment of assessments in installments shall not apply to such assessments: Provided further, that the levy of such taxes against road districts or road and bridge funds for any improvement heretofore made shall not be affected by any limitation of law as to tax levies against such road districts or road and bridge funds. [L. '21, p. 640, § 5. Cf. L. '19, p. 230, § 1; L. '17, p. 251, § 17; L. '93, p. 315, § 35.]

Cited in 109 Wash. 176, 177, 184, 185.

The amendment of this section, by Laws of 1919, p. 230, § 1, which provides for payment in installments of the tax levied upon the "property assessed" for county road improvements, applies to the proportion to be paid by counties and road districts as well as to assessments on private property; but, in view

of the whole act, the language may be construed as mandatory to grant the maximum period on installments apportioned to individuals, and discretionary as to the maximum time for payment of benefits apportioned to the county and road districts: State ex rel. McMillan v. Hills, 109 Wash. 175, 186 Pac. 295.

§ 6623. [5762.*] Construction Contracts.

That all moneys collected by levy and assessment for improvements made under the provisions of this act shall be paid into such "— road improvement fund" and all payments made for costs of said improvements shall be paid by warrants drawn by the county auditor on said improvement fund upon presentation of proper vouchers, and such warrants shall bear interest at a rate not exceeding six per cent per annum. [L. '17, p. 252, § 18. Cf. L. '93, p. 315, § 36; L. '99, p. 171, § 4.]

§ 6624. [5763.*] Bond Issue Authorized — Payment Out of General Fund.

That whenever the board of county commissioners shall have provided for the payment of said assessment in installments, as aforesaid,

it may, if it shall deem it necessary or proper, issue bonds of the county, payable from the said road improvement fund, not to exceed twelve years after the date of the issuance thereof, with such option to redeem as shall be advisable, in an amount not exceeding the cost of such improvement, and said bonds shall bear interest at a rate not greater than seven per cent per annum, and shall be sold at not less than par, by the board of county commissioners in such manner as they shall deem advisable: Provided, that should there not be sufficient money in said improvement fund to make payment of any installment of interest, or the bonds when due, said interest and bonds may be paid out of the general road and bridge fund or the current expense fund of the county as may be directed by the board of county commissioners, and such fund shall be reimbursed from said improvement fund from time to time as moneys are paid therein. The county treasurer shall pay the interest on the bonds authorized to be issued by this act out of the respective improvement funds from which they are payable. [L. '21, p. 642, § 6. Cf. L. '17, p. 252, § 19; L. '93, p. 315, § 37.]

§ 6625. [5764.*] Adjustment Where New District Overlaps Old.

That when a proposed road improvement shall intersect a road which has been completed or ordered constructed under any local improvement plan, that portion of the proposed new district overlapping the limits of the old improvement district shall be divided into four equal subdivisions parallel to the previously improved road, and numbered consecutively from the line of the previously improved road on either side thereof. The first subdivision shall be assessed one-fifteenth of the cost of the proposed new road improvement, the second, two-fifteenths of the cost of the proposed new road improvement, the third, three fifteenths of the cost of the proposed new road improvement and the fourth, four-fifteenths of the cost of the proposed new road improvement, and the remainder of the cost of the improvement chargeable to said area shall be paid by the county out of the general road and bridge fund. [L. '17, p. 253, § 20. Cf. L. '93, p. 317, § 38.]

§ 6626. [5765.*] Tax Levy—Basis of Computation.

That no assessments for road construction or improvements under the terms of this act for which any county may be held liable shall ever exceed four (4) mills in any one year: Provided, that in computing the indebtedness to be created under the provisions of said act, the actual value of the taxable property in said county shall be used as the basis therefor, and not the last assessed valuation thereof. [L. '19, p. 298, § 1. Cf. L. '17, p. 253, § 21; L. '93, p. 317, § 39.]

§ 6627. Uncompleted Construction Under Prior Act.

Nothing in this act shall be construed as affecting any improvements already begun under the provisions of the act of which this act is amendatory, or any outstanding obligations incurred under such act: Provided, further, that all proceedings completed or uncompleted, heretofore had under sections 6598 to 6646, inclusive, whether pursuant to

said sections or in accordance with this act, are hereby declared valid and binding, and may be completed under this act. [L. '17, p. 253, § 22.]

§ 6628. Assessments, How Payable.

The owner of any lot, tract or parcel of land or other property charged with any such assessments may redeem the same from all or any portion of the liability for the contract price of such improvement by paying the entire assessment or any portion thereof charged against such lot or parcel of land, without interest, within thirty days after notice to him of such assessment. Assessments certified to the county treasurer for collection in due time therefor shall become due and payable during the thirty day period ending May 31st or November 30th respectively. Such notice shall be given by the county treasurer by publication in the official newspaper of the county in two consecutive weekly issues, that the assessment-roll is in his hands for collection and that any assessment thereon or any portion thereof may be paid at any time without penalty, interest or costs during such payment period, and that any assessment in the sum of twenty-five dollars or less must be paid in cash. The bonds herein provided for shall not be issued prior to twenty days after the expiration of the thirty days above mentioned, but may be issued at any time thereafter. Whenever any assessment shall be payable in installments, each installment shall become due and payable annually thereafter, during like thirty day periods as in case of original payments upon such assessments. The owner of any such lot, tract or parcel of land may redeem the same from all liability for the unpaid amount of said assessment at any time after said thirty-day period for original payment by paying the entire installments of said assessment remaining unpaid and charged against such lot, tract or parcel of land at the time of such payment with interest thereon to the end of the next thirty-day payment period. Assessments or installments thereof not paid, within the time herein prescribed shall become delinquent. Assessments or installments thereof, when delinquent shall in addition to interest, have a penalty of five per cent (5%) upon both principal and interest and shall be collected as other general taxes are collected. [L. '21, p. 643, § 8.]

§ 6629. Reassessment—Grounds.

In all cases of special assessments for local improvements, wherein said assessments have failed to be valid in whole or in part for want of form or insufficiency, informality or irregularity or nonconformance with the provisions of law, governing such assessments, or for insufficiency in the assessment, or that property specially benefited was omitted, in any county, the board of county commissioners of such county shall have power by resolution to reassess such assessments and to enforce their collection in like manner as in original assessments. •

All the provisions of this act relating to the filing of appraiser's reports, time and place of hearing thereon, notice of such hearing, the hearing thereon, and the confirmation thereof, the preparation, certification and filing of a reassessment-roll, the time when such assessments shall become a lien upon the property assessed, the method of collecting

such assessments and all proceedings for enforcing the lien thereof shall be had and conducted the same in the case of reassessments as in the case of an original assessment. [L. '21, p. 644, § 9.]

§ 6630. Resolutions of Board.

The board of county commissioners shall pass such resolution or resolutions as may be necessary to carry out the provisions of this act. Thereafter all proceedings relating to such improvements shall be had and conducted in accordance with this act and such resolutions. [L. '21, p. 645, § 10.]

§ 6631. Payment of Bonds from Sinking Fund.

Whenever the sinking fund for such improvement shall, over and above the amount necessary for the payment of interest on all unpaid bonds, be sufficient to pay the principal of one or more bonds, the county treasurer shall designate sufficient bonds, bearing the lowest numbers among those outstanding, to absorb the amount of said fund on hand, as near as may be, and he shall call such bonds by publishing a notice, giving the numbers of the bonds so called for payment, and fixing a day, not less than fifteen days after the first publication of the notice, when the bonds will be paid with accrued interest at the place of payment of said bonds, which notice shall be published in a daily newspaper published in the county seat once in each week for two consecutive weeks. And in case the bonds so called for payment are not presented on the day fixed therefor in such notice, interest thereon shall thereupon cease: Provided, the money for the payment thereof shall at all times thereafter be retained at the place of payment of the bonds, in readiness for payment of the same on presentation, until such bonds are presented for payment. All bonds and coupons received by the county treasurer under the provisions of this section shall be at once canceled by him and filed as vouchers with the county auditor as ex-officio clerk of the board of county commissioners. [L. '21, p. 645, § 11.]

§ 6632. [5768.] Penalty.

If an engineer, clerk of the board of county commissioners, member of the board of construction, or appraiser, neglect or refuse to perform any duty imposed upon him by the provisions of this chapter, he shall forfeit and pay a fine of twenty-five dollars for every such neglect or refusal, to be recovered before any officer having competent jurisdiction, in the name of the state, for the benefit of the common schools of the county, at the suit of any person aggrieved thereby. [L. '93, p. 319, § 42.]

§ 6633. [5769.] Court may Correct Error, etc.

The court in which any proceeding is brought to recover any tax or assessment paid, or declare void the proceedings to locate or establish any road, or to enjoin any tax or assessment levied or ordered to be levied to pay for the labor and expense as aforesaid shall, if there is manifest error in the proceedings, allow the plaintiff in the action to show that he has been injured thereby, and may on

application of either party, appoint such person or persons to examine the premises or to survey the same, or both as may be deemed necessary, the court in which any such proceedings are begun shall allow parol proof that said improvement is necessary and will be conducive to the public needs, convenience and welfare, and that any steps required by law for any improvement have [been] substantially complied with, notwithstanding any defects or omissions in the record required to be kept by any board or officer; and with or without finding error, the court may correct any gross injustice in the apportionment made by the commissioners; the court shall, on final hearing, make such order in the premises as shall be just and equitable, and may order that such tax and assessment remain on the duplicate assessment roll for collection, or the same to be levied, or may perpetually enjoin the same or any part thereof; or if the same has been paid under protest may order the whole or any part thereof as is just and equitable to be refunded, and the costs of such proceedings shall be apportioned among the parties or paid out of the county treasury as justice requires. [L. '93, p. 319, § 43.]

§ 6634. [5770.] Commissioners to Hear Petition for Locating Improvements.

The county commissioners may hear and determine at the same time and under the same petition the necessity of locating any new improved road, or of a road already partly improved, or of widening, straightening, relocating or altering any road previously improved, or in process of improvement under this chapter, as the necessity of the case requires, and shall cause such entry to be made on their journal as in their judgment is required. All estimates shall be made in the manner provided in this chapter. No assessment shall be made to any land, person, or property upon any principle other than that of benefits derived and in proportion thereto. [L. '93, p. 320, § 44.]

§ 6635. [5771.] Bond of Engineer and Appraiser.

The board of county commissioners shall require each engineer and appraiser appointed by them under the provisions of this chapter to enter into a good and sufficient bond, with surety to be approved by them, conditioned for the faithful performance of his duties, in a sum to be fixed by the county commissioners, and an action may be brought on such bond by any person aggrieved by a failure of any such person so appointed to do his duty, in the name of such party, and recovery may be had for his benefit. [L. '93, p. 320, § 45.]

§ 6636. [5772.] Officers to Take Charge of Roads.

Upon the completion of any improved road or any section thereof, for which final payment has been made, the charges and care thereof shall be assumed by the district road overseer or township road officers in each district or township in which the improvement is located, and it shall be the duty of such road officers to keep the improved roads in their respective districts or townships in constant and good repair, and any failure so to do shall justify the county commissioner in

the commissioner's district in which the neglect occurs, to cause such repairs to be made at the expense of the road district or township in which repairs are done. [L. '93, p. 320, § 46.]

§ 6637. [5773.] Places of Beginning, How Construed.

In case the road proposed to be improved be located so as to connect with two or more trading points located upon a railroad or body of navigable water, or with a road already improved under this chapter, or with a road over which heavy freighting and rapid travel can be done at any time of the year, then each of said points shall be construed as "places of beginning" under this chapter, and construction may be commenced at one or more of them as the board of construction shall direct. [L. '93, p. 320, § 47.]

§ 6638. [5774.] Commissioners may Vacate.

The county commissioners may, on the proper petition and bond being filed, and the same notice being given as required in cases of the location of an improved road, declare any such road vacated and abandoned and its location and establishment to be held for naught, if in their judgment the same has ceased to be of public utility, and the public need, convenience and welfare no longer demand the maintenance thereof; but private rights of persons acquired by reason of the location and establishment of such road shall not be interfered with nor in any way impaired thereby unless due compensation be made therefor. [L. '93, p. 321, § 48.]

Cited in 71 Wash. 317.

§ 6639. [5775.] Public Lands Subject to Assessment.

All state, county, school, school district or other lands shall be subject to the provisions of this chapter, and the proper authorities having charge of said lands may institute proceedings to enjoin assessment of benefits hereunder or for damages herefrom as in the case of private persons: Provided, that such public authorities shall not be required to give any bond in such proceedings. [L. 93, p. 321, § 49.]

§ 6640. [5776.] Record of Roads to be Made.

The clerk of the board of county commissioners shall make, in a suitable book to be provided for that purpose, at the expense of the county, a complete record of each road in his county improved under the provisions of this chapter, which record shall include the petition and all bonds, reports of the engineer, appraisers and board of construction and all journal entries made, together with all plats and other papers necessary to show a complete history of all that is done in each case up to and including the final order made by the board. [L. '93, p. 321, § 50.]

§ 6641. [5777.] Road Accounts, How Kept.

The commissioners of any county wherein a road improvement is ordered shall provide a suitable book in which to keep the improved road accounts of the county. The clerks shall open therein an account with

each improvement in the name by which the same is known, and charge all assessments and credit all payments made in the case. The money collected on each improvement shall constitute a special fund unless the cost of the improvement shall have been advanced out of the general road fund, in which case the money collected shall be credited to the general road fund. [L. '93, p. 321, § 51.]

§ 6642. [5778.] Fees for Services of Officers.

Fees for services of officers under this chapter shall be the same as for like services in civil cases, or as is or may be provided by law. [L. '93, p. 322, § 52.]

§ 6643. [5779.] Per Diem of Commissioners.

In performing their duties under this chapter, the county commissioners shall be entitled to a per diem allowance equal to that allowed by law for other services. [L. '93, p. 322, § 53.]

§ 6644. [5780.] Blanks.

It shall be the duty of the prosecuting attorney in each county to prepare suitable blanks for the use of the board of county commissioners, under this chapter. [L. '93, p. 322, § 54.]

§ 6645. [5781.] Reimbursement.

All fees under this chapter, when not otherwise provided herein, shall be paid out of the county treasury as soon as bills and items thereof are examined and allowed by the commissioners; and for all amounts so paid, except to the commissioners and clerk, the commissioners shall order the general county fund to be reimbursed from the money raised for the respective improvement. [L. '93, p. 322, § 55.]

§ 6646. [5782.] Balances.

All balances remaining unexpended of any road improvement fund arising from excess of assessments made after the expenses thereof have been fully paid, shall be transferred to the general road fund of the county. [L. '93, p. 322, § 56.]

CHAPTER XX.

BOULEVARDS, HIGHWAYS, CYCLE PATHS, ETC., AT EXPENSE OF LAND BENEFITED.

See, also, last preceding chapter, and next chapter.

§ 6647. [5783.] Improvement of Boulevards, Cycle Paths and Highways:

There shall be and is hereby conferred upon cities of the first class within the state of Washington, full power and authority to acquire, receive, condemn, lay out, grade and improve boulevards or composite highways, and walks, cycle paths and parks in connection therewith and prescribe and limit the use thereof to specified kinds of traffic; and also full power and authority to levy and provide for the collection by the county treasurer of an assessment or assessments upon all lots or parcels of land benefited thereby, and full power and authority to defray the

full cost and expense thereof, including the cost of all necessary lands for right of way, whether obtained by purchase or condemnation, by issuing local improvement district bonds, as hereinafter provided, which said assessments and bonds shall become and remain a lien upon said lands until the said assessments and bonds shall have been paid, except as is herein otherwise provided; and the same full power and authority is hereby conferred upon counties where the said boulevards or composite highways, walks, cycle paths and parks extend from and beyond the limits of any such city of the first class into such county, and prescribe and limit the use thereof to specified kinds of traffic; the authority and power hereby conferred shall be exercised in the manner pointed out by this chapter, but any failure of power herein or informality may be supplied from the general power possessed by cities and counties to lay out, grade, improve, and protect and repair roads, bridges and highways; said boulevards or composite highways shall, with the walks, cycle paths and parks connected therewith, be in no case less than one hundred feet wide, nor more than two hundred feet in general width. [L. '97, p. 266, § 1.]

Cycle paths in cities: See *infra*, §§ 9204—9209.

§ 6648. [5784.] **Petition for Improvement.**

Whenever the owners of property to be benefited along the line of any proposed boulevard or composite highway, shall desire to improve the same under the provisions of this chapter, at the expense of such property benefited, and by the issuance of serial bonds to be payable in ten annual installments, with interest, they must present to the city council of such city of the first class a petition setting forth a general description of the route of the said improvement within said city, giving its terminal points, and a general description of the character of improvements desired, together with the general plan of the various roadways, walks, cycle paths and contemplated parks; if any portion of such proposed boulevard or composite highway shall extend beyond the limits of such city, a similar petition shall be filed with the board of county commissioners of the county into which it so extends covering the portion of same outside of the city; before any such petition shall be allowed and favorably acted upon, it must appear therefrom that the owners of a majority in area of the lands to be benefited along said proposed boulevard or composite highway have signed the same and requested the work to be done under the provisions of this chapter; and any administrator, executor or guardian may, upon consent of the court appointing him, sign the same, and his signature shall bind the property of the estate or ward. [L. '97, p. 267, § 2.]

§ 6649. [5785.] **Survey and Estimate to be Made—Notice and Hearing.**

Whenever any such petition shall be filed, signed by a majority of the property owners as aforesaid, a council or board, as the case may be, shall cause a survey, plan and estimate of the entire cost within the said district to be made, which shall be filed with the city clerk or county auditor, as the case may be: Provided, that no such survey, estimate and plan shall be made, without the said petitioners shall advance the cost thereof, which shall be afterward included as a part of the expense of the

improvement, and refunded if it be made; immediately after the said survey, plan and estimate is made and filed, the city clerk or county auditor, as the case may be, shall cause a notice of such filing to be published daily for ten days in the newspaper doing the city or county printing, which notice shall state that such petition has been filed, and shall give a brief and general description of the improvements proposed, the terminal points of the same and the proposed width of the same, together with the estimated cost and expense thereof, and also a description of the property included within the proposed district. Said notice shall fix a time and place at which all persons interested in said property may appear before said council or board and show cause, if any there be, why the said improvement ought not to be made as petitioned for. Said time shall not be less than eight days nor more than twenty days from the date of said notice. All owners who shall not make and file objections to the granting of such petition, within the time mentioned shall be deemed to have assented thereto, in the same manner as if they had signed the said petition. If any remonstrance shall be made thereto, the council or board shall hear the same, and if it shall appear that the law has not been complied with in the securing [of] a sufficient number of signers to the said petition, or that the requisite notice has not been given, or that the proposed improvement will not be a benefit to the property in the said district, or that for any other similar reason the work ought not to be done at the expense of the property owners, the said council or board shall so find, and decline and refuse to proceed further with the matter; but if it appears that the law has been in the aforesaid particulars complied with, and that the proposed improvement will be a benefit to the property in the said district, and will be a public convenience and benefit, the said council or board shall so find and shall authorize the improvements. [L. '97, p. 268, § 3.]

§ 6650. [5786.] Improvements, How Ordered.

Whenever any such petition shall have been presented to the city council, and upon notice as aforesaid shall have been examined and the proposed improvement found to be a proper one to be made by local assessment, the council shall by ordinance order such improvement to be made within any city or district, and shall by such ordinance create a local improvement district, which shall embrace the lands and lots described in the said notices, and which will be benefited by such improvement; such ordinance shall provide in full for the levy and collection of such assessments, the issuance and sale of the bonds, and the general outline of the improvements and the proposed method of paying therefor; when a portion of said boulevard or composite highway shall lie outside of the city limits, the board of county commissioners shall upon like petition, notices and finding, make similar provisions for the improvement within its jurisdiction, by an order entered upon its records; the district lying within the city limits shall be known as District A, and that outside of the city, if any, as District B, and a different series of bonds shall issue in each, and the property in District A shall not be responsible for the payment of the bonds issued on District B, nor shall the property in

District B be responsible for the payment of the bonds issued on District A. [L. '97, p. 269, § 4.]

§ 6651. [5787.] What Constitutes a Frontage.

Each local improvement district shall include all property between the terminal points of said improvement; in case the line thereof extends beyond the city limits, the line of the city limits shall be one of the ends of termini of the inner and outer districts; the inner or local improvement District A shall include all property between its termini parallel to and within three hundred feet on each side of the average central line of the said boulevard or composite highway; and all property included within said limits shall be considered and held to have a frontage upon such improvement, and shall be the property benefited by said local improvement, and shall be the property to be assessed to pay the cost thereof, which cost shall be assessed by the said city council upon all the property so benefited in proportion to the benefits obtained thereby; the outer or local improvement District B shall include all property between its terminal points, one of which shall be the line of the city limits, and all property parallel thereto and within six hundred and sixty feet on each side of the average central line of the said composite highway; and all property included within said limits shall be considered and held to have a frontage upon such improvement, and shall be the property benefited by the said local improvement, and shall be the property to be assessed to pay the cost thereof, which cost shall be assessed by the said board of county commissioners upon all the property so benefited in proportion to the benefits obtained thereby; and no lot or parcel of land in any district shall be assessed or charged for but one proportionate part thereof, regardless of any angle or change of direction in the line of improvement. [L. '97, p. 269, § 5.]

§ 6652. [5788.] Relating to Street-car Tracks and Right of Way.

In arranging and laying out any such boulevard or composite highway it shall be proper and lawful to arrange for the location and right of way of a street-car track or tracks therein, but the lands upon which the same are built, or to be built, shall not be improved by such special assessment, but only at the expense of the parties owning the lands or the franchise thereon, and said land shall also be assessed in proportion to other property in the district to pay for the local improvement. [L. '97, p. 270, § 6.]

§ 6653. [5789.] Assessment-rolls and Exhibits.

The city council or board of county commissioners, as the case may be, shall make out and certify to an assessment-roll, which shall show and exhibit in separate columns,—

First: The name of the owner of each separate lot, piece, parcel or subdivision of land assessed and lying within the assessment district, which shall be set opposite the inscription [description] thereof, and if the name of the owner be unknown the word “unknown” shall be written in its place;

Second: A brief description by lot, block, or by metes and bounds, of each subdivision of land therein;

Third: The assessment number of each subdivision of land separately assessed;

Fourth: The amount assessed separately against each subdivision within said district, which shall be the sum, also, that the said lot, piece or parcel of land is benefited by the said improvement;

Fifth: A plat or map showing the line or lines of said proposed improvement, and the lots, blocks, pieces and parcels of land lying in said district to be assessed for such improvement, each of which subdivisions of land shall be marked with its assessment number on its face. [L. '97, p. 270, § 7.]

§ 6654. [5790.] Filing of Assessment-roll—Notice of.

Upon the completion of such assessment-roll it shall be filed with the city clerk or county auditor, as the case may be, whereupon such clerk or auditor shall forthwith give notice by publication for five days in a daily paper doing the city or county printing, that said assessment-roll is on file in his office, where it may be seen and examined by all parties interested, and the said notice shall state a time at which the council or the board, as the case may be, will hear any objections to the said assessment-roll, which time shall be not less than one nor more than ten days after the last publication of the said notice. [L. '97, p. 271, § 8.]

§ 6655. [5791.] Objections to be Heard—Confirmation of Assessment-rolls.

At the time appointed for hearing objections to the said assessment-roll and the assessments therein, the council or board, as the case may be, shall hear and decide upon all objections which shall have been filed by any party interested, to the regularity of the proceedings in making said improvements or in levying said assessments, or to the correctness of the amount of said assessment, or of the amount levied upon any particular lot or parcel of land; and if the proceedings are found by them to have been regular, they shall correct any errors which may be found in the assessment, and shall pass an order approving and confirming said proceedings, and said assessment so corrected by them, and their decision and order shall be a final determination of the regularity, validity and correctness of said assessment, and of the amount thereof levied upon each lot or parcel of land, and shall bar all persons appearing and objecting or failing to appear from any further recourse in law. [L. '97, p. 271, § 9.]

§ 6656. [5792.] Lien of Assessments.

All such assessments shall be liens upon the property assessed, and all such liens shall relate back to and take effect as of the date when the council or board, as the case may be, found the work a proper one to be undertaken under the law and the petitions presented, and sustained the petitions against the objections made, or proceeded with the work without such objection, when none was made. [L. '97, p. 272, § 10.]

§ 6657. [5793.] County Treasurer to Collect—Date of Delinquency.

The city or county clerk, as the case may be, shall, within five days after the confirmation of said assessment-roll as aforesaid, certify and

annex to the said roll a true copy of the order of confirmation, and issue and annex to the said roll a warrant directing the county treasurer to receive and collect the amount or amounts due thereon, in the manner and at the times hereinafter pointed out, and shall thereupon deliver said roll, order of confirmation and warrant to the said county treasurer, who shall thereupon be authorized to receive and collect the same, as by this law provided; the clerk shall, if the district lies within the city, also notify the city controller of the amount of the said roll, and if a district lies outside of the city the county auditor shall be so notified of the amount thereof, and the treasurer shall be charged therewith; the treasurer, within ten days after receiving the said roll, shall give notice by three weekly publications in the official newspaper of the city or county that such assessment-roll is in his hands for collection, that the assessments are payable, and the date at which the same will become delinquent for the nonpayment of the first installment of principal and interest; no demand shall be necessary for any such assessment, but it shall be the duty of every person whose property is assessed for the improvements as herein provided, to pay all such assessments levied upon such property before the same become[s] delinquent. [L. '97, p. 272, § 11.]

§ 6658. [5794.] When Assessments are Due and Payable.

The said assessments shall be due and payable on the date of the order confirming the said assessment-roll, and may be paid at any time thereafter as herein provided. Any person may at any time within thirty days after said order of confirmation redeem his said property by paying the full amount of such assessment without interest; if the said property is redeemed after said thirty days the owner shall pay the full amount of such assessment and the interest up to the succeeding first Monday in July or January, as the case may be. If the order confirming the said assessment-roll shall be made more than thirty days next before the first Monday in July or January, or if not then, on the first Monday in July or January first thereafter, the first installment of one-tenth of the principal, and interest for one year on the whole sum due, shall be and become due and delinquent; and thereafter, annually, on the said first Monday in July or January, corresponding to the first date of delinquency, one-tenth of the principal sum, and one full year's interest on the whole sum due, shall be and become due and delinquent; upon the failure of any such owner to make payment of any installment and the interest before delinquency, and upon such delinquency, the whole sum due on the said lot, piece or parcel delinquent shall also be and become due, payable and delinquent, and any sale of the said property for delinquency shall be for the full amount of the said assessment not then paid and interest to the next succeeding first Monday in July or January, as the case may be, and the costs of sale. [L. '97, p. 272, § 12.]

§ 6659. [5795.] Sale to Satisfy Assessments.

The said county treasurer shall be and he is hereby empowered and authorized, by virtue of the law and the warrant to collect, to sell at public auction to the highest bidder for cash, all the lots, pieces and parcels of land described in the said assessment-roll, and upon which assessments

are levied, whether in the name of the owner or in the name of an unknown, to satisfy all delinquent and unpaid assessments, with interest and costs; on the day of the delinquency a penalty of five per cent on the principal sum due shall accrue to such assessment in addition to the interest thereon, and must then and thereafter be collected therewith; such treasurer's warrant shall, for the purpose of making sale of said real estate on which assessments are delinquent and unpaid, be deemed and taken as an execution against said real property for the amount of the said assessments with interest, penalty and costs, and the treasurer shall, within sixty days after said date of delinquency, commence the sale of the said real property, and continue such sale from day to day thereafter, until all the lots and parcels of land described in said assessment-roll on which any such assessment or installment is delinquent and unpaid are sold; such sales shall take place at the front door of the courthouse, and such sales may take place from year to year if other delinquencies on said roll occur; the treasurer shall give notice of such sales by publishing a notice thereof once a week for three consecutive weeks, in the official city or county newspaper, as the case may require; such notice shall contain a list of all lots and parcels of land upon which such assessments are delinquent with the amount of the assessment, interest, penalty and costs, to the date of sale, including the costs of advertising due upon each of such lots or parcels of land, together with the names of the owners thereof, or the words "unknown owner," as the same may appear on said assessment-roll, and shall specify the time and place of sale, and that the several lots or parcels of land therein described will be sold to satisfy the assessment, interest, penalty and costs due upon each. [L. '97, p. 273, § 13.]

§ 6660. [5796.] When Sale shall Take Place.

All such sales shall be made between the hours of 10 o'clock A. M. and 3 o'clock P. M., each lot or parcel of land shall be sold separately and in the order in which the same appears on the assessment-roll, commencing at the head thereof; all lots and parcels of land sold for delinquent assessments shall be sold to the highest bidder, and whenever any such lot is sold for more than the sum sufficient to satisfy the delinquent assessment, with interest, penalty and costs, the surplus shall be kept by the treasurer in a separate fund, and thereafter the owner or his legal representatives shall, on application, be entitled, upon proving their right thereto, to receive the same; if there be no bidder for any lot or parcel of land of a sum sufficient to pay the delinquent assessment, interest, penalty and costs, the said treasurer shall declare the said property sold to the city, if the district is within the city, or to the county, if without the city, and the city or county in such case shall be a trustee of the title for the benefit of the bondholders; the said lands so stricken off to the said city or county may be disposed of as hereinafter provided, by a sale of the certificates of sale, or held, if not sold, to await the action of the bondholders, who shall be held to be the equitable owners thereof in proportion as their interests may appear. [L. '97, p. 274, § 14.]

§ 6661. [5797.] Improvement Ordered—Limit of Liability.

Immediately after and upon the passage of the order confirming the assessment-roll, the city council or the board of county commissioners, as the case may be, shall be and they are hereby authorized to cause the said improvement to be made at the expense of the said district: Provided, that the said contractor, laborers, materialmen or subcontractors shall in all cases look only to the fund to be raised by such special assessment for their compensation: And provided, that neither the city nor county shall be responsible therefor in any degree except as trustee for the said district and bondholders. [L. '97, p. 275, § 15.]

§ 6662. [5798.] Sale of Certificates.

The city controller shall be the custodian of all certificates of purchase for lots or parcels of land so sold to the city, and the county treasurer shall continue in the custody of all such certificates so sold to the county, and either shall, at any time prior to the issuance of a deed for such property and prior to the redemption of the lot or parcel of land therein described, sell and transfer any such certificate to any person who will pay to the county treasurer the amount for which the lot or parcel of land therein described was stricken off to the city or county with the interest subsequently accrued thereon; within ten days after the completion of the sale of all the lots and parcels of land described in such assessment-roll and sold as aforesaid, the treasurer must make a return to the city council, or the board of county commissioners, of his doings thereon, showing all lots and parcels of land sold by him, to whom sold, and the sum paid therefor. [L. '97, p. 275, § 16.]

§ 6663. [5799.] Purchaser's Lien.

The purchaser at improvement assessment sales acquires a lien on the lot or parcel of land sold for the amount paid by him at such sale, as well as for all delinquent taxes and improvement assessments, and all costs and charges thereon, whether levied previously or subsequently to such sale, subsequently paid by him on the lot or parcel of land, and shall be entitled to interest thereon at the rate of twelve per cent per annum from the date of such payment. [L. '97, p. 275, § 17.]

§ 6664. [5800.] Redemption Notice—Deed.

Every lot or parcel of land sold for any delinquent assessment as aforesaid, shall be subject to redemption by the former owner, or his grantee, mortgagee or heir, within one year within the date of the certificate of purchase, on payment to the county treasurer, for the purchaser, of the amount the same was sold for, with twelve per cent interest per annum, together with all taxes and improvement assessments and costs and charges thereon paid by the purchaser on such lot or parcel of land since such sale, with like interest thereon, and on such redemption being made, the treasurer shall give to the redemptioner a certificate of redemption therefor and pay over the amount received from such redemptioner to the purchaser or his assigns; should no redemption be made within the period of one year, the treasurer shall, on demand by the purchaser, or his assigns, and the surrender of the certificate, execute to him a deed for

the lot or parcel of land therein described: Provided, that no such deed shall be executed until the holder of said certificate shall have notified the owner of the said lot or parcel of land that he holds said certificate and that he will demand a deed thereof; and if, notwithstanding said notice, no redemption be made within ninety days from the service of said notice, said holder shall be entitled to said deed. Said notice may be given by personal service upon said person, or by publication in a weekly newspaper published in said city or county for three weeks; such notice and return thereto, with the affidavit of the person claiming said deed, stating that said service was made, shall be filed with the treasurer; such deed shall be executed only for the lot or parcel of land named in the certificate, and after the payment of all subsequent taxes and assessments thereon; the deed shall be executed in the name of the city or county, as the case may be, and shall recite in substance the matters contained in the certificate, the notice to the owner, and that no redemption has been made of the property within the time allowed by law; such deed shall be signed and acknowledged before a notary public by the treasurer as such; the deed shall be prima facie evidence that the property was assessed as required by law, that the improvement assessment was not paid, that the property was sold as required by law, that it was not redeemed, that notice had been given, and that the person executing the deed was the proper officer, and the deed shall be conclusive evidence of the regularity of all other proceedings from the assessment inclusive up to the execution of the deed. [L. '97, p. 276, § 18.]

§ 6665. [5801.] Sale to City or County.

If any property within such assessment district shall be offered for sale, and no person shall bid a sum sufficient to pay the assessment, the interest, penalty and costs, the said property shall be stricken off to the city, if the district is within the city, or to the county, if the assessment district is within the county, and in either case the city or county, as the case may be, shall hold the said property as a trustee for the use and benefit of the holders of the bonds against the said district; but neither the said city nor county shall be required to pay any money out of its treasury upon the said bonds or interest thereon otherwise than as the same shall have been received from the said assessments: Provided, that if there shall not be a sufficient fund to pay the bonds and interest the said lots or lands so stricken off to the trustee may be utilized by the bondholders, as a common fund for further payments. [L. '97, p. 277, § 19.]

§ 6666. [5802.] Improvements, How Made.

All work authorized by this chapter in laying out, grading and finishing the said composite highway or boulevard, or walks, cycle paths or parks in connection therewith, shall be done under the same supervision as other improvements in said city or county, and shall be done by days' work or by contract, at the discretion of the council or board: Provided, that if the petition for doing the work in the first place shall designate the manner of making the improvement, whether by days' work or contract, then the improvement must be done as requested in said petition:

And provided further, that in no case shall the cost of any such improvement exceed the estimate made by the engineer; and before awarding any contract authorized by this act the same proceedings shall be let in like manner as other contracts in said city or county. [L. '97, p. 277, § 20.]

Cited in 77 Wash. 231.

§ 6667. [5803.] Contracts for Improvements.

All contracts shall be drawn under the supervision of the city or county attorney and shall have attached thereto detailed specifications of the work to be done, which shall be referred to and made a part of the contract, and the maps, estimates and all of the proceedings in the matter of creating the said assessment district shall be considered a part of the said contract; each contract shall be signed in duplicate, the contractor taking one and the proper city or county official keeping the other; at the same time with the execution of said contract the said contractor shall execute a bond to the city or county, as the case may be, and deliver the same to the clerk of the council or board; said bond shall be jointly and severally in the sum named in the notice for proposals, with two or more sufficient sureties, to be approved by the council or board; or the contractor may deposit with the county treasurer a certified check, upon some solvent bank, for said amount, for the faithful performance of said contract, which check shall be drawn payable to the said county treasurer; such sureties shall justify in a sum equal to the amount of the bond, and such bond shall be conditioned that such contractors shall pay all laborers, mechanics and materialmen and persons who shall supply such contractor with provisions or goods of any kind, all just debts due to such persons, or to any person to whom any part of such work is subcontracted or given; which bond shall be filed with the clerk of the city or county, as the case may be. The contract for work shall specify the time within which the work shall be commenced and when to be completed, as was specified in the notice inviting proposals therefor; in case of failure on the part of the contractor to complete his contract within the time fixed, his contract may be by the council or board declared void, and the council or board may relet any unfinished portion of said work: Provided, that no contractor shall be paid any sum to exceed eighty per cent until the whole of the said contract shall have been completed and accepted by the board or council; the work shall be done to the satisfaction of the city engineer, if within the city, or to the county surveyor, if without, and shall be done according to the plans and specifications. [L. '97, p. 278, § 21.]

§ 6668. [5804.] Payment for Improvements—Issuance of Bonds.

Whenever any improvement aforesaid shall be made under this chapter, provision for its payment shall be made by the issuance, by the council or board, of improvement district bonds, payable in ten annual equal installments, none of which bonds shall draw interest at a higher rate than ten per cent per annum; such bonds may be issued to the contractor at par, if he agrees to accept the same, or the council or board may sell the same at not less than par value, net, and pay the proceeds to the contractor. Such bonds shall not be issued in amount in excess of the

contract price of the work or improvement together with the cost of all lands for the right of way therefor, whether acquired by purchase or condemnation, and also all incidental expenses incurred by the city or county for said improvement: Provided, that when the annual tenth is paid the interest upon the whole sum shall also be paid; the bonds shall be of such denominations as the council or board shall determine, and shall be numbered from one to the highest number; the county treasurer, whenever he shall have received a sum sufficient from the redemption of any piece or pieces of property by the owner's paying his assessment together with the interest to the next semi-annual date of interest payment, to pay one of the bonds in full, shall call the said bond, beginning at the first in number: Provided, that no such call shall be made and no such payments received after the eighth annual payment; the installments of principal and interest shall be paid on the third Monday in July and January; the principal annually and the interest semi-annually, and the bonds may provide for paying the same at the fiscal agency of the state of Washington in New York City. [L. '97, p. 279, § 22.]

§ 6669. [5805.] Lien of Assessment Transferred to Bondholders.

Such bonds, when issued to the contractor constructing the improvement in payment therefor, or when sold as above provided, shall transfer to the contractor or other owner or holder all the right and interest of such city or county in and with respect to every such assessment, and the lien thereby created against the property of such owners assessed as shall not have availed themselves of the provisions of this chapter in regard to the redemption of their property as aforesaid, shall authorize said contractor and his assigns and the owners and holders of said bonds to receive, sue for and collect or have collected every such assessment embraced in any such bond by or through any of the methods provided by law for the collection of assessments for local improvements. And if the city or county shall fail, neglect or refuse to pay said bonds, or to promptly collect any of such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover, in addition to the amount of such bonds and interest thereon, five per centum together with the costs of such suit. Any number of holders of such bonds for any single improvement may join as plaintiffs, and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. And such bonds shall be equal liens upon the property for the assessments represented by such bonds without priority of one over another to the extent of the several assessments against the several lots and parcels of land. [L. '97, p. 280, § 23.]

§ 6670. [5806.] Reassessment, When.

In all cases of special assessment for local improvements of any kind against any property, persons or corporations whatsoever, wherein said assessments have failed to be valid in whole or in part for want of form or insufficiency, informality or irregularity, or nonconformance with the laws governing such assessments, the city council or other authorized board or body shall be and they are hereby authorized to reassess such

special taxes or assessments and to enforce their collection in accordance with the provisions of law existing at the time the reassessment is made: And it is further provided, that whenever, for any cause, mistake or inadvertence, the amount assessed shall not be sufficient to pay the cost of the improvement made and enjoyed by owners of property in the local assessment district where the same is made, that it shall be lawful, and the city council or other authorized board or body is hereby directed and authorized, to make reassessments on all the property in said local assessment district sufficient to pay for such improvement, such reassessment to be made and collected in accordance with the provisions of the law or ordinance existing at the time of its levy. [L. '97, p. 280, § 24.]

§ 6671. [5807.] Construction.

Nothing herein shall be construed as repealing or modifying any existing manner and method for cities of the first class or counties to make improvements as herein provided for, but shall be construed as an additional and concurrent power and authority. The holder of any bond issued under the authority of this chapter shall have no claim therefor against the city or county by which the same is issued, in any event, except from the collections of the special assessment made for the improvement for which such bond was issued; but his remedy, in case of no payment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on the face of each bond so issued. [L. '97, p. 281, § 25.]

CHAPTER XXI.

CHANGING AND IMPROVING ROADS AT EXPENSE OF LAND BENEFITED.

See last two preceding chapters.

§ 6672. [5808.] Improvements Authorized — Assessment of Property Benefited.

The board of county commissioners of any county in this state shall have power, as hereinafter provided, to cause to be constructed or improved any county road, or any part of such road, within the limits of their respective counties, by deviating from existing lines whenever it shall be deemed of advantage to obtain a shorter or more direct road without lessening its usefulness or whenever such deviation is of advantage by reason of lessened gradients, or by draining in any direction to reach the most convenient and sufficient outlet, or by grading or by constructing thereon a roadway of telford, macadam, gravel, or any other suitable material; and to levy and cause to be collected an assessment upon all lots, tracts and parcels of land specially benefited by such improvement for paying the cost and expenses thereof, which assessment shall become a first lien upon all property liable therefor, prior and superior to all other liens and encumbrances; and to provide for the payment of such assessment either on the immediate payment plan or by installments; and to issue local improvement district warrants for such installments. [L. '09, p. 768, § 1.]

§ 6673. [5809.] Resolution to Improve by County Commissioners.

Upon the presentation of a petition as provided in section 6674 hereof the board of county commissioners shall pass a resolution that the public interest demands the improvement of any such county road, or part thereof, situated within such county, and described in such resolution, but such description shall not include any portion of a highway within the boundaries of any city or incorporated town. [L. '09, p. 769, § 2.]

§ 6674. [5810] Petition by Owners of Abutting Property.

The owners of two-thirds of the lineal feet of lands fronting on such county road, or part thereof sought to be improved, in any county in this state may present to the board of county commissioners of such county a petition setting forth that the petitioners are such owners and that they desire such road, or part thereof, to be improved under the provisions of this chapter, the particular road or portion thereof sought to be improved, the kind and nature of the improvement desired, and the mode of payment of the assessments to be levied for defraying the cost and expenses of such improvement. If any such property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator or guardian, as the case may be, shall be deemed equivalent to the signature of the owner of the property on such petition. [L. '09, p. 769, § 3.]

§ 6675. [5811.] Notice of Hearing—Election of Supervisors.

Such board of county commissioners shall make an order appointing a place in the vicinity of said road in said county where, and at a time when said petitioners and all owners of land fronting upon said road, or portion thereof sought to be improved, and to be specially benefited by such improvement, and upon whose lands special assessments will be levied to pay for such improvement, may meet with the county engineer, or his duly appointed deputy; and the county auditor shall immediately give notice to said county engineer of such meeting, and shall cause a notice thereof to be given by publication in a newspaper printed and published in the vicinity of said road, or nearest thereto, in said county, and of general circulation therein, for three consecutive weeks next prior to the time of such meeting, which notice shall state the time and place of said meeting, the kind of improvement asked for, the place of beginning, intermediate points, if any, and place of termination of said road, or the portion thereof sought to be improved. At said meeting said county engineer, or his said deputy, or in the absence of both, some one of the said owners present, shall preside, and said petitioners and said owners of such lands shall then proceed to elect three of such owners as a committee of supervisors, at least one of whom shall be chosen from among the said petitioners. A majority of such owners present and voting at such meeting shall be sufficient for such election, and said presiding officer shall declare and certify to said board of county commissioners the names of such owners so elected as such committee of supervisors. The persons so elected shall, as soon as may be thereafter, qualify by taking an oath that they are owners of lands fronting upon or specially benefited by said improvement and to be included within the local assessment district therefor, as hereinafter pro-

vided, and that they will fully, impartially and faithfully perform the duties of such supervisors to the best of their ability, which said oath may be administered by anyone authorized by the laws of the state of Washington to administer oaths, or by said county engineer or his deputy, who are thereunto hereby fully authorized. [L. '09, p. 770, § 4.]

§ 6676. [5812.] Assessment of Damages and Benefits—Plans—Width of Road.

It shall be the duty of such committee of supervisors and the county engineer or his said deputy to forthwith, or as soon as they can assemble at said place, meet and proceed to view, examine and survey said road, or the portion thereof sought to be improved, so that such county engineer can from such examination and survey make plans and specifications and an estimate of the cost of such construction and improvement; to examine and determine the lands that will be specially benefited by such improvement and should be included within the local district to be assessed to defray the cost and expense of such improvement; to ascertain what, if any, damage or injury to the property of any person or persons will be sustained by or in consequence of the making of such improvement for the payment of which such local district would be liable and, in so far as may be, obtain without cost to the local district the release in writing from such person or persons of their claim for such damage or injury, or, in case of failure so to do, arrange, in so far as may be, for such release to be given, upon the approval and ordering of such improvement, on such terms as to amount as may be deemed fair and reasonable to be paid from the funds collected upon the assessment of said district; and such county engineer shall without unnecessary delay prepare such plans and specifications and an estimate of the cost of such improvement, including therein all expenses incident thereto except for services of any county officer receiving a salary, and prepare a plat and description of such local improvement district and a description of the several tracts or parcels of land included therein and the valuation of said lands as appears upon the last annual assessment-roll of the county made for the purpose of levying general taxes; and for the purpose of making such surveys said county engineer shall take to his aid such assistants as are necessary and usually employed by him in making county surveys and at such compensation as is usually paid for like services employed in making other county surveys, the same to be charged as an expense against said local improvement district. The improved or permanent roadway of all such roads so improved shall not be less than eight nor more than sixteen feet in width with shoulders of not less than two feet nor more than four feet in width, unless for special reasons to be stated by said county engineer and committee of supervisors it is required that it shall be of greater width. [L. '09, p. 771, § 5.]

§ 6677. [5813.] Boundaries of Improvement District — Divisions for Assessment.

Such local improvement district shall be constituted, and the boundaries thereof fixed, as follows: The road, or portion thereof to be improved, coterminous with the improvement, shall be the central line

through the district, and the bordering lands on each side, and within a distance of half a mile from the margin of said road and coterminous with the construction work or improvement shall be included in and constitute the body of the improvement district, and shall be subject to assessment to the extent above provided. For the purpose of making an equitable apportionment of the assessment, such improvement district shall be divided longitudinally into three parts as follows: All land on both sides of said road, or portion thereof, to be improved, and within a distance of eight hundred and eighty feet from the margins thereof shall constitute the first subdivision; all the land outside of the first subdivision, and within eight hundred and eighty feet from the exterior margins thereof, shall constitute the second subdivision; and all the land outside of said second subdivision and within eight hundred and eighty feet from the exterior margins thereof shall constitute the third subdivision. Each separate tract or parcel of land in said first subdivision shall be assessed and be subject to a charge for a proportional part of forty-five per cent of the whole cost of the construction work or improvement of said road, including said incidental expenses, and it shall be subject to a lien therefor until it shall be paid; each separate tract or parcel of land in said second subdivision shall be assessed and subject to a charge for a proportional part of thirty-five per cent of said whole cost and expense of said construction work or improvement, and be subject to a lien therefor until it shall be paid; each tract or parcel of land in said third subdivision shall be assessed and subject to a charge for a proportional part of twenty per cent of said whole cost and expense of said construction work or improvement, and be subject to a lien therefor until it shall be paid. The charge upon the several separate tracts or parcels of land in each subdivision shall be assessed ratably according to the front foot plan; that is to say, one foot of longitude measured along the road constituting the center of such improvement district, and extending latitudinally across the subdivision shall be taken as the unit by which to determine the proportion of the assessment, so that a unit in each subdivision will be eight hundred and eighty square feet of superficial area. If the areas of said subdivision are not equal to each other the rates fixed for each subdivision shall be fixed on the basis that the benefit conferred on eight hundred and eighty square feet of land in subdivisions first, second and third, are related to each other as are the numbers 45, 35 and 20, respectively. [L. '09, p. 772, § 6.]

§ 6678. [5814.] Engineer's Report of Cost, etc.

As soon as the county engineer shall have completed said work, and at the next ensuing meeting of the board of county commissioners the said county engineer in conjunction with said committee of supervisors shall render a detailed report to said board of county commissioners, with all maps, descriptions, plans, specifications, details and estimates of damages, costs and expenses, and if it shall appear from the said report that the whole amount of the damages, cost and expense of said construction or improvement, chargeable as a lien against the property specially benefited within such improvement district, does not exceed fifty per cent of the total assessed valuation of the lots, tracts and parcels of land contained in such improvement district as the same appears upon the last annual assessment-

roll of the county made for levying general taxes, the said board of county commissioners shall make and enter upon their records an order that the said improvement be made, and creating such local improvement district for the payment of said damages, costs and expenses of making said improvement, by special assessment of the property in said district specially benefited, according to said report, to be known and designated Local Improvement District No.—— in —— County, Washington, and such report shall be kept on file in the office of the auditor of said county with the files pertaining to the proceedings of said board of county commissioners. [L. '09, p. 773, § 7.]

§ 6679. [5815.] Condemnation Proceedings.

When said county engineer and committee of supervisors are unable to agree with the owner of any lands upon the amount of damages, if any, sustained by the taking or injuring of his property by reason or in consequence of making of such improvement, they shall in said report to the county commissioners set forth such fact with a statement of their reasons therefor, and said county commissioners shall cause the amount thereof to be ascertained and determined by condemnation and paid in the same manner as damages are so ascertained, determined and paid where new roads are laid out and opened and the county commissioners and land owners are unable to agree upon the amount thereof; and such damages, and the expenses incident to ascertaining and determining the same, shall be advanced on the order of the county commissioners from the funds of the county, so that the progress of such work shall not be delayed, and said funds shall be reimbursed the amount so advanced from the first money collected of the local improvement district funds, and the same shall constitute a part of the cost and expense of making such improvement. [L. '09, p. 774, § 8.]

§ 6680. [5816.] Advertisement for Bids — Contract—Bond—Payments—Liability.

After the making of such order directing the making of such improvement and establishing such local improvement district, said county engineer and committee of supervisors shall let a contract for furnishing of the necessary materials and the performance of the work and labor necessary for the construction and completion of said improvement, according to said plans and specifications, and under the supervision of said county engineer. They shall advertise for bids for three successive weeks in a newspaper published at the county seat of such county, and in such other newspaper as said committee of supervisors shall deem of advantage, for the construction of said improvements, according to such plans and specifications, fixing the time for opening such bids at the office of the county commissioners and award such contract to the lowest responsible bidder, except that no contract shall be awarded at a greater sum than the estimate of cost of such work hereinbefore provided for. But if no bid otherwise acceptable be made within such estimate, such county engineer may amend his estimate, and in conjunction with said committee of supervisors certify such amended estimate to the county commissioners, and if

said amended estimate does not exceed said fifty per cent limit of valuation, said board of commissioners shall make and enter a new order, in like manner as provided in section 6679 hereof, based upon such amended estimate, and said county engineer and committee of supervisors may proceed anew to obtain bids and award the contract as herein provided. The county engineer and committee of supervisors may reject any and all bids, and before the execution of a contract for such construction, they shall require a bond executed by a corporate surety or two or more individuals, good and sufficient sureties, satisfactory to them, conditioned that the contractor will furnish the required material and perform the required work upon the terms specified and within the time prescribed and in accordance with the plans and specifications, and will pay for all labor and materials employed upon or in said work; and as a bond of indemnity against any direct or indirect damages that shall be suffered or claimed for injuries to persons or property during the construction of said improvement and until the same is accepted. Partial payments may be provided for in the contract, and paid in the manner herein provided when certified by the county engineer and committee of supervisors to an amount not to exceed eighty per cent of the value of the work done. In letting said contract said surveyor [engineer] and supervisors shall provide therein that at least twenty per centum of the amount due the contractor on estimates shall be retained to secure the payment of laborers who have performed work on said improvement and materialmen who have furnished materials therefor, and such laborers and materialmen shall for thirty days after their work has been completed or their materials furnished have a lien on such twenty per centum so reserved for labor done and materials furnished: Provided, notice thereof in writing shall have been filed with the county engineer within said thirty days, which lien shall be senior to all other liens, whether by judgment, attachment or contract, and no improvement shall be deemed completed until the county engineer and committee of supervisors shall have filed with the clerk of the board of county commissioners a statement signed by a majority of them declaring the same to have been completed, and all such liens shall have been discharged. Such contract shall be executed in the name and on behalf of the county by the chairman of the board of county commissioners and attested with the seal of said board, for the use and benefit of said local improvement district; but such county shall not thereby be rendered subject to any claim or liability except from the special assessment made upon the property of such local district for such improvement or from the proceeds of the sale of any local improvement warrants issued to pay for such improvement as herein provided. Such contractor's bond shall be executed to the county, and in its name enforced by and for the use and benefit of any and all whom it may concern, and shall be kept in the custody of the county auditor. [L. '09, p. 774, § 9.]

§ 6681. [5817.] Bids, Notice for — Deposit — Opening, etc.

Such notice for bids shall state generally the work to be done, and refer to the plans and specifications [filed] with the board of county commissioners, and shall call for proposals for doing the same and furnishing the necessary materials therefor, sealed and filed with the county auditor, as

clerk of the board of county commissioners, on or before the day and hour named in said notice. All bids shall be accompanied by cash or a certified check payable to the order of the county auditor for a sum not less than five per cent of the amount of the bid, as a guaranty of the good faith of the bidder, and no bid shall be considered unless accompanied by such cash or check. At the time and place named such bids shall be publicly opened and read; no bid shall be rejected for informality, but shall be received if it can be understood what is meant thereby. The county engineer and committee of supervisors shall determine the lowest bidder, and may let such contract to such bidder if within said estimate, or if in their opinion all bids are too high, they may reject all of them and readvertise for bids, and in such case all checks and cash shall be returned to the bidders; but if such contract be let, then and in such case all checks and cash shall be returned to the bidders except that of the successful bidder, which shall be retained until a contract be entered into for making such improvement between the bidder and the county in accordance with such bid. If the said bidder fails to enter into such contract in accordance with his bid within ten days from the date on which he is notified that he is the successful bidder, and to execute and file a bond as hereinbefore provided, the said cash and check and the amount thereof shall be forfeited to the county, for the use and benefit of the particular local improvement district, and the county auditor shall cash said check and pay said amount into the county treasury to the credit of the said local improvement district, and the said county engineer and committee of supervisors shall readvertise for bids for the doing of such work. Neither said supervisors nor any county officer shall have power to remit such forfeiture. [L. '09, p. 776, § 10.]

§ 6682. [5818.] Roads Closed When Necessary.

Whenever a contract has been let for the construction or improvement of any such county road in accordance with the provisions of this chapter, the contractors may and are hereby authorized to, whenever the county engineer supervising the work shall certify to the necessity therefor in writing, close any such road or part thereof to the public by putting up a sufficient obstruction and notice to the effect that such road is closed for improvement. When so closed any person disregarding such obstruction and driving, riding or walking over any portion of such road so closed shall be deemed guilty of a misdemeanor and shall upon conviction thereof be subject to a fine of five dollars. Nothing herein contained, however, shall relieve the contractor of the burden of keeping county roads under construction or improvement at all times open to the public until the county engineer supervising the work shall have certified to the necessity for closing such road and shall have filed such in the office of the county auditor. [L. '09, p. 777, § 11.]

§ 6683. [5819.] Inspector—Duties and Salary—Pay of Supervisors.

The committee of supervisors and county engineer together shall appoint some suitable and competent person, other than one of said committee, as an inspector of such work as it progresses, whose duty it shall be to be upon the work at all times during its progress and to in-

spect and observe the performance thereof and to report to and be under the supervision of the county engineer, and to inform said county engineer and said committee of supervisors of any inferior materials used or any departure from the plans and specifications not authorized by said county engineer and committee of supervisors; and he shall be paid for his services as such inspector at the rate of three dollars per day for the time he is actually engaged upon said works. Each member of the committee of supervisors shall be paid for his services the sum of three dollars per day for the time said committee of supervisors is actually engaged in meeting and acting with said county engineer, and in transacting as a committee the business of said local improvement district, until the work of said improvement shall have been fully completed and accepted by them and said county engineer. [L. '09, p. 778, § 12.]

§ 6684. [5820.] Assessment-roll — Notice — Hearing — Objections — Confirmation.

When the final order for said improvement shall have been made, such county engineer and committee of supervisors shall proceed to apportion the estimated cost and expenses of said improvement upon the land embraced in said improvement district, according to the benefits to be derived therefrom, and, not more than thirty days after said contract shall have been let as hereinbefore provided, report to and file with the board of county commissioners an assessment-roll, in duplicate, prepared by such surveyor [engineer], which shall contain the description of each lot or parcel of land or part thereof to be assessed, the amount to be charged, levied or assessed against each lot or parcel of land or part thereof in proportion to the special benefits to be derived by each such lot or parcel or part thereof from such improvement, and the name of the owner of each such lot or parcel of land or part thereof, if known, but in no case shall a mistake in the name of the owner be fatal when the description of the property is correct. As soon as said assessment-roll shall have been so reported and filed, the county commissioners shall cause notice to be published for three consecutive weeks, which notice shall be published in the newspapers in which notice of invitation for bids for the letting of said contract was published, notifying all persons interested that said assessment-roll has been filed, and requiring them to appear at the office of the county commissioners, at the county seat, at a time not less than fifteen days from the date of the last issue of said publication of said notice, and make objections thereto if any they have. At the time fixed the county commissioners shall meet, and, if no objections have been filed to said assessment-roll, they shall make and enter an order confirming the same; but if objections, in writing, have been filed by any of the land owners affected thereby, the county commissioners shall proceed to hear such objections and for that purpose shall hear any testimony that shall be offered by any party interested; and either one of the county commissioners shall be authorized to administer oaths to witnesses. After such hearing they shall make such corrections and changes, if any, as to them shall appear just and requisite to apportion the assessment to the benefits to be received from such improvement, and shall then make and enter an order approving and certifying such assessment-roll, and levying and assess-

ing the amounts thereof against each and all of the lots and parcels of land, or parts thereof, respectively, included in said roll as approved, and the same shall become a first lien thereon. The costs and expenses of surveys and of all preliminary proceedings to and including the letting of the contract and giving notice that the assessment-roll has been certified for collection and the preparation, issuance and disposal of the warrants for the payment of the cost and expenses of such improvement shall be paid out of the county treasury, and shall be refunded, as well as all other amounts advanced by the county for expenses of such improvement, or for damages as hereinbefore provided, from the local improvement funds as soon as sufficient thereof shall come into the hands of the county treasurer. [L. '09, p. 778, § 13.]

§ 6685. [5821.] Modes of Payment.

There shall be two modes of making payment of such special assessments chargeable against the several tracts and parcels of land included in such local improvement district, namely, that of "immediate payment" and that of "payment by warrants." The mode adopted and the period, not exceeding ten years, over which such warrants shall be made payable, shall be that petitioned for. [L. '09, p. 780, § 14.]

§ 6686. [5822.] "Immediate Payment"—Notice — Collection.

In case of the payment of such assessments by the mode of immediate payment, the county commissioners, as soon as such assessment-roll has been approved and certified, shall deliver the same to the county auditor, who shall file one of such duplicates thereof in his office with the files of the proceedings of said county commissioners in relation to such improvement district, and shall immediately deliver the other of said duplicates to the county treasurer for the collection of such assessments. The county treasurer shall give notice by publication for two consecutive weeks in the newspapers in which notice of proposals for bids was advertised, and shall mail a copy of such notice to the owner of the property assessed when the name of such owner and his postoffice address is known, but the failure to mail such notice shall not be fatal when publication thereof is made, which said notice shall state that such assessment-roll has been certified to him for collection, and that unless payment is made within thirty days from the date of such notice such assessment will become delinquent and shall bear interest at the rate of ten per cent per annum, and if not paid before such assessment shall have become delinquent, a penalty of five per cent shall be added, and the sums delinquent shall be added on the annual tax-roll for the current year against each lot, tract and parcel so delinquent, and, with the interest and penalty, collected as other taxes, separate account being kept thereof, and if not paid within the time fixed for the payment of general county taxes, shall be collected as such taxes are collected, together with such additional charges and penalties as are authorized to be charged and collected on other delinquent taxes, and each lot, tract or parcel so delinquent shall be sold for the amount of such assessment, with interest, penalty and costs, at the time and in the manner and by the same authority and process as lands and lots are sold for general county taxes. [L. '09, p. 780, § 15.]

§ 6687. [5823.] "Payment by Warrants"—Collection of Installments.

In case of the mode of "payment by warrants" being adopted the county commissioners, and the county engineer and committee of supervisors, shall proceed the same in all respects as in case of the mode of "immediate payment," to the approval and certifying of the assessment-roll; but the county commissioners at the time of levying said assessment, and in their order making such levy, shall provide and declare that the sum charged thereby against each of such tracts or parcels of land may be paid in equal annual installments, with interest upon the whole sum so charged at the rate fixed in said order, specifying the number of such installments, which shall be equal to the number of years which the warrants issued to pay for the improvement may run before payment of the same may be demanded by the holder thereof; and each year thereafter the county treasurer shall collect one of said installments, together with the interest due thereon and on all installments thereafter to become due, in the same manner and with the same added penalty and interest in case of delinquency, and by means of the same proceedings to enforce such payment by the sale of the land as hereinbefore provided for the collection of said assessment by the method of immediate payment. [L. '09, p. 781, § 16.]

§ 6688. [5824.] Special Warrants to Contractor.

The county commissioners may, and in all cases where the improvement is ordered upon a petition specifying the method of payment by warrants, must provide for the payment of the cost and expenses of such improvement, to be made under the provisions of this chapter, by special warrants as a charge against the property of the local improvement district, issued to the contractor in payment of the contract price, or by the proceeds of such warrants to be issued and sold as hereinafter provided. [L. '09, p. 781, § 17.]

§ 6689. [5825.] Issuance of Special Warrants — Interest — Form, etc.

The county commissioners shall make and enter an order authorizing and directing the issuance of such warrants, which by their terms shall be made payable on or before a date not to exceed ten years from and after the date of their issue, which latter date may be fixed by the order, and payment of which shall not be demanded by the holder thereof until the end of said period, and they shall bear such interest as shall insure their being disposed of at par and as may be provided for in said order, not exceeding ten per cent per annum, which interest shall be payable annually, and each warrant shall have attached thereto interest coupons for each interest payment. Such warrants shall bear the date of issue and be made payable to bearer. The warrants and each coupon shall be signed by the chairman of the board of county commissioners and shall be attested by the clerk of said board, and the seal of such board shall be affixed to each warrant but not to the coupon. Such warrant shall be printed, engraved or lithographed on good bond paper, and state on its face that it is issued in accordance and compliance with this act, designating the same by title and date of approval. Such warrants shall be in denominations of not less than one hundred nor more than one thousand dollars, and they shall refer to the improvement to pay for which the same shall be issued, and

to the order and record thereof authorizing the same; each warrant shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created by special assessment for the payment of the cost and expenses of such improvement, and not otherwise, and shall bear upon its face the designation of the local improvement district, thus, Local Improvement District Number — in — County, Washington. Such warrants shall not be issued in excess of the cost and expenses of the improvement. [L. '09, p. 782, § 18.]

§ 6690. [5826.] Payment of Assessments — Redemption of Warrants.

In case of payment by such special warrants, the county treasurer shall give notice by publication for two consecutive weeks, and shall mail a copy of such notice to the owner of the property assessed in the manner and with the same qualifications as to the giving of such notice provided in section 6687 of this chapter with regard to immediate payment, which notice shall state that such assessment-roll has been certified to him for collection, and that unless payment of the whole amount of such assessment is made within thirty days from the date of such notice, special warrants will be issued against said property for the payment of said assessment, and thereafter the same will be payable in annual installments with interest thereon at the rate provided for in said warrants. At any time within such thirty days any owner of lands within such local improvement district may pay the said assessment chargeable against his said lands, and release and discharge the same therefrom and from the operation and effect of such warrants; and no warrants shall be issued until twenty days after the expiration of such thirty days, nor for any amounts of such assessments so paid in full within such thirty days. The owner of any such lands may redeem the same from all liability for such assessment at any time after said thirty days by paying the entire installments of said assessment remaining unpaid and charged against such lands at the time of such payment with interest and all charges thereon to the date of the maturity of the installment next falling due. In all cases where any assessment or any installment thereof is paid as herein provided, the same shall be paid to the county treasurer, and all sums so paid shall be applied solely to the payment of the cost and expenses of such improvement, or to the redemption of such warrants issued therefor if paid after such warrants are issued. [L. '09, p. 783, § 19.]

§ 6691. [5827.] Warrants — Sale of — Contractor may Take Proceeds Applied.

The special warrants issued under the provisions of this act, or such portion thereof as may remain unsold, if the same are ordered sold by the county commissioners, may be issued to the contractor constructing the improvement in payment therefor, or the order of the board of county commissioners directing the issuance of such warrants may provide that the same may be sold by the county treasurer, in the manner prescribed in such order, at not less than their par value and accrued interest; and the proceeds of such warrants shall be applied in payment of the cost and expenses of such improvement. [L. '09, p. 783, § 20.]

§ 6692. [5828.] Warrants—Payment of Interest, Call for.

The county treasurer shall pay the interest on the warrants authorized to be issued by this act out of the funds of the local improvement district collected on assessments on account of which said warrants are issued. Whenever there shall be sufficient money in such local improvement fund against which such warrants have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid warrants, to pay the principal of one or more of such warrants he shall call in and pay such warrants in their numerical order. Such call shall be made by publication in the county official newspaper on the day following the maturity date of the installment of assessment or as soon thereafter as practicable, and shall state that special warrants No. — (giving the serial number or numbers of said warrants called) of such local improvement district will be paid on the day the next interest coupons of said warrants shall become due, and interest upon said warrants thus called shall cease upon said date. [L. '09, p. 784, § 21.]

§ 6693. [5829.] Collection by Holder.

If the county treasurer shall fail, neglect or refuse to pay said warrants issued under the provisions of this act, or to collect promptly any such assessments when due, the owner of any such warrants may proceed in his own name to collect such assessments and to foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such warrants and interest thereon, five per centum, together with the costs of such suit. Any number of holders of such warrants for any single improvement may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. Neither the holder nor any owner of any such warrant issued under the authority of this act shall have any claim therefor against the county through the instrumentality of which the same is issued, except from the special assessment made for the improvement for which such warrant was issued, but his remedy in case of nonpayment shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each warrant so issued. [L. '09, p. 784, § 22.]

§ 6694. [5830.] Claims Audited—Order for Payment—Disbursement.

It shall be the duty of the county auditor to audit all claims and accounts for services and every kind of expense payable from the funds of the local improvement district, when the same shall have been first approved and certified by the committee of supervisors; and when so approved and audited, the county auditor shall issue to the county treasurer an order, in favor of the person to whom such claim or account is payable, to pay the same, and upon the presentation of such order by the person to whom it was issued, or his assignee, the county treasurer shall pay the same from the funds of such local improvement district provided for the payment of the cost and expenses of such improvement, and not otherwise. Estimates for work done under the contract for the construction and completion of such improvement shall be made by the county engineer with the approval of the committee of supervisors, and the same shall be like-

wise audited by the county auditor, and, when so made, approved and audited, the same shall be likewise paid by the county treasurer upon the order of the county auditor, to an amount, however, not exceeding eighty per centum of such estimate during the progress of the work. In case of said assessment being made payable by installments, the county treasurer shall pay such order only from such assessments as shall have been collected prior to the issue of such special local improvement warrants and from the proceeds of the sales of such warrants after the issue thereof; but in case it has been arranged with the contractor for the work, and ordered by the board of county commissioners, that such contractor shall receive such warrants to pay the contract price of the work, such order of the county auditor upon such approved estimates shall call for such warrants instead of money, and shall be paid in such warrants by the county treasurer, with whom the same shall be deposited for that purpose, and in that case such warrants shall not be given a date prior to the time of their delivery to such contractor upon such order, which date shall be then written in such warrants by the county treasurer and be deemed to be the date of their issue, from which interest shall begin to run and the time at or after which their payment may be demanded by the holder shall be computed. The amounts collected upon the installment payments of such assessments shall be reserved and disbursed by said county treasurer for the payment of the principal and interest on and for the redemption of such warrants. The proceeds from the sale of such warrants shall be disbursed by such county treasurer in payment of the cost and expenses of such construction and improvement of such county road, upon the orders of such county auditor, as hereinabove provided. [L. '09, p. 785, § 23.]

§ 6695. [5831.] Refund of Excess for Improvement District.

Any money remaining in the county treasury belonging to the funds of such local improvement district, after the payment of the whole cost and expense of such construction or improvement, in excess of the total sum required to defray all expenditures on account thereof, including the reimbursement of the county for any advancements, shall be refunded, on demand, to the amount of such overpayment; and if there shall be such an excess in the assessment of any person who shall not have paid his assessment in full a rebate shall, on demand, be allowed to such person to the amount of such over-assessment: Provided, such demand hereinabove provided for be made within two years from the date upon which the assessment for such local improvement district became due. Any such funds remaining in the county treasury after the expiration of two years for which no demand has been made as herein provided, belonging to any local improvement district, after the payment of the whole cost and expense of such improvement shall go into a special fund and be disbursed by the county treasurer under the directions of the county commissioners for keeping in repair the county road or part thereof so improved in said local improvement district. [L. '09, p. 786, § 24.]

§ 6696. [5832.] Actions Arising Out of Improvements and Assessments.

No person shall be permitted to take advantage of any error committed in any proceeding to lay out, construct or improve any county road,

or part thereof, under and by virtue of this chapter nor of any error committed by the county commissioners or by the county auditor, or county treasurer or county engineer or any other person or persons in the proceedings to lay out, construct or improve such road; nor of any informality, error, or defect appearing in the record of such proceedings, unless the party complaining is affected thereby. But the court in which any action may be brought to enjoin, reverse, or declare void the proceedings by which any such road has been laid out, constructed or improved, or ordered to be laid out, constructed or improved, or to enjoin the collection of any tax or assessment levied or ordered to be levied for the purpose aforesaid, may, if there be manifest error in such proceedings affecting the rights of the plaintiff in such action, set the same aside, as to him, without affecting the rights or liabilities of other parties in interest; and the court shall, in the final hearing, make such order in the premises as may be equitable and just, and may order the assessment levied against the plaintiff's property to remain on the assessment-roll for collection, or to be again levied in whole or in part, or may perpetually enjoin the same, or any part thereof. The cost of such action, and the proceedings had therein, shall be apportioned among the parties, or paid out of the county treasury, in whole or in part, as justice may require and the court direct: Provided, that all the land liable to assessment, under the provisions of this act, for the construction of such road, shall be held responsible to the county, to protect the county against all loss or liability arising from any judicial proceedings affecting the assessment for benefits, and also all costs and expenses that may arise in any litigation; and reassessments by the county engineer and committee of supervisors shall be made to discharge the same. [L. '09, p. 787, § 25.]

§ 6697. [5833.] Roads Kept Up by County.

All roads laid out, constructed or improved under the provisions of this chapter shall thereafter be maintained in repair by the county, as other roads are kept and maintained in repair. [L. '09, p. 788, § 26.]

§ 6698. [5834.] Act Concurrent With Existing Laws.

Nothing herein shall be construed as repealing or modifying any existing law for the creation, laying out, opening, construction or improvement of any public highway or county road, but shall be construed as an additional power and method for the improvement of county roads, and as extending to owners of rural lands a similar right to that enjoyed by cities of the first class of making good roads of the public highways which are appurtenant to such lands at their own expense by charging the cost thereof upon such lands specially benefited, without impairing the county general funds or road and bridge funds, and shall be construed as co-operating and concurrent with the laws providing for the improvement of public highways under the supervision of the state highway commissioner. [L. '09, p. 788, § 27.]

CHAPTER XXII.

INDEPENDENT HIGHWAY DISTRICTS FOR TRUNK-LINE HIGHWAYS.

§ 6699. Authority to Organize.

Whenever twenty-five or more persons who are the owners of lands so situated that the most feasible means of affording transportation to market from such lands would be the construction of a trunk-line highway leading from the neighborhood of said lands to a connection with navigable water or existing lines of railway or existing highways connecting therewith, and the lands bordering upon the route of said proposed highway are of such character or value, or so situated with reference to said proposed highway, that no considerable portion of the cost of said highway can be assessed against the lands bordering thereon on account of benefits thereto, and the lands belonging to said persons, and other lands, are so situated that they will be specially benefited by the construction and maintenance of said highway, and the owners of such lands shall desire to provide for the construction and maintenance of such trunk-line highway, they may propose the organization of a highway district under the provisions of this act; and when so organized, such district shall have the power conferred, or that may hereafter be conferred by law, upon such highway district. [L. '17, p. 432, § 1.]

§ 6700. Petition to County Commissioners—Notice—Publication—Hearings—Establishment—Election.

For the purpose of organizing a highway district under the provisions of this act, a petition, signed by twenty-five or more holders of title or evidence of title to land within the proposed district, shall be presented to the board of county commissioners of the county in which the lands, or the greater portion thereof, are situated, which petition shall set forth and particularly describe the proposed boundaries of such district, and the route and termini of the proposed highway, and shall pray that the territory embraced within the boundaries of such proposed district may be organized as a highway district under the provisions of this act. The petition shall be accompanied by a good and sufficient bond, to be approved by the board of county commissioners, in double the amount of probable cost of organizing the district, and condition [conditioned] that the bondsmen will pay all of the costs in case such organization shall not be effected. Said petition shall be presented at a regular meeting of the board of county commissioners, or at any special meeting ordered to consider and act upon said petition, and shall be published once a week, for at least two weeks before the time at which the same is to be presented, in the official county newspaper of the county where such petition is to be presented, together with a notice by the petitioners stating the time of the meeting at which the same will be presented, and if any portion of the lands within said proposed district lie within another county or counties, then the petition and notice shall be published for the time above provided in the official county newspaper printed and published in each of the said counties. When the petition is presented, the board of county commissioners shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing

may make such changes in the proposed boundaries as it may find to be proper and just, and shall establish and define the boundaries of the district: Provided, that said board shall not modify the boundaries to except from the operation of this chapter any territory within the boundaries of the district proposed by said petitioners, so situated as to be easily accessible to the proposed highway by the existing public highways or so situated that it is feasible to construct public highways leading from the said territory to the proposed highway; nor shall any lands which, in the judgment of said board, will not be benefited, be included within such district. The board of county commissioners, as soon as it has established the boundaries of said proposed district, shall enter an order establishing and defining such boundaries, and ordering that three directors for said district be elected from the district at large, and calling an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act, and for the purpose of electing three directors at large, and designating the number of the proposed district, being the serial number in the order of time of its formation among the highway districts of the county formed under this act, and thereafter such district shall be designated as "Independent Highway District No. —, of — county." The clerk of the board of county commissioners shall then give notice of the election ordered to be held as aforesaid, which notice shall describe the district boundaries as established, and shall give the name by which said proposed district has been designated, and shall state the purposes and objects of said election, shall be published once a week, for at least two weeks prior to said election, in the official county newspaper published in the county where the petition aforesaid was presented; and if any portion of said proposed district lie within another county or counties, then said notice shall be published in a like manner in the official newspaper within each of said counties. Said election notice shall also require the electors to cast ballots which shall contain the words "Independent Highway District—Yes," and "Independent Highway District—No," and also the names of persons to be voted for as directors of the district, nominated by the petitioners. [L. '17, p. 433, § 2.]

§ 6701. Election Precincts—Conducting Election—Canvass of Votes—Qualification of Voters.

For the purposes of the election above provided for, the board of county commissioners shall establish a convenient number of election precincts in the proposed district and define the boundaries thereof, and designate a polling place and appoint the necessary election officers for each of said precincts, but said precincts may thereafter be changed by the board of directors of said district. Such election shall be conducted as nearly as may be practicable in the manner provided by law for conducting school district elections, and the election officers of the various precincts shall make and file returns of the votes cast at said election with the clerk of the board of county commissioners. The board of county commissioners shall meet on the second Monday next succeeding such election and proceed to canvass the returns of the vote cast thereat, and if upon such canvass it appears that at least two-thirds of all the

votes cast were for "Independent Highway District—Yes," the board shall, by an order entered on its minutes, declare said territory duly organized as an independent highway district, under the name and style theretofore designated, and shall declare the three persons receiving the highest number of votes, to be duly elected directors of such district, and shall cause a copy of such order, duly certified, to be filed for record in the office of the county clerk of each county in which a portion of the district may lie. From and after the date of filing of such order, the organization of the district shall be complete and the directors thereof shall be entitled to enter immediately upon the duties of their office, upon qualifying in the manner hereinafter provided, and shall hold office until their successors are elected and qualified. Any person of the age of twenty-one years, being a citizen of the United States, and a resident for ninety (90) days of the county in which any of the lands of the district may lie, and who holds title to land or evidence of title to land embraced within the boundaries of the district, or proposed district in the case of an election for the organization thereof, shall be entitled to vote at any election held therein, called for any purpose. Additional qualifications for voting, required by the general election laws of the state shall not apply: Provided, there shall be no denial of the right to vote on account of sex. [L. '17, p. 435, § 3.]

§ 6702. Directors—Tenure—Oath and Bond.

The directors elected at the election for the organization of an independent highway district shall hold office until, and for the term of one, two and three years respectively, from and after the first Monday in April in the year following their election, and one member of the board of directors shall be elected for the term of three years at an annual election to be held in the district on the first Monday in March in the year following the organization of the district. In case of any vacancy occurring in the office of director, such vacancy shall be filled by appointment by the board of county commissioners of the county in which the proceedings for the organization of the district were had, and the person so appointed shall serve until the next annual election of directors, when an election by the district shall be had to fill the vacancy for the remainder of the unexpired term. Each director shall take and subscribe an official oath to faithfully discharge the duties of his office and shall execute an official bond to the district in the sum of twenty-five hundred dollars (\$2500) conditioned for the faithful discharge of the duties of his office, which bond shall be approved by the judge of the superior court of the county where the organization of the district was effected, and said oath and bond shall be recorded in the office of the county clerk of said county and filed with the secretary of the board of directors. The secretary of the board shall take and subscribe a written oath of office and execute an official bond in the sum of twenty-five hundred dollars (\$2500), which said bond shall be approved and filed as in the case of the bond of the director. [L. '17, p. 436, § 4.]

§ 6703. Subsequent Elections—Notice—Officers—Polling Places.

Fifteen days before any election is held under the provisions of this act, subsequent to the organization of any district, the secretary

of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place, to be determined by said board, specifying the polling places for each precinct. Prior to the time for posting the notices, the board shall appoint for each precinct, from the electors thereof, one inspector and two judges, who shall constitute a board of election for such precinct. If the board fail to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the directors of the precinct present at that time may appoint the board, or supply the place of any absent member thereof. The board of directors shall, in its order appointing the board of election, designate the house or place within the precinct where the election shall be held; and all elections shall be held and the votes cast thereat canvassed and returned to the board of directors in the same manner, as near as may be, as is provided by law for holding school district elections. [L. '17, p. 437, § 5.]

§ 6704. Canvass of Returns.

The board of directors shall meet at its usual place of meeting on the first Monday after each election to canvass the returns and, having made the canvass, shall declare the result thereof, and the secretary of the board of directors shall, as soon as the result is declared, enter in the records of the board a statement of such result, which statement shall show:

- (1) The whole number of votes cast in the district;
- (2) The names of the persons voted for;
- (3) The office to fill which each person was voted for;
- (4) The number of votes given in each precinct to each of such persons;
- (5) The number of votes given in each precinct for or against any proposition voted for.

The board of directors shall declare elected the person having the highest number of votes cast for each office. The secretary shall immediately make out, and deliver to such person a certificate of election signed by him and authenticated by the seal of the district. [L. '17, p. 437, § 6.]

§ 6705. Office of Board—Meetings—Records—Powers and Duties.

The board of directors shall elect a president from among their number, and appoint a secretary, who shall keep a record of their proceedings. The office of the board and principal place of business of the district shall be at some place in the county in which the organization was effected, to be designated by the board. The board of directors shall hold a regular monthly meeting, at its office, on the first Tuesday of every month, and may adjourn any meeting from time to time as may be required for the proper transaction of business. Special meetings may be called at any time by a majority of the board, but in case the three members of the board do not join in said order, the secretary

shall give the member not joining five days' notice of such meeting. The order or notice calling another meeting shall specify what business shall be transacted and none other than that specified shall be transacted at such meeting. All meetings of the board shall be public. Two members of the board shall constitute a quorum for the transaction of business but in all matters requiring action by the board, there shall be a concurrence of at least two members. All records of the board shall be open to the inspection of any elector of the district during business hours. The board shall have power, and it shall be its duty, to adopt a seal of the district, to handle and conduct the business and affairs of the district, to make and execute all necessary contracts, to employ and appoint such agents, officers and employees as may be necessary, and prescribe their duties, to establish equitable by-laws, rules and regulations for the government and management of the district, and shall have power to adopt, publish and enforce regulations for traffic on the highway of the district, not inconsistent with general laws, and for a consideration, may grant a common carrier franchise on and over the highway of the district, which may be exclusive, for the purpose of providing adequate transportation facilities, and may realize a revenue therefrom for the maintenance of the highway, and shall have power in the name of the district to enter into contracts for the construction and maintenance of the highway and to acquire lands for the right of way of such highway, or the right to damage lands not taken, by purchase or condemnation in the manner provided by law for the appropriation of lands, real estate or other property by private corporations: Provided, that the district, at its option, pursuant to resolution to that end duly passed by its board of directors, may unite in a single action or proceeding for the acquisition and condemnation of different tracts of land, and the court may, on the motion of any party, consolidate into a single action, separate suits, for the condemnation of lands whenever, from motives of economy or expediting of business, it appears desirable so to do: Provided further, that there shall be a separate finding of the court or jury as to each tract held in separate ownership. [L. '17, p. 438, § 7.]

§ 6706. Power to Take Property and Maintain Actions, etc.

The board of directors shall have power to take conveyances or other assurances of all property acquired by it under the provisions of this act, in the name of the district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this act or acquired in pursuance thereof; and in all courts, actions, suits or proceedings, the said board may sue, appear and defend in person or by attorney, and in the name of the district. Any highway constructed under the provisions of this act may be constructed over and upon any right of way heretofore or hereafter acquired for highway purposes after securing the consent of the county commissioners of any county through which such highway may pass or into which it may extend

and the county commissioners of any such county are hereby given full authority to make all necessary orders granting any right of way acquired for highway purposes to any independent highway district. [L. '19, p. 159, § 1. Cf. L. '17, p. 439, § 8.]

§ 6707. Special Election for Bonding Purposes—Notice—Law Governing—Bond Requisites—Sale.

For the purposes of construction, reconstruction, betterment or acquisition of the necessary property and right therefor, and to pay all necessary expenses in connection with the organization of any highway district authorized by this act, and otherwise carrying out the provisions of this chapter, the board of directors of any such district shall, as soon after such district has been organized as may be practical and whenever thereafter the fund for any such purpose has been exhausted by, or shall appear to be inadequate to meet, the expenditures herein authorized therefrom, and the board deems it necessary or expedient to raise additional money for said purpose, estimate and determine the amount of money to be raised and shall immediately thereafter call a special election. At such election shall be submitted to the electors of said district possessing the qualifications prescribed by this act, the question whether or not the bonds of said district, in the amount so determined, shall be issued. Notice of such election shall be given by posting notices in three public places in each election precinct in said district for at least twenty days prior to the election, and also by publication of such notice in the official county newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice must specify the time of holding the election, and the amount of bonds proposed to be issued; and said election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers: Provided, that no informality in conducting such election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballot shall contain the words "Bonds—Yes," and "Bonds—No" or words equivalent thereto. If the majority of the votes cast are for "Bonds—Yes" the board of directors shall proceed to call for bids for the sale of the whole or any part of the amount of bonds so authorized. If a majority of the votes cast at any bond election are "Bonds—No," the result of such election shall be so declared and entered of record. Each issue of said bonds shall be payable in gold coin of the United States, in ten series, to wit: At the expiration of eleven years five per cent of the whole number of bonds issued; at the expiration of twelve years, six per cent; at the expiration of thirteen years, seven per cent; at the expiration of fourteen years, eight per cent; at the expiration of fifteen years, nine per cent; at the expiration of sixteen years, ten per cent; at the expiration of seventeen years, eleven per cent; at the expiration of eighteen years, thirteen per cent; at the expiration of nineteen years, fifteen per cent; at the expiration of twenty years, sixteen per cent, and shall bear interest at the rate of not to exceed six per cent per annum, to be determined

by the board of directors payable semi-annually on the first day of January and July of each year. The principal and interest shall be payable at the place designated therein. Said bonds shall be each of the denomination of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500); shall be negotiable in form, signed by the president and secretary, and sealed with the seal of the board of directors. Each issue shall be numbered consecutively as issued and the bonds of each issue shall be numbered consecutively and bear date of issue. One authority may cover one or more issues. Coupons for the interest shall be attached to each bond signed by the president of the board and the secretary. The signatures of the president and secretary may, however, appear by lithographic facsimile. Said bonds shall express upon their face that they were issued by authority of this act, stating its title and date of approval, and shall also state the number of issues of which such bonds are a part. Upon the authorization of an issue of bonds at an election held as provided in this section, the board of directors shall advertise said bonds, or any portion thereof, for sale and that the same will be sold to the best bidder therefor for cash who shall bid the highest price therefor the whole or any portion of the issue, to be stated in the advertisement. Such advertisement shall be published once each week for four successive weeks in the official county newspaper of general circulation in the county where the district is situated and in such newspaper or financial journals as the board of directors may determine, and shall state the amount of the issue of bonds offered for sale and the respective amounts less than the whole for which bids will be received, and that sealed bids, stating the price bid and accompanied by certified checks for ten per cent of the amount of the bonds bid for, will be received by the secretary on or before, and opened by the board on a date to be fixed in said advertisement. On the date fixed in the advertisement, the board of directors shall meet at the place designated in the advertisement and shall open the bids and award the sale of the bonds to the best bidders therefor or the board may reject any and all bids and postpone or readvertise the sale of such bonds and in case any bidder or bidders shall fail, for twenty days after the opening of the bids to accept the bonds awarded and pay the price bid therefor, shall forfeit to the district the certified check accompanying the bid of such bidder and award the bonds to the next best bidder therefor, and when the bonds shall have been accepted and paid for, shall return to the unsuccessful bidders their respective certified checks accompanying their bids. The secretary shall keep a record of all bonds sold, their number, the date of sale, the price received and the name of the purchaser, and shall certify said record to the county treasurer who shall keep such record on the books of his office. [L. '19, p. 160, § 2. Cf. L. '17, p. 440, § 9.]

§ 6708. Annual Assessments—Books and Entries.

For the purpose of carrying out the provisions of this act and the payment of bonds and interest thereon, as the same shall fall due and warrants issued against any of the several funds of the district, and to meet maintenance charges and any necessary expenses in connection with

the organization, annual assessments shall be made in proportion with benefits accruing to the lands assessed. At its meeting on the first Tuesday in March of each year the board shall determine the amount of money to be raised for the payment of any outstanding warrants, for any general expenses, maintenance charges, or principal or interest upon bonds of the district to become due during the period of collection of the next annual assessments and shall direct the secretary to prepare an assessment-roll for the spreading of such assessments in proportion to benefits accruing to the lands within the district exclusive of improvements thereon. The secretary must before the first Tuesday in June next following prepare an assessment-book, with appropriate headings, in which must be listed all the lands within the district. In such book must be specified, in separate columns, under the appropriate headings:

First: The name of the person to whom the property is assessed. If the name is not known to the secretary the property shall be assessed to "unknown owners."

Second: Land by township, range, section or fractional section, and when such land is not a legal subdivision, by metes and bounds or other description sufficient to identify it, giving an estimate of the number of acres, city and town lots, naming the city or town, and the number and block according to the system of numbering in such city or town, or plat recorded in the office of the county auditor.

Third: The ratio of benefits.

Fourth: The respective sums in dollars and cents to be paid as assessments on the respective parcels of land.

Fifth: Such other things as the board of directors may require.

Any property which may have escaped the payment of any assessment for any year, shall, in addition to the assessment for the then current year, be assessed for such year with the same effect and with the same penalties as are provided for such current year. [L. '19, p. 166, § 6.]

§ 6709. Deputy Assessors—Appointment and Compensation—Assessments—Equalization and Confirmation.

The board of directors must allow the secretary as many deputies, to be appointed by the board, as will, in the judgment of the board, enable him to complete the assessment-roll within the time herein prescribed, compensation for such deputies to be fixed by the board for time actually engaged and only for work between the first Tuesday in March and the first Tuesday in June of each year, on or before which date the secretary must complete his assessment-book and deliver it to the board. Thereafter the assessment-book must remain in the office of the secretary for the inspection of all persons interested until finally confirmed. The board shall then fix a time and place for the hearing on said roll and shall direct the secretary to give notice thereof and of the time the board acting as a board of equalization will meet to equalize the assessments, by publication once in a newspaper published in each county in which any of such independent highway may lie. The time shall not be less than twenty or more than thirty days from the date of such publica-

tion. Such published notice shall notify all persons interested that in accordance with law the secretary has prepared an assessment-roll for the current year for the raising of necessary funds for the purpose of the district as directed by the board, that said roll will be open for inspection in his office that at the time and place fixed by the board, it will meet and proceed to consider said roll acting as a board of equalization and will equalize assessments, notifying any person interested therein that objections thereto must be made in writing and filed with the secretary on or before the last day of hearing thereon and that if not so filed objections cannot be heard, and that the board will consider said roll and properly filed objections thereto and will either confirm, modify or set aside said roll as shall be just and in accordance with special benefits to the land assessed. At the time and place specified in the notice for the hearing, the board, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days, exclusive of Sunday, to hear and determine such objections to the said assessment-roll as may come before it; and the board may confirm said roll or modify the same as may be just and in accordance with special benefits or may set the same aside and order a new roll to be prepared by the secretary. The secretary shall be present during its session, and note all changes made at said hearing. In case the roll is set aside or any assessments raised, a revised roll shall be prepared by the secretary, a time and place fixed for hearing and a new notice given as provided herein for the original hearing. When the board shall have confirmed the roll after hearings as herein provided the secretary shall complete the same as finally equalized. [L. '19, p. 167, § 7.]

§ 6710. Appeal to Courts.

Any person who has filed objections in writing with the secretary at the hearing on said assessment-roll as hereinbefore provided, shall have the right to appeal from equalization as made to the superior court of the county in which the land assessed is situated. Such appeal shall be made by filing a written notice of appeal with the secretary of said board, within ten days after the equalization of said assessment-roll by the board and said notice shall describe the property and the objection of such appellant to such assessment; and the appellant shall also file with the clerk of the superior court aforesaid within ten days of taking such appeal, a copy of said notice, appeal, assessment-roll and proceedings therein, certified by the secretary of said board, together with a bond to such district conditioned to pay all costs that may be awarded against appellant in such sums, not less than two hundred dollars (\$200), and with such security as shall be approved by the clerk of said court, and the case shall be docketed by the clerk of such court in the name of the person taking such appeal as plaintiff, and, such district as defendant. Such cause shall then be at issue and shall be tried immediately by such court as in the case of equitable causes, except that no further pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment in so far as the same affects the property of appellant with respect to which the appeal was taken from which

judgment an appeal shall lie to the supreme court as in other causes. [L. '19, p. 169, § 8.]

§ 6711. Conclusiveness of Assessment—Injunctions.

Whenever any such assessment-roll shall have been confirmed by the board of directors as herein provided, the regularity, validity and correctness of the proceedings relating to such improvement and to the assessment therefor, including the action of the board upon such assessment-roll, and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceedings whatsoever, by any person not filing written objections to such roll in the manner, and within the time provided in the preceding section, and not appealing from the action of the board in confirming such assessment-roll in the manner and within the time in said section provided. No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: Provided, that this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds (1) that the property about to be sold does not appear upon the assessment-roll or (2) that said assessment has been paid. [L. '19, p. 170, § 9.]

§ 6712. Lien of Assessment—Entry on General Tax-rolls—Redemption.

The assessment upon real property shall be a lien against the property assessed, from and after the date of the confirmation of the roll in the year in which it is confirmed, but as between grantor and grantee such lien shall not attach until the first Monday in February of the following year, which lien shall be paramount and superior to any other lien by mortgage or otherwise excepting for general taxes. On or before the first day of November, the secretary must deliver the assessment-book to the county treasurer of each county in which any land embraced within the boundaries of the district may lie, who shall immediately enter the same upon the tax-roll of his office, as provided by law for the entry of general taxes, against the land of each of the persons named in said assessment-book, together with the amounts thereof, and the same shall be subject to the same penalties in case of delinquency as in case of general taxes, and subject to the same right of redemption and the land sold for the collection of said assessments shall be subject to the same right of redemption as in the sale of lands for general taxes. [L. '19, p. 171, § 10.]

§ 6713. Bids for Construction and Repairs.

Whenever the estimated cost of the construction of any highway or portion thereof as provided for in this act, or of any repair or betterment thereto, shall exceed the sum of one thousand dollars (\$1,000), bids shall be called therefor and the same may be let to the lowest and best responsible bidder therefor, after the adoption by the board of directors of plans and specifications prepared by the engineer of the district. [L. '19, p. 163, § 3. Cf. L. '17, p. 443, § 11.]

§ 6714. Contractor's Bond—Call for Bids.

Any person to whom a contract may have been awarded for the construction or repair of any such highway, or any portion thereof, or for the furnishing of labor or material, shall enter into a bond, with good and sufficient surety to be approved by the board of directors, payable to said district for its use, for the amount of the contract price, conditioned for the faithful performance of said contract, and with such further conditions as may be required by law in the case of contracts for public work and as may be required by the resolution of the board. All work shall be done under the direction and to the satisfaction of the engineer of the district, and be approved by the board. Whenever, in the construction or repair of the highway, or any portion thereof, or the furnishing of materials therefor, the board of directors shall determine to let a contract or contracts for the doing of said work or the furnishing of said materials, a notice calling for sealed proposals shall be published in the official county newspaper in the county in which the office of the board is situated and in any other newspaper which may be designated by the board, and for such length of time, not less than two weeks, as may be fixed by the board. At the time and place appointed in the notice for the opening of bids, the sealed proposals shall be opened in public, and as soon as convenient thereafter, the board shall let said work or the contract for the purchase of materials, either in portion or as a whole, to the lowest responsible bidder or the board may reject any and all bids and readvertise, or may proceed to construct the work under its own superintendence. The board may in its call require bidders to bid separately on the basis of cash payment and on the basis of payment in bonds of the district previously authorized which bonds shall be accepted at par value plus accrued interest for any work, services or materials furnished. The board is authorized to make payment for any and all work, labor, materials, services or pay any indebtedness whatsoever against said district in bonds of the district previously authorized, at par value, plus accrued interest. [L. '19, p. 163, § 4. Cf. L. '17, p. 444, § 12.]

§ 6715. Treasurer—Warrants—Reports—Registration of Bonds.

The county treasurer of the county in which is located the office of any highway district, shall be and is hereby constituted ex-officio district treasurer of said district, and said county treasurer shall be liable upon his official bond and to criminal prosecution for malfeasance or misfeasance, or failure to perform any duty herein prescribed as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. It shall be his duty to collect and receipt for all assessments levied as in this act provided. There shall be deposited with such county treasurer all sums collected for the defraying of the expenses of the district and they shall be placed by the county treasurer in the expense fund of the district. The said county treasurer shall also keep such other funds as may be required by law governing independent road districts, or provided by this act, or as required by the board of directors by resolution, and shall place therein moneys collected for said funds. The county treasurer shall pay out the moneys received or deposited with him, or

any portion thereof, upon warrants drawn upon the several funds, signed by the president and countersigned by the secretary of the district, except the sums to be paid out of the bond interest and redemption fund upon the coupons and bonds presented to the treasurer. Warrants drawn upon any fund which is temporarily depleted may be stamped by the treasurer "Not paid for want of funds" with the date of presentation and shall draw interest at six per cent per annum until redeemed out of the fund upon which they are drawn, after call as provided by law for county warrants. The said treasurer shall report in writing, on the first Monday of each month, to the board of directors of the district the amount of money held by him, the amount in each fund, the amount of warrants outstanding in each fund, the amount of receipts for the month preceding, in each fund, and the amount or amounts paid out of each fund, and said report shall be filed with the secretary of the board. The secretary shall also report to the board, in writing, on the first Tuesday in each month, the amount deposited with the county treasurer belonging to the district during the preceding month, the amount of receipts for the month preceding and the amount and items of expenditure during the preceding month, and said report shall be filed in the office of the board. Any bonds issued, by the district may be registered as to principal or principal and interest as provided by law for the registration of county bonds. [L. '19, p. 164, § 5. Cf. L. '17, p. 444, § 13.]

§ 6716. Per Diem and Mileage of Directors—Salary of Secretary.

The board of directors shall each receive three dollars per day and mileage at the rate of five cents per mile in attending the meetings, and actual and necessary expenses paid while engaged in official business under order of the board. The board shall fix the compensation to be paid the secretary, to be paid out by warrants drawn on the county treasurer out of funds belonging to said district on deposit with the treasurer of said county. [L. '17, p. 445, § 14.]

§ 6717. Director's Interest in Contracts—Penalty.

No director or any other officer named in this act shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor and such conviction shall work a forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment. [L. '17, p. 446, § 15.]

§ 6718. Special Elections to Authorize Special Assessments.

The board of directors may at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to the improvement or maintenance of the highway. Such election shall be called upon the notice prescribed, and the same shall be held and the

result thereof determined and declared in all respects in conformity with the provisions for holding bond elections. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used. At such election the ballot shall contain the words "Assessment, Yes," and "Assessment, No." If a majority of the votes cast are "Assessment, Yes" the board, at the time of the annual levy thereunder, shall levy an assessment to raise the amount voted. The assessment so levied shall be assessed, extended and collected at the same time and in the same manner as other assessments provided for herein, and when collected shall be paid into the county treasury of the county to the credit of the district for the purposes specified in the notice of such special election. [L. '17, p. 446, § 16.]

§ 6719. Validation of Organization and Bond Issues.

All acts and things of any independent highway district heretofore organized under this chapter, whether by the county commissioners or the board of directors or any officer of any such district, and which was done under and by authority of this chapter, and in any way relating to the organization of such district, or to the voting or authorization of bonds by its electorate, are in all respects hereby cured, validated, ratified and confirmed and declared legal and valid and such independent highway district is hereby authorized, through its board of directors and proper officers, to proceed to further carry out the object or objects of said act and all amendatory acts relating thereto from the point reached under this chapter. [L. '19, p. 171, § 11.]

CHAPTER XXIII.

METROPOLITAN PARK DISTRICTS.

§ 6720. [5835.] Organization Authorized.

The cities of the first class in the state of Washington, and such contiguous property the residents of which may decide in favor thereof in the manner hereinafter set out, are hereby authorized and empowered to create a metropolitan park district for the management, control, improvement, maintenance, and acquisition of parks, park ways, and boulevards, now or hereafter located within such park district. [L. '07, p. 182, § 1.]

Cited in 100 Wash. 450.

The operation of a public restaurant by a metropolitan park district is not among the powers conferred upon it by

this act: State v. Metropolitan Park District of Tacoma, 100 Wash. 449, 171 Pac. 254.

§ 6721. [5836.] Petition for Election for Formation of District.

At any general election, or at any special election which may be called for that purpose, or at any city election held in such city in each of the various voting precincts of such city, the city council may, or on petition of fifteen per cent of the qualified electors of such city based upon the registration for the last preceding general city election shall, by ordinance, submit to the voters of such city the proposition of creating a metropolitan park district, the limits of which park district shall be co-extensive with the limits of such city as now or hereafter established, inclusive of territory annexed to and forming a part of such incorporated

city of the first class, which said territory by virtue of such annexation to any city having theretofore created a park district under this chapter shall be deemed to be the limits of such metropolitan park district, and the city council shall submit such proposition at the special election to be called therefor when such petition so requests. In submitting the said question to the voters for their approval or rejection, such city council shall pass an ordinance declaring its intention to submit the proposition of creating a metropolitan park district to the qualified voters of such city, which said ordinance shall be published for at least five days in a daily newspaper published in said city, and said city council shall cause to be placed upon the ballot for such election, at the proper place, the proposition which shall be expressed on said ballot in the following terms:



“For the formation of a metropolitan park district.”



“Against the formation of a metropolitan park district.”

[L. '07, p. 182; § 2; L. '09, p. 427, § 1.]

§ 6722. [5837.] Park Districts—Elections—Commissioners.

If at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such park district, the city council shall so declare in its canvass of the returns of such election, and such park district shall then be and become a municipal corporation of the state of Washington, and the name of such metropolitan park district shall be “Metropolitan Park District of —— (inserting the name of the city constituting the park district).” At the same election at which the proposition is submitted to the voters as to whether a metropolitan park district shall be formed, five (5) park commissioners shall be elected to hold office respectively for the terms of one, two, three, four and five years, and until their respective successors are elected, the term of each nominee for park commissioners to be expressed on the ballot. And thereafter, and at least thirty (30) days prior to the first Tuesday of June in each year, such board of park commissioners shall give notice by publication in at least five issues of a daily newspaper published within said metropolitan park district that an election will be held on the first Tuesday of June thereafter for a park commissioner to hold office for five years and until his successor is elected. Nominations for park commissioners shall be by petition of one hundred (100) qualified electors of such park district, to be filed in the office of the city clerk of such city for the first election, and with the clerk of such metropolitan park district for all succeeding elections, such nominations to be so filed at least five (5) days prior to such election: Provided, however, that there shall be no election held on the first Tuesday of June immediately following the creation of such park district: And provided further, that in the event of a vacancy caused by death, resignation or otherwise, such vacancy shall be filled by appointment by a majority vote of the remaining commissioners until the next regular election for park commissioner. Said board of metropolitan park commissioners shall designate in their notice of election whether such election be a general or special election, the time of opening and closing the polls and the places for voting, but in no event shall there be less than one voting place in each of the various wards of such city,

and at least one voting place in any outlying district annexed to such park district and not within the city. The polls shall be kept open at every election held by said park district at least from 1 o'clock P. M. to 7 o'clock P. M., but said park commissioners may keep the polls open for a longer period of time if they shall so order, but the time of opening and closing the polls must be stated in the notice of election, and the polls shall be opened and closed in accordance with such notice. Any person residing in said park district who is, at the time of holding of any such election, a qualified voter under the laws of the state of Washington, shall be entitled to vote at any election held in such metropolitan park district. The officers of the city or county having charge of the registration books shall deliver the same to the park commissioners for the use of the election officers at any election held in a metropolitan park district formed under and in accordance with the provisions of this act. And the registration of voters for elections to be held in such metropolitan park district shall be conducted by the city clerk and officers of registration of the city and territory embraced within said metropolitan park district; and the notice prescribed to be given by section 5123, supra, shall constitute sufficient notice to citizens residing within said metropolitan park district for registration for any general or special election therein, without the necessity for such notice specially stating that it is for the registration for an election to be held by a metropolitan park district. And any elector who shall have registered in accordance with the laws of this state entitling him to vote at a general or special election in the city or territory comprised within such metropolitan park district within time to constitute same a good registration for any general or special election of said metropolitan park district shall be entitled to vote thereat without further or other registration. The clerk of such metropolitan park district shall give notice of the closing of the poll-books for registration for any general or special election of such park district, by a notice published at least ten (10) days preceding such closing, such published notice to have at least two (2) insertions in a newspaper of general circulation in such park district. And such poll-books shall be closed for the purpose of registration of voters for any general or special park district election five (5) days preceding such election, and such published notice shall so declare: Provided, however, that said poll-books shall not thereby be deemed closed for general, county or city municipal elections, but closed only for general or special metropolitan park district elections. The city clerk or registration officer required to perform the duties enumerated under this act shall receive no additional compensation therefor. The general laws of the state of Washington governing the registration of voters for general or special city or municipal elections, when not inconsistent with the foregoing provisions, shall govern the registration of voters for elections held under this chapter, and the registration books of the city and territory comprising said park district shall be the books used by said park district, and no separate registration books shall be kept or maintained by it. The manner of holding any general or special election for said metropolitan park district shall be in accordance with the laws of this state, and the charter provisions of the city within which said park

district lies, in so far as the same are not inconsistent with the provisions of this act. [L. '07, p. 183, § 3; L. '09, p. 428, § 2.]

§ 6723. [5838.*] Board of Park Commissioners — Officers — Powers and Duties.

When the said Metropolitan Park District shall be created as hereinbefore provided for, it shall at once be and become a separate and distinct corporation, the officers of which shall be a board of park commissioners consisting of five members, and said board of park commissioners shall annually elect one of their number as president and another of their number as clerk of said board. Such corporation is hereby given the right of eminent domain, and may purchase, acquire and condemn lands lying within or without the boundaries of said park district, for public parks, parkways, boulevards, aviation landings and playgrounds, and may condemn such lands to widen, alter and extend streets, avenues, boulevards, parkways, aviation landings and playgrounds, to enlarge and extend existing parks, and to acquire lands for the establishment of new parks, boulevards, parkways, aviation landings and playgrounds. Said park commissioners shall have authority to pass orders, providing for all condemnations which they may desire to institute for the purpose of this act, and to bring actions in the proper courts for the condemnation of lands, to employ counsel, and to regulate, manage and control the parks, parkways, boulevards, streets, avenues, aviation landings and playgrounds under its control, and to provide for park policemen, for a secretary of the board of park commissioners and for all necessary employees, and to fix their salaries and duties: Provided, however, that all employees of such metropolitan park district, except the attorney for such park district, shall be under civil service, and the said park commissioners shall constitute a civil service board to pass upon the qualifications of applicants for positions. Said board of park commissioners, as such civil service commission, shall adopt rules for the employment of necessary employees, shall provide for examinations at such times and upon such subjects as they may deem necessary, and the employment of such park employees shall be wholly upon the merit system. No park employee shall be discharged except for incompetency, inability to perform duties, offensive partisanship or such other reasons as may be deemed sufficient by such board, and then only after a full and fair hearing upon written charges filed with such board: Provided, however, that when the necessity for further continuing any park employee shall cease, such park commissioners shall have power to discharge such employee. It being the true intent and meaning of this act to place the sole acquisition, management, improvement and control of all parks, boulevards and parkways belonging to, or under the control of, said city, whether within or without the limits of said city, in such board of park commissioners, and to create a metropolitan park district pursuant to this act, in which said district said sole acquisition, management, improvement and control, shall immediately vest: Provided, however, that all such parks, boulevards, parkways, aviation landings and playgrounds shall be subject to the police regulations of any city within which they may lie. [L. '19, p. 382, § 1; L. '07, p. 184, § 4.]

Cited in 100 Wash. 450.

§ 6724. [5839.] Tax Levy—Limit of—Collection.

Said board of park commissioners are hereby authorized to levy, or cause to be levied, a general tax on all the property located in said park district each year, not to exceed one and one-half mills on the assessed valuation of the property in such park district. Said taxes when so levied shall be certified to the proper county officials for collection the same as other general taxes. When such money is collected it shall be placed in a separate fund, to be known as the "Metropolitan Park District Fund," and paid out on warrants issued on the board of park commissioners for the purposes specified in this act. [L. '07, p. 185, § 5.]

§ 6725. [5840.] Limit of Indebtedness.

Each and every metropolitan park district that may hereafter be organized pursuant to this chapter is hereby authorized and empowered, by and through its board of commissioners, to contract indebtedness for park, boulevard and parkway purposes, and the extension and maintenance thereof, not exceeding one quarter ($\frac{1}{4}$) of one per cent of the taxable property in such metropolitan park district, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness. [L. '07, p. 186, § 6.]

§ 6726. [5841.] Additional Indebtedness—Election to Authorize.

Each and every metropolitan park district hereafter to be organized, pursuant to this chapter, may contract indebtedness in excess of the amount named in the preceding section, but not exceeding in amount, together with existing indebtedness, five (5) per centum of the taxable property in said district, to be ascertained as provided in the preceding section, whenever three-fifths ($\frac{3}{5}$) of the voters voting at said election in such metropolitan park district assent thereto, at an election to be held in said metropolitan park district, in the manner provided by this act, which election may be either a special or a general election, and the park commissioners of such metropolitan park district are hereby authorized and empowered to submit the question incurring such indebtedness, and issuing negotiable bonds of such metropolitan park district, to the qualified voters of such park district at any time they may so order. [L. '07, p. 186, § 7.]

§ 6727. [5842.] Bonds—Issuance and Disposal of.

In case the question of incurring indebtedness and issuing bonds as set forth and described in section 6726 shall be submitted to the voters of such metropolitan park district and carried as hereinabove provided for, the commissioners of such metropolitan park district may issue the negotiable bonds of such district for the amount of such indebtedness and may dispose of said bonds either in payment of such indebtedness, or may advertise and sell said bonds in the open market for cash, but in no event shall said bonds be disposed of or negotiated at less than par. [L. '07, p. 186, § 8.]

§ 6728. [5843.] Same—Denomination, Interest, Form, etc.

Said bonds shall be in denominations of not less than one hundred dollars nor more than one thousand dollars. They shall bear the date of

issue, shall be made payable to the bearer, in not more than twenty (20) years from date of issue, and bear interest at a rate not exceeding five (5) per cent per annum, payable annually, with coupons attached, for each interest payment. The bonds and each coupon shall be signed by the presiding officer of the board of park commissioners and shall be attested by the clerk of said board, who shall be a member thereof. Said bonds shall be printed, engraved, or lithographed on good bond paper, and the bond shall state on its face that it is issued in accordance, and in strict compliance with an act of the legislature of the state of Washington, entitled: "An act authorizing the formation of metropolitan park districts, providing for park officials, fixing their powers and duties, and declaring an emergency," approved March 11, 1907, and the act amendatory thereof approved on the — day of —, 1909 (inserting the date of the approval of this act). Said bonds shall be payable as therein designated in any city of the United States having a national bank. [L. '07, p. 187, § 9; L. '09, p. 431, § 3.]

§ 6729. [5844.] Tax Levy for Interest and Redemption.

Said commissioners shall include in their general tax levy for each year a sufficient sum to pay the interest on all outstanding bonds, and may include a sufficient amount to create a sinking fund for the redemption of such bonds. Said bonds shall be numbered from one (1) up consecutively, and shall be payable in the order of their number beginning with bond numbered one (1). [L. '07, p. 187, § 10; L. '09, p. 431, § 4.]

§ 6730. [5845.] Payment of Bonds—Notice of Call.

Whenever there is money in the funds of such metropolitan park district and the commissioners shall deem it advisable to apply the same or any part thereof upon the payment of bonded indebtedness, they shall advertise in a daily newspaper published within said park district for the presentation to them for payment of as many bonds issued under the provisions of this act as they may desire to pay with the funds on hand, said bonds to be paid in numerical order, beginning with bond numbered one, until all of said bonds are paid: Provided, that thirty (30) days after the first publication of said notice by the board of such park district, calling in any of said bonds by number, said bonds shall cease to bear interest, which shall be stated in the notice calling for such bonds. [L. '07, p. 187, § 11.]

§ 6731. [5846.] Interest Coupons—Payment of.

The coupons hereinbefore mentioned for the payment of interest on said bonds shall be considered in all purposes as warrants drawn upon the general fund of the said metropolitan park district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such park district at maturity, or thereafter, and when so presented, if there are no funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to indorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as the bond to which it was attached. [L. '07, p. 188, § 12.]

§ 6732. [5847.] Registration of Bonds, by County Treasurer and Park Board.

Before the bonds are delivered to the purchaser, they shall be presented to the county treasurer who shall register them in a book kept for that purpose and known as the "Metropolitan Park Bond Register," in which register shall be entered the number of each bond, date of issue and maturity, amount, rate of interest, to whom and when payable. Such county treasurer shall receive no compensation other than his regular salary for receiving and disbursing the funds of such metropolitan park district. The board of park commissioners shall keep a register of such bonds similar to that provided for the county treasurer. [L. '07, p. 188, § 13.]

§ 6733. [5848.*] Powers of Commissioners.

Said park commissioners shall have power to improve, acquire, extend and maintain, open and lay out, parks, parkways, boulevards, avenues, aviation landings and playgrounds, within or without said park district, and to authorize, conduct and manage the letting of boats, or other amusement apparatus, the operation of bath houses, the purchase and sale of foodstuffs or other merchandise, the giving of vocal or instrumental concerts or other entertainments, the establishment and maintenance of aviation landings and playgrounds, and generally the management and conduct of such forms of recreation or business as they shall judge desirable or beneficial for the public, or for the production of revenue for expenditure for park purposes; and may pay out moneys for the maintenance and improvement of any such parks, parkways, boulevards, avenues, aviation landings and playgrounds as now exists, or may hereafter be acquired, within or without the limits of said city, and for the purchase of lands within or without the limits of said city, whenever they shall deem such purchase to be for the benefit of the public and for the interests of said park district, and for the maintenance and improvement of the same, and for all expenses incidental to their office and duties. [L. '19, p. 384, § 2. Cf. L. '07, p. 188, § 14.]

§ 6734. [5849.] Improvement on Local Assessment Plan.

If at any time any proposed improvement of any parkway, avenue, street, or boulevard shall be deemed by said park commissioners to be a special benefit to the lands adjoining, contiguous, approximate to or in the neighborhood of such proposed improvement, if such lands be within the corporate limits of any city of the first class, such board of park commissioners may so declare and order, designating the property to be benefited thereby, and thereupon they may petition the city council of such city to cause such improvement as said commissioners may direct to be done and made on the local assessment plan, and the portion of the cost of such improvement as fixed by such assessment-roll assessed against the said property so benefited in the same manner and under the same procedure as is now, or may hereafter be, enacted for local improvements by cities of the first class, in so far as such procedure is not inconsistent with the provisions of this act, and the remainder of the cost of such improvement to be paid out of any funds of such metropolitan park district in its pos-

session or under its control. Said board of park commissioners shall designate the kind, manner and style of the improvement so to be made, and may designate the time within which same shall be made. [L. '07, p. 188, § 15; L. '09, p. 432, § 5.]

§ 6735. [5850.] City may Give Lands.

Any city of the first class within or comprising any such metropolitan park district is hereby given authority to turn over to said park commissioners any lands which it may own, or any street, avenue, or public place within said city for parkway purposes, and thereafter the control and management of the same shall vest exclusively in the said board of park commissioners: Provided, however, that the police regulations of such city shall apply to all such premises. [L. '07, p. 189, § 16.]

§ 6736. [5851.] Objections to Assessments—Appeals.

Any person, firm or corporation, feeling aggrieved by the assessment against his or its property, may file objections with the city council, and may appeal from the order confirming said assessment-roll, in the same manner as objections and appeals are made in regard to local improvements in cities of the first class in the state of Washington. [L. '07, p. 189, § 17.]

§ 6737. [5852.] Lien and Collection of Assessment.

The assessment for local improvements authorized by this chapter shall become a lien in the same manner, and be governed by the same law, as is provided for local assessments in cities of the first class, and such assessment shall be collected as local improvements in said cities of the first class. [L. '07, p. 189, § 18.]

§ 6738. [5853.] Donations.

Said park commissioners shall have power to accept public streets of the city and grounds for public purposes when the same shall be donated for park, boulevard, and parkway purposes. [L. '07, p. 189, § 19.]

§ 6739. [5854.] Annexation of Territory—Petition for Election for.

The territory adjoining and in the same county with any park district organized under this chapter may be annexed to and become a part of such metropolitan park district, in the manner following: Any twenty-five (25) legal voters, residents within the territory proposed to be annexed, may petition the board of park commissioners of such district to cause the question to be submitted to the legal voters of the territory proposed to be annexed, whether they will be annexed and become a part of such adjoining park district: Provided, however, that where such territory proposed to be annexed shall be within the limits of an incorporated city or town other than the first class, such petition shall be signed by at least twenty (20) per cent of the qualified electors residing within such territory. The petition shall define the limits of the territory proposed to be annexed to such park district. Upon the filing of such petition with the board of park commissioners, if said commissioners shall concur in said petition, they shall provide for a hearing to be held for

the discussion of such proposed annexation at the office of said board of park commissioners, and shall give due notice of such hearing by publication in a daily newspaper published in said park district for at least five (5) days prior to said hearing. If said park commissioners shall concur in said petition, it shall be their duty to submit the proposal to the electors of such territory proposed to be annexed, at an election to be held in such territory. The said commissioners shall, by order of such board duly adopted, fix a time and place or places within the limits of the territory proposed to be annexed, for the holding of such election to determine the question of annexation, and said commissioners shall name the persons to act as judges at such election, and shall give notice thereof by causing notice to be published for five (5) days in five (5) consecutive issues of a daily newspaper published in said park district, and by posting notices in five (5) public places within the territory proposed to be annexed in said district. The ballot to be used at such election shall be in the following form:

- ☐ "For annexation to metropolitan park district."
☐ "Against annexation to metropolitan park district."

The judge or judges at such election shall make return thereof to the board of park commissioners, who shall canvass such return and cause a statement of the result of such election to be entered on the record of such commissioners. If the majority of the votes cast upon that question at such election shall be for annexation, then such territory shall immediately be and become annexed to such park district, and the same shall thenceforth be a part of said park district, the same as though originally included in such district. [L. '07, p. 189, § 20.]

§ 6740. [5855.] Election—Officers—Expense.

All election officers for any election held pursuant to this chapter shall be named by the board of park commissioners, and the expense of all such elections shall be paid out of the funds of such metropolitan park district. [L. '07, p. 191, § 21.]

§ 6741. [5856.] Indebtedness Against Park Property Assumed by District.

When the metropolitan park district shall be formed pursuant to this chapter, and shall assume control of the parks, parkways, boulevards, and park property of the city in which said park district is created, such park district shall assume all existing indebtedness, bonded or otherwise, against such park property, and shall arrange by taxation or issuing bonds, as herein provided, for the payment of such indebtedness, and shall relieve such city from such payment. Said park district is hereby given authority to issue refunding bonds when necessary in order to enable it to comply with this section. [L. '07, p. 191, § 22.]

CHAPTER XXIV.

ARTERIAL STREETS.

§ 6742. [5856-1.] "Arterial Streets" Defined.

Whenever any street, avenue or highway within any city or town shall connect at or near the corporate limits of such city or town with any pub-

lic road or highway not less than two miles in length, and constructed along a main line of travel being uniformly graded to a width of not less than sixteen feet, and having proper bridges, drains and culverts, and surfaced with macadam, stone, compacted gravel, or other material equally as permanent and durable, not less than twelve feet in width, such street, avenue or highway may be improved by grading or regrading, planking or replanking, paving or repaving, macadamizing or remacadamizing, graveling or regravelling, bridging or rebridging, surfacing or resurfacing, from the point of connection with such road or highway to the business center of such city or town, or to a connection with a permanently surfaced street leading thereto, under the provisions of this act. Streets improved under the provisions of this act shall be known as "arterial streets." [L. '13, p. 142, § 1.]

Cited in 87 Wash. 192, 194.

This section is not mandatory in requiring "arterial streets" to be improved under that system; and, containing no repealing clause, it does not repeal, but is merely supplemental to the existing

law, section 9352, *infra*, et seq., providing a distinct method for the improvement of streets and highways by cities, towns and counties: *White v. North Yakima*, 87 Wash. 191, 151 Pac. 645.

§ 6743. [5856-2.] Resolution to Improve Arterial Street.

Whenever the city council or other governing body of any city or town shall desire to improve any arterial street under the provisions of this act it shall adopt a resolution designating the street or streets to be improved, the general character of the improvement to be made, the estimated cost thereof and the amount of such cost which will be of special benefit to the property, a certified copy of which resolution shall be forthwith transmitted to the board of county commissioners. If the board of county commissioners shall approve such resolution the city council or other governing body of such city or town shall thereupon be empowered to and shall improve such arterial street as above provided and to enter into contracts therefor. [L. '13, p. 143, § 2.]

Cited in 87 Wash. 194.

§ 6744. [5856-3.] Local Improvement District—Limit of Assessments.

So much of the cost of such improvement as shall be of special benefit to property within such city or town shall be a charge upon such property, and the city council or other governing body shall cause to be created in the manner provided by law a local improvement district for the purpose of defraying so much of the cost as shall benefit property therein. The provisions of law with reference to the creation of local improvement districts for the improvement of streets shall, so far as the same are applicable, apply to arterial streets improved under the provisions of this act: Provided, however, that nothing in this act shall be construed to prevent any property included in such improvement district from being charged under this act with any amount not exceeding fifty per cent of the valuation thereof, as last placed upon it for the purpose of general taxation, exclusive of improvements thereon. So much of the cost of such improvement as shall not be charged to property within the improvement district above provided for shall be paid equally by the county and the city or town. The board of county commissioners of any county is authorized and

empowered to pay the portion of the cost chargeable to such county for the improvement of any arterial street under the provisions of this act from the general road and bridge fund of the county, or from the district road and bridge fund of the district with which such arterial street connects. The city council or other governing body of any city or town is authorized to pay the part of the cost of improving any arterial street under the provisions of this act, which shall be a charge against such city or town from the general fund of such city or town or from any special fund which shall be available for that purpose. [L. '13, p. 143, § 3.]

§ 6745. [5856-4.] Limitation of Act.

This act shall not be construed as providing for the maintenance of said arterial highways within the limits of any municipality. [L. '13, p. 143, § 4.]

CHAPTER XXV.

PRIVATE WAYS OF NECESSITY.

§ 6746. [5857.] Private Ways may be Established, How.

The owner or owners of any lands, which do not abut on any highway, or which are so situated that it is necessary to cross the lands of others to obtain a reasonable way to any public highway, may obtain the location and establishment of a road between his or their said lands and the highway by proceedings in the superior court of the county in which the lands over which such proposed road is to run are situated, in the manner provided by law for the appropriation of private property by corporations, except as in this chapter provided. [L. '95, p. 180, § 1.]

For former laws on this subject see L. '54, p. 346, §§ 18, 19; Cd. '81, §§ 2984—2986; L. '88, p. 196.

, "Chapter" refers to all except the next three sections.

The provision of Article I, § 16, of the Constitution, authorizing the taking of private lands for "private ways of necessity," is not self-executing, but before a right of such private ways of necessity can arise, the legislature must define what they are, authorize persons to apply for them, and prescribe the method by which the necessary land is to be taken: *Long v. Billings*, 7 Wash. 267, 34 Pac. 936.

As to meaning of the constitutional provision, see *Healy Lumber Co. v. Morris*, 33 Wash. 490, 74 Pac. 681, 99 Am. St. Rep. 964, 63 L. R. A. 820.

The evidence is insufficient to establish a private way by prescriptive use, when: *Peterson v. Waske*, 45 Wash. 307, 88 Pac. 206.

§ 6747. [5857-1.] Eminent Domain—What Included.

An owner or one entitled to the beneficial use, of land which is so situate with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity or to construct and maintain any drain, flume or ditch, on, across, over or through the land of such other, for agricultural, domestic or sanitary purposes, may condemn and take lands of such other sufficient in area for the construction and maintenance of such private way of necessity, or for the construction and maintenance of such drain, flume or ditch, as the case may be. The term "private way of necessity," as used in this act, shall mean and include a right of way on, across, over or through the land

of another for means of ingress and egress, and the construction and maintenance thereon of roads, logging roads, flumes, canals, ditches, tunnels, tramways and other structures upon, over and through which timber, stone, minerals or other valuable materials and products may be transported and carried. [L. '13, p. 412, § 1.]

Cited in 77 Wash. 586; 82 Wash. 508; 91 Wash. 250, 251; 100 Wash. 486; 106 Wash. 598; 107 Wash. 233; 111 Wash. 208.

This section is constitutional: *State ex rel. Mountain Timber Co. v. Superior Court*, 77 Wash. 585, 137 Pac. 994.

The word "necessary," as used in this act, means reasonable necessity: *State ex rel. Grays Harbor Log. Co. v. Superior Court*, 82 Wash. 503, 144 Pac. 722.

A private way of necessity may be condemned although petitioner has a long term lease: *State ex rel. Preston Mill Co. v. Superior Court*, 91 Wash. 249, 157 Pac. 689.

Insufficient testimony to satisfy the burden of proof as to necessity, under this action: *State ex rel. Carlson v. Superior Court*, 107 Wash. 228, 181 Pac. 689.

Sufficient evidence of reasonable necessity: *State ex rel. Stephens v. Superior Court*, 111 Wash. 205, 190 Pac. 234.

Condemnation of property for private ways. 91 *Am. Dec.* 585; 1 *Ann. Cas.* 188; 16 *L. R. A.* 81.

Condemnation of land for logging road. *L. R. A.* 1917A, 102.

Condemnation of property for mining road. 1 *L. R. A. (N. S.)* 977; 22 *L. R. A. (N. S.)* 701.

§ 6748. [5857-2.] Procedure for Condemnation.

The procedure for the condemnation of land for a private way of necessity or for drains, flumes or ditches under the provisions of this act shall be the same as that provided for the condemnation of private property by railroad companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation by railroad companies. [L. '13, p. 412, § 2.]

Cited in 91 Wash. 251.

This section is satisfied by the filing at the time of the adjudication of public necessity, of a contract agreeing to

carry timber products at reasonable prices: *State ex rel. Stephens v. Superior Court*, 111 Wash. 205, 190 Pac. 234.

§ 6749. [5857-3.] Logging Road to Carry Products.

Any person or corporation availing themselves of the provisions of this act for the purpose of acquiring a right of way for a logging road, as a condition precedent, [shall] contract and agree to carry and convey over such roads to either termini thereof any of the timber or other produce of the lands through which such right is acquired at any and all times, so long as said road is maintained and operated, and at reasonable prices; and a failure so to do shall terminate such right of way. The reasonableness of the rate shall be subject to determination by the public service commission. [L. '13, p. 412, § 3.]

Cited in 111 Wash. 207.

§ 6750. [5858.] Petition must Show What.

The person or persons desiring the location and establishment of such road shall set out in his or their petition a description of his or their lands, the situation of the highway with reference to such land, and such other facts as will show the necessity of the establishment of the road, and shall set out the estimated value of the lands to be appropriated for such road. [L. '95, p. 180, § 2.]

§ 6751. [5859.] Bonds for Costs.

Before the hearing of such petition, the petitioner or someone in his behalf shall enter into a bond with two or more sureties to be approved by the county clerk, which bond shall be in the penal sum of two hundred dollars, payable to the state of Washington for the use of such persons as may be interested, conditioned that the obligators shall pay all costs and expenses incurred in the proceedings. [L. '95, p. 181, § 3.]

§ 6752. [5860.] Commissioners to View Proposed Road.

Upon the hearing of said petition after notice thereof as prescribed by law, the court shall appoint three commissioners, who shall, on a day to be fixed by the court, in the order appointing them, view the lands of the petitioner, and the lands over which it is proposed to locate and establish such road, for the purpose of determining,—

First: Whether there is necessity for the establishment of a road; and,

Second: The most practicable route for such road, if the same be necessary, and the clerk of said court shall furnish to said commissioners a certified copy of the order so appointing them. [L. '95, p. 181, § 4.]

§ 6753. [5861.] Report of Commissioners.

When said commissioners shall have made such examination they shall, within ten days after the day appointed by the court for such examination, report to the court in writing (filing the same with the clerk of said court), their decision as to the necessity for the road, and if they deem such road necessary, then they shall set out in such report an accurate description of the road and the route thereof, as recommended by such commissioners, and the estimated value of the land which would be taken for such road, and the amount to be allowed in damages to each separate owner of the lands sought to be appropriated, which in their estimation is just and equitable. [L. '95, p. 181, § 5.]

§ 6754. [5862.] Exceptions to.

Any person interested may file exceptions in writing to such report at any time within thirty days after the time fixed by the court for the examination of such commissioners, and such report shall be heard and considered by the court as to the necessity for such road, and as to the location thereof. On the next day after the expiration of the time limited for the filing of exceptions, or as soon thereafter as the same can be heard, which hearing shall be by the court without a jury, and the court shall decide as to the necessity of such road, and if the same be found necessary, then the court shall fix the location of the road and establish such road, to be opened when compensation shall be made therefor as provided by law: Provided, that if the court do not approve the report of the commissioners as to the necessity of the road, or as to the route thereof, then the court may appoint other commissioners whose duties shall be the same as the duties of the commissioners first appointed. [L. '95, p. 181, § 6.]

§ 6755. [5863.] Costs.

Such commissioners shall be allowed two dollars per day for their services, which shall be taxed as a part of the costs of the proceedings. All

other costs shall be the same as in other civil actions and proceedings in such court, and all costs shall be taxed to and paid by the petitioner or petitioners. [L. '95, p. 182, § 7.]

§ 6756. [5864.] Damages, When and How Awarded.

If, on the hearing of the report of the commissioners, the court shall find that there is necessity for the road, and shall by order determine the route thereof, then the cause shall be tried before a jury as to the amount of compensation to be made by way of damages for the establishment of the road: Provided, that such trial shall be had at a regular term [session] of such court when a jury shall be present. The trial shall be conducted and verdict rendered in the manner provided by law in the case of appropriation of private property by corporations: Provided further, that a jury may be waived as in other civil cases in courts of record in the manner prescribed by law. [L. '95, p. 182, § 8.]

§ 6757. [5865.] Appeal.

No appeal shall be taken from any order of the court as to the necessity of the road or as to the route thereof until after judgment as to the amount of compensation: Provided, that exception shall be taken and entered to such orders at the time the same are made, and the appeal from such orders and from the judgment awarding such compensation shall be taken at one time: Provided further, that all the provisions of law relating to appeals from judgments in proceedings for the appropriation of private property by corporations shall apply to the proceedings provided for it in this chapter so far as the same are not inconsistent herewith. [L. '95, p. 182, § 9.]

"This chapter," see note to § 6746.

§ 6758. [5866.] Damages, Payment of.

Within twenty days after the judgment awarding damages the petitioner or petitioners shall pay into court the amount of the award of damages, together with the costs as aforesaid, and upon such payment judgment of appropriation shall be made establishing the road. [L. '95, p. 183, § 10.]

CHAPTER XXVI.

STATE HIGHWAY COMMISSIONER AND BOARD.

§ 6759. [5868.] Location of Office—Duties.

The commissioner shall be furnished with a suitable office in the capitol building, where his records shall be preserved, and said office shall be kept open at such times as the business of the commissioner shall require. He shall keep a record of all proceedings and orders pertaining to the matters under his direction and copies of all plans, specifications and estimates submitted to him. The commissioner shall prepare and submit, ninety days before the session of each legislature of the state of Washington, a report of the work constructed or under construction and shall make recommendation as to the needed state highways, together with the esti-

mated cost of such needed highways. [L. '05, p. 355, § 2; L. '07, p. 294, § 2; L. '09, p. 650, § 2.]

See *infra*, § 10765, duties of state highway board devolve upon state highway committee.

See *infra*, § 10766, duties of highway commissioner devolve upon director of public works.

See *infra*, § 10893, state highway board and commissioner abolished.

§ 6760. [5869.] Apportionment of Appropriation.

It shall be the duty of the state highway board to decide what portion of the amount appropriated for any state road shall be expended within the boundaries of the several counties through which it is proposed to pass. [L. '07, p. 295, § 3; L. '09, p. 650, § 3.]

See notes to § 6759.

§ 6761. [5869-1.*] Construction of State Roads.

The state highway board may in its discretion cause any state road to be constructed, either under contract as now provided by law or by force account. Construction may be done by force account in all cases where the estimated amount of said work is less than the sum of five thousand dollars (\$5,000): Provided, this limitation of five thousand dollars (\$5,000) shall not apply to work done by convict labor. The work may be done either by free or day labor or by the use of convict labor when available and capable of advantageous use. The state highway board shall by resolution entered upon its record determine when construction in any case shall be by force account and whether by free or day labor or by convict labor, which resolution shall state the reasons for such determination. In all other cases construction shall be let by contract on plans and specifications previously prepared by the highway engineer and let to the lowest and best bidder in the manner now provided by law. In the event that the highway board considers said bids when received too high, they may readvertise, or do the work by force account, which decision shall be ordered by resolution to that effect entered upon the records of said board, which resolution shall set out the amount of the lowest bid and the fact that said board had found that in its judgment the said work may be more cheaply done by force account, day labor or convict labor. [L. '17, p. 488, § 1. Cf. L. '13, p. 411, § 1.]

See notes to § 6759.

§ 6762. [5869-2.] Purchase of Machinery.

Whenever any money shall be appropriated for any state road or roads, and the state highway board shall have determined to construct the same by convict labor and free labor as aforesaid, the state highway board may in its discretion purchase road-making machinery to be used in such construction work. The board shall, prior to entering upon any such construction work determine what roads shall be improved by force account, and estimate the amount and cost of machinery that can be used in the construction of all of the roads, to the end that the machinery may be used on different roads. When the board has decided how much machinery can be so used, it may purchase the same and pay for it from the appropriation made for different roads, in proportion to the amount of use that will be made of it on each road. [L. '13, p. 411, § 2.]

See notes to § 6759.

§ 6763. [5870.] Survey—Approval of Board.

Whenever any money is appropriated for the construction of a state road, the state highway commissioner shall, unless such road has been theretofore surveyed, cause survey to be made of the entire length of such highway, and cause the same to be mapped both in outline and profile, and shall also cause plans and specifications for the construction of such highway to be prepared. Such maps, plans and specifications shall be thereupon submitted to the state highway board, and no portion of any appropriation shall be expended upon such road until the state highway board shall have declared such road feasible and shall have approved said outline and profile maps and said plans and specifications. [L. '07, p. 295, § 4; L. '09, p. 650, § 4.]

See notes to § 6759.

Cited in 112 Wash. 44.

This section is modified by the act of 1919, c. 92, p. 223, making appropriation for the purpose of meeting the cost of

constructing only specified parts of the state's highways: *State ex rel. Urquhart v. Superior Court*, 112 Wash. 34, 191 Pac. 416.

§ 6764. [5871.] Assistants—Expense.

The state highway commissioner shall have authority to employ such civil engineers and assistants as may be necessary to carry out the provisions of section 6763, and to provide for superintendents of construction and maintenance work on state roads, and the expense so incurred shall be considered a part of the cost of the road in connection with which such expense is incurred and shall be a charge against the fund appropriated for the construction of such road. He shall also have authority to employ such assistants as may be necessary to carry on the office work of the highway department. [L. '07, p. 295, § 5; L. '09, p. 650, § 5.]

See notes to § 6759.

§ 6765. [5871-1.] Assistant and Chief Clerk.

The highway commissioner may appoint an assistant who shall act as chief clerk in his office, and such assistant shall have power to perform any act or duty relating to the office of highway commissioner that the commissioner has, and, in case of vacancy by death or resignation of the highway commissioner, said assistant shall perform the duties of said office until the vacancy is filled. Such assistant shall subscribe, take and file the oath of office provided by law for other state officers before entering upon the performance of his duties. The principal shall be responsible under his official bond for all of the official acts of the assistant, and may revoke such appointment at his pleasure, and may require his assistant to give him a bond in such sum as the principal may determine, which bond shall be made, executed, approved and filed as other state official bonds. [L. '13, p. 69, § 1.]

See notes to § 6759.

§ 6766. [5872.*] Acquisition of Right of Way.

Whenever it is necessary to secure any lands for a right of way for a state highway, or for the drainage thereof, the supervisor of highways is authorized to acquire such lands in behalf of the state by gift, purchase

or condemnation. In case of condemnation to secure such lands, the action shall be brought in the name of the state under the provisions of sections 891 to 900, both inclusive, of this code, and in such action the selection of the lands by the supervisor of highways shall, in the absence of bad faith, arbitrary, capricious or fraudulent action, be conclusive upon the court and judge before which the action is brought that said lands are necessary for the purpose sought. The cost of such lands may be paid from the fund apportioned to the state road for which such right of way or drainage is acquired. Whenever it is necessary to locate and construct a state road over and across any of the public lands of the state of Washington, including tide or shore lands or any oyster reserve which has been or may hereafter be established, the supervisor of highways shall file in the office of the state land commissioner a map showing the location of such road over and across such lands with reference to a United States government survey, and upon the filing of such map the easement for such right of way shall be reserved to the state and such land when sold, leased or otherwise disposed of, shall be sold, leased or disposed of subject to such right of way. [L. '21, p. 116, § 1; L. '07, p. 295, § 6; L. '09, p. 651, § 6.]

Cited in 94 Wash. 178, 179; 111 Wash. 544, 545.

Rem. Code, § 5872, providing that the cost of a right of way for a state road acquired by the highway commission shall be paid for from the fund apportioned to such state road does not make that method exclusive, or repeal the provisions of the general eminent domain act which applies where the road fund has been exhausted and the state had

taken possession of land and put it to a public use without making compensation: State ex rel. Peel v. Clausen, 94 Wash. 166, 162 Pac. 1.

Under this section the state may proceed to condemn under sections 921—936, supra, without hearings and notices for the establishment of county roads: State v. Superior Court, 111 Wash. 542, 191 Pac. 413.

§ 6767. [5873.] Advertisement for Bids—Deposit—Contractor's Bond.

Upon the approval of the maps, plans and specifications as provided for in section 6763, it shall be the duty of the state highway commissioner to advertise for bids for the construction of such highway, or such sections thereof as the state highway board shall designate, according to such maps, plans and specifications. Advertisements for such bids shall be made by publication in the official county paper, and also in some daily paper of general circulation in the state to be designated by the state highway commissioner, for not less than three consecutive weeks prior to the time set for the opening of said bids. All bids received shall be opened by the state highway board at its office at the capitol. Said state highway board shall have the right to reject any and all bids if in its opinion good cause exists therefor, but otherwise shall award the contract to the lowest and best bidder. The state highway board shall require a surety bond from the successful bidder in the full amount of the contract, conditioned for the faithful performance thereof according to law. Each bidder shall deposit with his bid a certified check in an amount equal to five per centum of the amount of his bid. Should the bidder to whom the contract is awarded fail to enter into a contract and furnish the bond hereinbefore provided within ten days after the notice of such award, the amount of such check shall be forfeited to the public highway fund. The checks of all unsuccessful bidders shall be returned after the contract is awarded and a bond given. Nothing in this section shall be construed to prevent the employ-

ment of convict labor when otherwise authorized by law. [L. '07, p. 296, § 7; L. '09, p. 651, § 7.]

See notes to § 6759.

§ 6768. [5874.] Approval of Claims—Vouchers.

The state highway commissioner shall examine and allow or disallow all bills for work done or materials furnished, and certify all claims allowed to the state auditor. In the event that counties appropriate money to aid in the construction of any state road, such sum so appropriated shall be expended upon vouchers approved by the state highway board, and the county auditor is authorized to draw his warrant upon such vouchers. [L. '07, p. 296, § 8; L. '09, p. 652, § 8.]

See notes to § 6759.

§ 6769. [5875.] State to Keep in Repair.

After the completion of any road constructed or repaired by the state under this act it shall become the duty of the state highway commissioner to keep the same in repair at the cost of the state, such cost to be paid from the public highway fund. The word road in this act shall be deemed to include all tunnels, culverts and bridges built by the state. [L. '07, p. 297, § 9; L. '09, p. 652, § 9.]

See notes to § 6759.

§ 6770. [5876.] Expenses Paid from Highway Fund.

All expenses of the state highway commissioner's office, including salary, office expenses, traveling expenses, and all expenses of the highway board shall be paid out of the public highway fund. [L. '07, p. 297, § 10; L. '09, p. 652, § 10.]

§ 6771. [5877.] Duties of Commissioner—Statistics—Advice.

In addition to his other powers and duties, the state highway commissioner shall compile statistics relative to the public highways throughout the state, and shall collect all information in regard thereto deemed expedient. He shall investigate and determine upon various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of roads and bridges, and such other information relating thereto as he shall deem appropriate. He may be consulted at all reasonable times by county officers having care and authority over highways and bridges, and shall advise such officers relative to the construction, repair, altering or maintenance of the same; and shall furnish such other information and advice as may be requested by persons interested in the construction and maintenance of public highways, and shall at all times lend his aid in promoting highway improvement throughout the state. He shall co-operate with all highway officers and shall assist county authorities, and, when requested by them, furnish them with plans and directions for the improvement of the public highways and bridges. [L. '07, p. 297, § 11; L. '09, p. 652, § 11.]

See notes to § 6759.

§ 6772. [5878.] Reports to Highway Commissioner.

The road supervisors and the county commissioners of any county, and all other officers who now have or may hereafter have by law the care and supervision of the public highways and bridges shall, from time to time, upon the written request of the state highway commissioner, furnish him with all available information in connection with the building and maintenance of the public highways and bridges in their respective localities. [L. '07, p. 297, § 12; L. '09, p. 653, § 12.]

CHAPTER XXVII.
PERMANENT HIGHWAYS.

§ 6773. [5879-1.] Permanent Highway.

The term "permanent highway," when used in this act, shall be construed to mean an improved public road constructed along a main line of travel, either beginning at some trade center or an extension of an existing road of like character beginning at some trade center. Every permanent highway shall be uniformly graded to a width of not less than sixteen feet, shall have proper bridges, drains and culverts, and shall be surfaced with macadam, stone, gravel or other material equally as permanent and durable not less than twelve feet in width. No such highway shall be constructed with a grade exceeding five per cent, except where, by reason of physical conditions, it is not feasible or practicable to obtain such grade, but in no case shall any such highway be constructed with a grade greater than ten per cent. [L. '11, p. 118, § 1.]

Cited in 80 Wash. 52; 90 Wash. 451; 98 Wash. 610; 103 Wash. 693; 107 Wash. 328; 108 Wash. 315; 110 Wash. 476, 477.

The provision of the Constitution vesting in counties the right of local self-government is not violated by the state aid road law: *Meeham v. Shields*, 57 Wash. 617, 107 Pac. 835.

An action to enjoin the county commissioners from reletting a contract for state highway work under this section and from interfering with the plaintiff in the performance of a contract does not state a cause of action for damages, where neither the county nor state was made a party, and there was no allegation of the incurring of expense or of possible profits in the performance of plaintiff's contract: *Barber Asphalt Paving Co. v. Hamilton*, 80 Wash. 51, 141 Pac. 199.

This act intended only the improvement of existing roads along main lines of travel, and does not authorize the opening of new roads, especially in view of the comprehensive act passed at the same session, Id., § 6448, supra, et seq., for the opening and establishing of new roads; and the clause "or the extension of an existing road of like character," taken in connection with the balance of the act, gives no authority for the opening of new roads; and owners need not take any appeal from an order of the county commissioners taken thereunder for the opening of a new road, of which they had no notice, but may directly attack the institution of condemnation proceedings by petitioning for a writ of review: *Gregory v. Commissioners of Kitsap County*, 110 Wash. 476, 188 Pac. 761.

§ 6774. [5879-2.] Owners' Petition.

The owners of two-thirds of the lineal feet of lands, other than lands of the state or the United States, fronting upon any public highway or section thereof in any county may present to the board of county commissioners a petition setting forth that the petitioners are such owners, and that they desire that such highway or section thereof be improved under the provisions of this act.

The board of supervisors of any township, in any county having township organization, or a majority of them, may, when authorized at a general election, or a special election called for the purpose, sign a petition for the improvement of any public highway within such township, in whole or in part. [L. '11, p. 118, § 2; L. '13, p. 484, § 1.]

Cited in 98 Wash. 611; 103 Wash. 309.

There is no constitutional objection against the initiation of a permanent highway improvement by a petition signed by the owners of two-thirds of

the lineal feet of the lands fronting upon the highway as authorized by this section: Lindstrom v. McMillan, 98 Wash. 608, 168 Pac. 463; Kaufman v. McMillan, 103 Wash. 690, 175 Pac. 309.

§ 6775. [5879-3.] Resolution to Improve.

The board of county commissioners in any county, upon the receipt of a petition as provided in the preceding section, or upon its own motion, may pass a resolution for the improvement of any public road or highway or section thereof described in such resolution, under the provisions of this act, and within ten days after the passage of any such resolution shall transmit a certified copy of the same to the state highway commissioner.

Said board shall have no power to provide for the improvement of any portion of a highway within the corporate limits of any city or town. [L. '11, p. 119, § 3.]

§ 6776. [5879-4.] Highway Commissioner's Duty.

Such highway commissioner, upon receipt of such resolution, shall investigate and determine whether the highway or section sought to be improved is of sufficient public importance to merit improvement under the provisions of this act, taking into consideration the use, location and value of such highway or section thereof for the purpose of common traffic and travel, and after such investigation shall certify his approval or disapproval of such resolution, and if he shall disapprove such resolution he shall state his reasons therefor.

All expenses incurred by the state highway commissioner under the provisions of this act shall be paid from the public highway fund. [L. '11, p. 119, § 4.]

§ 6777. [5879-5.] County Engineer.

The board of county commissioners may require the county engineer to perform all engineering in connection with and to supervise any improvement work contemplated or prosecuted under the provisions of this act, or may in its discretion employ a construction engineer for that purpose and fix his compensation, such compensation to be paid by the county. [L. '11, p. 119, § 5.]

§ 6778. [5879-6.] Surveys.

Whenever the board of county commissioners shall have passed a resolution for the improvement of any public highway under the provisions of this act, and the same shall have received the approval of the state highway commissioner, a certified copy thereof shall be transmitted to the county engineer, or construction engineer appointed as aforesaid, who shall thereupon make the necessary surveys and prepare profiles, maps,

plans and specifications, and an estimate of the cost of construction or improvement of the highway or section thereof described in the resolution; making such recommendations concerning deviation from existing lines as he shall deem of advantage to obtain a shorter and more direct route, or to lessen gradients, or to otherwise improve such highway. [L. '11, p. 119, § 6.]

Cited in 110 Wash. 477.

§ 6779. [5879-7.] Recommendation—Record.

Upon the completion of such profiles, maps, plans, specifications and estimate, a copy thereof shall be transmitted to the state highway commissioner, who shall thereupon examine the same and return them to the board of county commissioners, making such changes therein or recommendations with reference thereto as he may deem advisable, and certifying his approval thereof.

Upon receipt of such profiles, maps, plans, specifications and estimate, the board of county commissioners may pass a resolution adopting the same, and that such highway or section thereof shall be improved under the provisions of this act. No resolution thereafter adopted by said board shall have the effect of rescinding or annulling the resolution so adopting such profiles, maps, plans, specifications and estimate, unless the same shall be approved by the state highway commissioner. The profiles, maps, plans, specifications and estimate as finally adopted by the board of county commissioners shall be filed in its office and become a permanent record of the board, and certified copies thereof shall be transmitted to the state highway commissioner and to the county engineer. [L. '11, p. 120, § 7; L. '13, p. 484, § 2.]

Cited in 99 Wash. 442.

A county commissioner has no authority to bind the county as to the kind of paving to be used on right of way secured, in view of this section making

all plans and specifications for proposed roads subject to the supervision of the state highway commissioner: *Tukwila v. King County*, 99 Wash. 439, 169 Pac. 824.

§ 6780. [5879-8.] Board may Condemn.

Whenever the board of county commissioners shall find it necessary for the purpose of straightening any permanent highway, lessening the gradients thereof, or otherwise improving the same, to acquire or appropriate lands, real estate, or other property, and are unable to agree with the owners thereof, upon the reasonable and fair value of such lands, real estate, or other property, such board is hereby authorized to acquire the same by condemnation proceedings in the manner provided by law for the appropriation of lands, real estate or other property by private corporations authorized to exercise the right of eminent domain. [L. '11, p. 120, § 8.]

Cited in 86 Wash. 412; 99 Wash. 443; 110 Wash. 477.

§ 6781. [5879-9.] Advertise for Bids—Surety Bond—Final Payment.

When the board of county commissioners shall have finally adopted the profiles, maps, plans and specifications for the improvement of any permanent highway under the provisions of this act, said board shall advertise for bids for three successive weeks in a newspaper published at

the county seat of such county, and if they deem advisable, in such other newspaper as it shall determine, for the construction and improvement of such permanent highway, or section thereof, according to such profiles, maps, plans and specifications, and shall award the contract to the lowest responsible bidder, save that the board shall have the right to reject any and all bids. All contracts shall be let on the lump sum basis. Before entering into any contract for such construction or improvement, it shall require a corporate surety bond in the full amount of the contracts, conditioned that the party thereto will perform the work upon the terms, within the time, and in accordance with the contract, profiles, maps, plans and specifications, and that such party will indemnify the county against any direct or indirect damages that shall be suffered or claimed for injuries to persons or property during the construction and improvement of such highway and until the same is accepted. Each bid shall be accompanied by a certified check in a sum equal to one-tenth of the amount of such bid, payable to the county, which shall be forfeited to the county upon the failure of the party, for a period of twenty days after any contract is awarded to any such party, to enter into a proper contract and furnish satisfactory bonds as required by this act. Monthly partial payments shall be provided for in the contract and paid in the manner therein provided, when certified by the county engineer or construction engineer employed, as the case may be, to an amount equal to eighty per centum of the value of the work done during the preceding month. Twenty per centum of the contract price shall be retained until the entire work has been accepted and no final payment shall be made until the state highway commissioner shall have examined the work or caused the same to be examined and certify to the state auditor that such work has been fully completed in accordance with the contract and the profiles, maps, plans and specifications governing such work. All payments to be made by the state upon contracts entered into in accordance with the provisions of this act shall be made by the state treasurer from the permanent highway fund hereinafter created, upon the warrant of the state auditor issued upon the presentation of proper vouchers by the person entitled thereto, said vouchers to be approved by the board of county commissioners, and the state highway commissioner, and, in case of final payment, to be accompanied by the certificate of the state highway commissioner as aforesaid. The state auditor shall issue no warrant for any purpose against the permanent highway fund hereinafter provided for unless there be sufficient money to pay such warrant in such fund to the credit of the county affected. No payment shall be made for any incidental changes during the progress of the work, unless the same shall have been approved by the board of county commissioners by resolution, and a copy of said resolution shall have been transmitted to the state highway commissioner. The board of county commissioners shall let no contract for the improvement of any permanent highway or section thereof less than one mile in length. Whenever any permanent highway shall be improved or constructed pursuant to a petition as provided for in section 6774, the proportion of the cost of such improvement chargeable to the property within the improvement district shall be paid out of the general road and bridge fund of the county, and all taxes

assessed against abutting property under the provisions of the following section, and all moneys payable by any township, shall, when collected, be paid into said general road and bridge fund. All payments made from the general road and bridge fund upon contracts entered into in accordance with the provisions of this act, shall be made by the county treasurer upon warrants of the county auditor, issued upon the presentation of proper vouchers, approved by the board of county commissioners and the state highway commissioner. [L. '11, p. 121, § 9; L. '13, p. 485, § 3.]

Cited in 90 Wash. 456; 92 Wash. 498; 108 Wash. 315.

Contracts Under This Section: See Remington's Digest, High., § 33; State ex rel. Washington Paving Co. v. Clausen, 90 Wash. 450, 156 Pac. 554, L. R. A. 1917A, 436; Maryland Casualty Co. v. Washington Nat. Bank, 92 Wash. 497, 159 Pac. 689; Tukwila v. King County, 99 Wash. 439, 169 Pac. 824.

See, also, Contractor's Bonds—Reserve

Fund—Rights of Creditors and Sureties: Denham v. Pioneer Sand & Gravel Co., 104 Wash. 357, 176 Pac. 333.

— Notice — Waiver: Cascade Construction Co. v. Snohomish County, 105 Wash. 484, 178 Pac. 470.

— Contract—Change—Extra Work—Quantum Meruit—Evidence—Sufficiency: Quigg Construction Co. v. Chelan County, 108 Wash. 314, 184 Pac. 331.

§ 6782. [5879–10.] Fifteen Per Cent Tax—Divisions—List—Roll—Assessment.

The county engineer of any county in which any highway or section thereof has been improved or constructed pursuant to a petition as provided in section 6774, shall have the power and it shall be his duty upon receiving notice from the board of county commissioners of the county in which said highway is located, of the cost of construction or improvement of such highway or section thereof, to prepare, verify and file with the county auditor an assessment-roll of the assessments and shall assess upon the lands benefited thereby, and situated within the boundaries of an improvement district, to be established, fifteen per cent or such greater per cent as may be stated in such petition, of said total cost. Such improvement district shall be constituted, and the boundaries thereof fixed, as follows: The highway coterminous with the improvement shall be the central line through the district, and the bordering lands on each side and within a distance of not less than six hundred and sixty feet, and not more than three miles, such width to be fixed by the board of county commissioners, from the center line of said highway and coterminous with the construction work or improvement shall be included in and constitute the body of the improvement district and shall be subject to assessment to the extent above provided. For the purpose of making an equitable apportionment of the assessment, such improvement district shall be divided longitudinally on each side of the center line of such highway, into three parts of equal width, which, beginning with the part abutting upon the highway shall be known as the first, second and third subdivisions, respectively, of such improvement district. In case the petition shall call for the payment of fifteen per cent each separate tract or parcel of land in said first subdivision shall be assessed and be subject to a charge for a proportional part of seven per cent of the whole cost of the construction work or improvement of said highway, and it shall be subject to a lien therefor until it shall be paid; each separate tract or parcel of land within said second subdivision shall be assessed

and subject to a charge for a proportional part of five per cent of the whole cost of such construction work or improvement and be subject to a lien therefor until it shall be paid; each separate tract or parcel of land in said third subdivision shall be assessed and subject to a charge for a proportional part of three per cent of the whole cost of such construction work or improvement and be subject to a lien therefor until it shall be paid. If the per cent of cost to be paid by such owners shall be greater than fifteen per cent the excess shall be assessed to the property in each subdivision upon the same ratio as such fifteen per cent. The charge upon the several separate tracts or parcels of land; in each subdivision shall be assessed ratably on the basis of the special benefits according to the actual area within such subdivision; that is to say, the area within the first subdivision shall be assessed seven-fifteenths, the area within the second subdivision shall be assessed five-fifteenths, and the area within the third subdivision shall be assessed three-fifteenths of the proportionate part of the cost assessed to the property in the assessment district. Each tract or parcel of land shall be assessed according to the relation of the area thereof to the total area within the subdivision wherein it is situated. The county engineer shall file such assessment-roll, as aforesaid, with the auditor of the county at least thirty days prior to the date prescribed by law for the first annual meeting of the county board of equalization after such list shall have been completed, and at said meeting, or an adjourned meeting, said board shall hear all objections to the assessments and determine the same, and correct all errors which may be found in such list; and after the same shall have been examined, compared and corrected by the county board of equalization, the assessment-roll shall be filed with the county treasurer, and the amount charged against the several lots, tracts or parcels of land within such improvement district shall be a lien upon such land, and shall be collected in the same manner as the general taxes of such county are collected, and shall become delinquent at the same time as general taxes, and after becoming delinquent shall be increased by the same percentage of penalty, and shall bear interest at the same rate as other delinquent state and county taxes: Provided, that the county commissioners may in their discretion by resolution duly certified to the county treasurer permit the payment of such taxes in ten equal annual installments, in which event each installment shall become delinquent as general taxes, and after becoming delinquent shall bear the same rate of interest as other delinquent state and county taxes: Provided, further, that the owner may pay all or any number of such installments at any time, and all deferred payments shall bear interest at the rate of six per cent per annum from the thirty-first day of May of the year following the filing of the assessment-roll with the county treasurer: And provided further, that whenever the county commissioners shall have provided for the payment of said taxes in installments as aforesaid it may, if it shall deem necessary or proper, issue bonds of the county payable from the general road and bridge fund ten years after the date of the issuance thereof with such option to redeem it as shall be considered advisable, in an amount not exceeding the proportion of the cost of such highway which shall be a charge against the abutting property,

and that such bonds shall bear interest at a rate not greater than six per cent per annum and shall be sold at not less than par by the board of county commissioners in such manner as they shall deem advisable. A notice directed to all owners of property affected by such assessment, whether known or unknown, to appear before said county board of equalization on a day to be therein specified to make their objections, if they have any, to such assessments, shall be published by the county auditor in a newspaper of general circulation in the county in at least three issues on different days of said newspaper, the first of which shall be at least twenty days prior to the specified date for appearances, and said notice shall contain a description of the highway, for the construction or improvement of which the assessment is made, and enumerate the several sections of land, according to the United States surveys, which shall be wholly or partially included within the special improvement district. If any such assessment shall be deemed invalid by the county board of equalization or adjudged to be invalid by any court of competent jurisdiction, a reassessment of the land within an improvement district with proper boundaries shall be made and collected in the manner herein prescribed. The county boards of equalization may hold adjourned or special sessions whenever it may be necessary to do so for the purpose of hearing objections to, and completing assessment lists required by this act.

All persons owning property abutting on such highway so improved, or residing thereon shall thereafter pay all highway taxes assessed against them in money, and in the manner now provided by law.

Where the petition for the improvement or construction of any permanent highway shall be signed by the board of supervisors of any township, or a majority of them, under the provisions of section 6774, the proportion of the assessment of abutting property shall, as to property within such township, be a charge upon such township and shall be paid by such township from the moneys raised for the purpose of constructing and improving roads therein into the general road and bridge fund of the county on or before the date of the approval of such construction or improvement work by the state highway commissioner. [L. '11, p. 122, § 10; L. '13, p. 487, § 4.]

Cited in 98 Wash. 612, 614.

Local Assessments and Special Taxes:
See Remington's Digest, High., § 39;
Pearson v. Island County, 3 Wash. 497,
28 Pac. 1108; Lindstrom v. McMillan,

98 Wash. 608, 168 Pac. 463; Kaufman
v. McMillan, 103 Wash. 690, 175 Pac.
309.

See, also, State ex rel. McMillan v.
Hills, 109 Wash. 175, 186 Pac. 295.

§ 6783. [5879-11.] Construction and Closing of Highway.

Whenever a contract has been let for the improvement or construction of any such highway in accordance with the provisions of this act, the contractors may and are hereby authorized to, whenever the engineer in charge of the work shall certify to the necessity therefor in writing, close any such highway or section thereof to the public by putting up a sufficient obstruction and notice to the effect that such highway is so closed. When such highway shall have been so closed to the public any person disregarding such obstruction and driving, riding or walking over any portion of such highway so inclosed, shall be deemed guilty of

a misdemeanor. Nothing herein contained, however, shall relieve the contractors of the burden of keeping highways under construction at all times open to the public until the engineer in charge of the work shall have certified to the necessity for closing such highway and shall have filed such certificate in the office of the county auditor of the county within which such highway or section thereof is located. [L. '11, p. 125, § 11.]

§ 6784. [5879-12.] Maintenance.

Whenever the improvement of any permanent highway shall have been completed and accepted under the provisions of this act, the same shall be maintained in the same manner as is provided by law for the maintenance of other public highways and roads. [L. '11, p. 126, § 12.]

§ 6785. [5879-13.] Draining.

Whenever during the construction of any such highway, or after its completion, it may be necessary for the proper construction or maintenance thereof to open or maintain ditches or drains for the purpose of properly draining such highway, the county commissioners of the county within which such highway or section thereof is situated, shall have the right to enter upon the lands adjacent thereto and to open any existing ditch or drain or dig a new ditch or drain for the free passage of water for the purpose of draining such highway. Said county commissioners shall also be empowered to agree with the owner of any such lands upon the amount of damages, if any, sustained by him in consequence of such entry upon his lands and performance of the work hereby authorized, and the amount of damages so agreed upon shall be the road district charge and shall be audited and paid the same as other road district charges. If the county commissioners are unable to agree with such owner upon the amount of damages thus sustained, the amount thereof shall be ascertained and determined and paid in the same manner as damages are so ascertained, determined and paid where new highways are laid out and opened and the county commissioners and land owners are unable to agree upon the amount thereof. [L. '11, p. 126, § 13.]

§ 6786. [5879-16.] No Railroads on Highway.

No railroad or street railroad, by whatsoever power operated, shall be constructed upon any permanent highway or section thereof which may be improved under the provisions of this act, and the acts amendatory thereof and supplemental thereto, nor shall any such railroad or street railroad be constructed upon any public highway or section thereof of which such permanent highway is a continuation. [L. '11, p. 127, § 16.]

§ 6787. [5879-17.] Bonds for Improvements Heretofore Made.

Where any assessment for the improvement of any permanent highway pursuant to petition has heretofore been made and extended upon the tax-rolls of any county and said assessment has not been paid, the county commissioners may provide for the payment of the same in in-

stallments, and may issue bonds of the county to an amount not exceeding such unpaid assessment in the manner provided in section 6782. [L. '13, p. 491, § 6.]

§ 6788. [5879-18.*] County Roads Through Fourth Class Cities.

Each and every county of this state is hereby authorized to build, construct and improve any permanent highway as same is defined by this chapter, through the corporate limits of any city of the third or fourth class, or any unclassified city having a population which would entitle it to reorganize as a city of the third or fourth class, upon such streets or other rights of way connecting with such permanent highway in the corporate limits of such municipality as may be provided for such purpose by the municipal authorities, of sufficient width and appropriate for said purpose. [L. '17, p. 43, § 1. Cf. L. '13, p. 384, § 1.]

Cited in 86 Wash. 411; 99 Wash. 443; 107 Wash. 329.

A county may construct permanent highways through the corporate limits of cities of the third and fourth class and for that purpose condemn the necessary right of way, where the city by ordi-

nance has authorized it, under this section: State ex rel. Floyd v. Superior Court, 86 Wash. 410, 150 Pac. 618.

But cannot condemn city lands for a county road either within or without the city: State ex rel. Cle Elum v. Kittitas County, 107 Wash. 326, 173 Pac. 698.

§ 6789. [5879-19.] Eminent Domain—County may Pay Damages.

Where such city or town is unable to pay for the condemnation of such rights of way, the county may pay or aid such municipality to pay for the same. All expenses herein authorized shall be disbursed and all such construction, improvement and repair herein contemplated shall be disbursed under, and be controlled wholly by, the provisions of this chapter, or law amending or superseding the same. [L. '13, p. 384, § 2.]

Cited in 80 Wash. 52; 86 Wash. 411; 99 Wash. 443.

CHAPTER XXVIII.

CLASSIFICATION AND ENUMERATION OF PRIMARY HIGHWAYS.

§ 6790. [5878-1.] Classes.

The highways of the state of Washington shall be divided into two classes, called primary and secondary roads. [L. '13, p. 221, § 1.]

Cited in 85 Wash. 262.

§ 6791. [5878-2.] Primary Roads Specified—Pacific Highway.

A primary state highway is established as follows: A highway starting at the international boundary line at Blaine, Washington; thence southerly by the most feasible route through the cities of Bellingham, Mt. Vernon, Everett, Bothell, Seattle, Renton, along the easterly side of the White River valley, through Kent, Auburn, Tacoma, Olympia, Tenino, Centralia, Chehalis, to the southern boundary line of the state at the city of Vancouver, Washington, to be known as the Pacific Highway. [L. '15, p. 484, § 1. Cf. L. '13, p. 221, § 2.]

§ 6792. Pacific Highway in Snohomish County.

That that portion of the Pacific Highway established by section 6791, lying between the city of Everett in Snohomish County and the City of

Marysville in said county be located as follows: Beginning in section 16, township 29 north, range 5 east W. M. at the north end of the Snohomish County bridge number 29 over the Snohomish River; thence in a northerly direction to the present Pacific Highway at the east town limits of the town of Marysville in Snohomish County, section 33, township 30 north, range 5 east W. M. [L. '19, p. 111, § 1.]

§ 6793. Same—Survey and Definite Location.

The state highway commissioner is hereby directed to survey and definitely locate the route for said highway. [L. '19, p. 112, § 2.]

§ 6794. [5878-2a.*] Sunset Highway.

A primary state highway is established as follows: A highway starting from the Pacific Highway at Renton, Washington; thence over the most feasible route through Snoqualmie Pass; from Snoqualmie Pass southeasterly by the most feasible route by way of Easton and Cle Elum and thence easterly to the vicinity of Swauk Creek; thence over the route heretofore designated as State Road No. 7 through Blewett Pass and easterly by the most feasible route to Wenatchee; thence over the most feasible route through Waterville, Davenport and Spokane to the state boundary; including a southern division extending from the junction in the Swauk vicinity southeasterly by the most feasible route to Ellensburg; all to be known as the Sunset Highway. [L. '19, p. 267, § 1; L. '15, p. 485, § 2; L. '15, p. 64, § 1.]

§ 6795. [5878-2b.] Inland Empire Highway.

A primary state highway is established as follows: A highway connecting with the Sunset Highway at or in the vicinity of the city of Ellensburg; thence by the way of North Yakima, Kennewick, Pasco, Walla Walla, Dayton, crossing the Snake River in the vicinity of Central Ferry, Colfax, Rosalia, Spokane, Deer Park, Loon Lake, Colville, to the international boundary line at Laurier, which shall be known as the Inland Empire Highway. [L. '15, p. 485, § 3.]

§ 6796. [5878-2c.] Inland Empire, Eastern Route.

A primary state highway is established as follows: A highway known as the eastern route of the Inland Empire Highway, shall commence at or in the vicinity of the town of Dayton, thence over the most feasible route, through the town of Pomeroy, to the Idaho and Washington state line where said line crosses the steel bridge known as the Lewiston and Clarkston bridge, and shall be known as the first division of the eastern route.

The second division of the eastern route shall commence at a point on the Idaho and Washington line where the same crosses the public road known as the Lewiston and Uniontown road, thence over the most feasible route through Pullman, Palouse, and Garfield, thence in a northerly direction through Oakesdale joining the Inland Empire Highway at the most practical point to be determined by the highway commissioner. [L. '15, p. 485, § 4.]

§ 6797. [5878-2d.] Central Washington Highway.

A primary state highway is established as follows: A highway connecting with the Inland Empire Highway at Pasco, Washington; thence by the most feasible route through Connell, Ritzville, Sprague, and Cheney, to Spokane, Washington, to be known as the Central Washington Highway. [L. '15, p. 486, § 5.]

Cited in 111 Wash. 543.

§ 6798. [5901f.*] North Central Highway.

A primary state highway is established as follows: A highway starting from a connection with the Sunset Highway at Ellensburg; thence by the most feasible route (heretofore the Sunset Highway) to the Columbia River near Vantage; crossing the same and continuing thence northeasterly by the most feasible route (heretofore the Sunset Highway) to Quincy; thence by the most feasible route (heretofore the North Central Highway) through Ephrata, Krupp, Odessa, and Harrington to a junction with the Sunset Highway at Davenport, to be known as the North Central Highway. [L. '19, p. 268, § 1½. Cf. L. '15, p. 489, § 15.]

Cited in 112 Wash. 35, 43.

§ 6799. [5878-2e.*] Naches Pass Highway.

A primary state highway is established as follows: A highway starting at a connection with the Pacific Highway at Auburn, Washington; thence along the most feasible route through Enumclaw and up the valley of White River to the vicinity of its emergence from the east side of Rainier National Park; thence continuing southerly by the most feasible route within said park or east thereof to the vicinity of Cayuse Pass, being the watershed summit whence Klickitat Creek flows northerly into White River and a creek tributary to Chanapecosh River flows southerly into Cowlitz River; thence by the most feasible route easterly over the summit of the Cascade Mountains through Chinook Pass to headwaters of American River and continuing northeasterly with the valley of American River down to its junction with that of Bumping River and thence with said valley to its junction with that of Naches River; thence southeasterly down the valley of Naches River to a connection with the Inland Empire Highway at the City of Yakima; the said highway to be known as the McClellan [Naches] Pass Highway. [L. '19, p. 268, § 2; L. '21, p. 118, § 1; L. '15, p. 486, § 6.]

Name changed from McClellan Pass to Naches Pass by the act of 1921.

§ 6800. [5878-2f.*] National Park Highway.

A primary highway is established as follows: A highway starting from the Pacific Highway in the city of Tacoma; running thence southerly by the most feasible route, to or near the town of Elbe, where it will branch, one section connecting with the Government road in Rainier National Park, at or near Ashford, Pierce County, and the other by the most feasible route through Mineral, Morton, Klickitat Prairie, to a connection with the Pacific Highway about midway between Chehalis

and Toledo; the said highway to be known as the National Park Highway. [L. '19, p. 269, § 3. Cf. L. '15, p. 487, § 7.]

§ 6801. [5878-2g.] Olympic Highway.

A primary state highway is established as follows: A highway starting from the Pacific Highway in Olympia, Washington, combining roads numbers nine (9) and fourteen (14), and completely circling the Olympic Peninsula, through the cities of Shelton, Hoodsport, Duckabush, Quilcene, Port Angeles, Hoquiam, Montesano, Elma, and McCleary, reuniting with the Pacific Highway at Olympia, which shall be known as the Olympic Highway. [L. '15, p. 487, § 8.]

§ 6802. Navy Yard Highway.

That that certain highway, being a section of State Road No. 21, from the vicinity of the head of Port Orchard Bay southwesterly by the most feasible route to a connection with the Olympic Highway between Shelton and Hoodsport be and the same is hereby established as a primary state highway to be known as the "Navy Yard Highway." [L. '19, p. 269, § 4.]

§ 6803. Ocean Beach Highway.

A primary state highway is established as follows: A highway starting from the Pacific Highway at Chehalis; thence westerly by the most feasible route through Pe Ell and Raymond to South Bend; thence southwesterly by the most feasible route to Ocean Beach at Holman in Pacific County (heretofore being a part of the National Park Highway); also from a junction point with the above-described highway in the vicinity of Nasel in Pacific County southeasterly by the most feasible route (heretofore being State Road No. 19) through the town of Skamokawa in Wahiakum County to a junction with the Pacific Highway at the most feasible point in the vicinity of Kelso in Cowlitz County, all of said highway to be known as the "Ocean Beach Highway." [L. '19, p. 270, § 5.]

§ 6804. North Bank Highway.

A primary state highway is established as follows: A highway starting from the Pacific Highway at Vancouver, Washington, thence by the most feasible route and so far as practicable along and on State Road No. 8, through Camas and Washougal in Clarke County, thence to Stevenson in Skamania County, Lyle, Maryhill and Goldendale in Klickitat County, thence northeasterly by the most feasible route to Mabton in Yakima County, thence to the most feasible connection with the Inland Empire Highway at or near Grandview in Yakima County; the said highway to be known as the "North Bank" highway. [L. '19, p. 270, § 6.]

§ 6805. Chelan and Okanogan Highway.

A primary state highway is established as follows: A highway starting from a connection with the North Central Highway at Quincy; thence westerly by the most feasible route through Trinidad and running

along the northeasterly bank of the Columbia River to Wenatchee; thence northerly by the most feasible route through or near the town of Chelan, in Chelan County, and Pateros, in Okanogan County; thence over the present constructed county road as nearly as practicable through the towns of Brewster and Okanogan; and thence by the most practicable route to the north line of Okanogan County, Washington, near the town of Oroville; the said highway to be known as the Chelan and Okanogan Highway. [L. '19, p. 271, § 7.]

§ 6806. Pend Oreille Highway.

A primary state highway is established as follows: A highway starting from the city of Spokane; thence by way of Mead to the town of Newport heretofore established as the Pend Oreille Highway. [L. '19, p. 271, § 8.]

CHAPTER XXIX.

STATE ROADS.

§ 6807. [5878-3.*] Secondary Highways.

All other state highways heretofore or hereafter established that are not designated to be primary highways, shall be classed as secondary highways. [L. '13, p. 223, § 3.]

For former laws establishing certain state highways, see L. '97, pp. 289—292, 338—345; L. '99, pp. 229—234; L. '01, pp. 217, 218, 225, 226; L. '03, pp. 265, 266; L. '05, pp. 18—22, 359.

See *infra*, § 6827, state roads defined.

§ 6808. [5901a.] State Road No. 4—Sans Poil-Loomis.

A secondary state highway is established as follows: State Road No. 4, or the Sans Poil-Loomis Road; this road shall begin at the mouth of the Sans Poil Creek on the Columbia River, and run thence as nearly as practicable over the present road to the city of Republic in Ferry county, Washington, and thence from said city of Republic over the present traveled road as nearly as practicable to the town of Loomis, in Okanogan county, Washington. [L. '15, p. 488, § 10.]

§ 6809. [5901b.] State Road No. 5—Cowlitz-Natches.

A secondary state highway is established as follows: State Road No. 5, or the Cowlitz-Natches Road: This road shall begin at Riffe postoffice in Lewis county, thence up the Cowlitz River and its tributaries by way of Kosmos and Randle by the most feasible route to a connection with the McClelland Pass Highway. [L. '15, p. 488, § 11.]

§ 6810. [5901c.] State Road No. 22—Kettle Falls.

A secondary state highway is established as follows: State Road No. 22. This road shall begin at Meyers Falls in Stevens county, and run thence through Kettle Falls, Daisy, Gifford, Cedonia and Hunters to Fruitland; thence through and across the Detillion Bridge across the Spokane River to a connection with the Sunset Highway at Davenport in Lincoln county. [L. '15, p. 488, § 12.]

§ 6811. [5901d.] State Road No. 4—Kettle River Extension.

A secondary state highway is established as follows: Kettle River extension of State Road No. 4: This road shall begin at the city of Republic in Ferry county and run thence by the most feasible route to Curlew in said county; thence by the most feasible route along the east river bank of Kettle River to the international boundary line near the town of Ferry. [L. '15, p. 488, § 13.]

§ 6812. Roosevelt Highway.

That State Road No. 11, as established from Marble Mount in Skagit County to Barron in Whatcom County, and State Road No. 12, as established from Barron by way of Mazama, Winthrop, Twisp, Carlton and Methow, to a connection with State Road No. 10 at Pateros in Okanogan County, shall constitute, and hereby is established as, a secondary state highway to be known as "Roosevelt Highway." [L. '19, p. 156, § 1.]

The acts referred to in this section described the two roads as beginning (1), at Marblemount in Skagit County, Washington, and shall run thence in a northerly direction up the Skagit River by the most practicable route to make connection with the present wagon road near the mouth of Mill Creek; thence by the most practicable route to Barron, in Whatcom County, Washington [L. '15, p. 490, § 17]; and beginning (2) in the county road on the south side of and near the mouth of the Methow River and shall follow as nearly as practicable the present surveyed line for such road to the twenty-mile post; thence by the most practicable route to the town of Winthrop; thence up the south fork of the Methow River valley and over the summit of the Cascade Mountains, by the most practicable route to Barron, in Whatcom County, Washington. See L. '15, p. 490, § 18.

§ 6813. [5901k.] State Road No. 20.

A secondary state highway is established as follows: State Road No. 20: This road shall begin at the town of Raymond in Pacific County and run thence by the most feasible route to Aberdeen in Chehalis County. [L. '15, p. 491, § 20.]

§ 6814. [5901-1.] State Road No. 21.

A secondary state highway is established as follows: State Road No. 21: This road shall begin at Kingston, thence by the most feasible route through Port Gamble, Poulsbo and Bremerton to a connection with the Olympic Highway between Shelton and Hoodspert in Mason County. [L. '15, p. 491, § 21.]

§ 6815. [5901m.] Scope of Amendment.

Nothing herein shall be construed to change or vacate any state road or extension of any road established by any act or statute other than section 6791. [L. '15, p. 491, § 22.]

Section 5901 of Remington and Ballinger's Code was also referred to in this section, but that section was repealed by L. '19, p. 271, § 9.

§ 6816. [5902, 5905.] Other Roads Designated as State Roads.

The following described roads having been examined and all surveys necessary to a determination as to their feasibility and utility having been made by the state highway commissioner under the provisions of chapter 116, Laws of Washington, A. D. 1907, and the report of the state highway

commissioner being favorable, the same are hereby declared to be state roads and shall be known and described as hereinafter set forth.

Lincoln County extension of State Road No. 4, the same being a road beginning at the mouth of the San Poil River on the north bank of the Columbia River in Ferry County, and extending thence southerly by the most practicable route to the town of Wilbur on the Central Washington Railroad in Lincoln County, Washington.

State Road No. 18, beginning at Alder in Pierce County and running in a southerly direction by the way of Elbe to a point in State Road No. 5 near Kosmos in Lewis County. [L. '09, p. 111, §§ 1, 2.]

CHAPTER XXX.

HIGHWAY FUNDS AND REVENUE.

§ 6817. [5897½.] Public Highway Fund Created.

There is hereby created a fund to be known as the public highway fund. [L. '05, p. 252, § 1.]

Chapter 46, Laws of 1919, p. 90, providing a "Motor Vehicle Fund" for the support of the highways of the state, is an act for the support of a public institution, within the seventh amendment to the Constitution, justifying the legislature in declaring an emergency which

excepts the act from a referendum to the people; especially as the funds for the current year were needed prior to the time of the taking effect of general laws: State ex rel. Anderson v. Howell, 106 Wash. 542, 181 Pac. 37.

§ 6818. Levy of Tax.

For the purpose of raising revenue to construct and repair highways and bridges, the proper state officers shall levy and collect a tax of one mill upon all of the property in the state subject to taxation. The fund provided by such levy shall be placed in the public highway fund: Provided, however, that nothing in this act contained shall have the effect or be construed to alter or modify in any particular any tax levy made or proceeding had or to be had for the collection of any tax heretofore levied or imposed under or pursuant to the provision of any former or existing laws. [L. '17, p. 471, § 6. Cf. L. '05, p. 253, § 2; L. '07, p. 23, § 1; L. '09, p. 886, § 1; L. '11, p. 303, § 1; L. '13, p. 220, § 1; L. '15, p. 231, § 1.]

"This act" refers to §§ 6821—6824, 6830, and this section.

§ 6819. [5879-14.*] Permanent Highway Fund.

For the purpose of raising revenue for the improvement and maintenance of permanent highways under the provisions of this act, the proper state officers shall levy and collect a tax of one and one-half mills upon all property in the state subject to taxation for the year 1913, and for each year thereafter. All moneys derived from such tax shall be paid into the state treasury and credited to a fund to be known as the "Permanent Highway Fund." The amounts received from each county shall be credited to the county paying the same, until such time as the same shall be expended on contracts for permanent highways within such county or for the maintenance of the same under the provisions of this act, or for the payment of interest on or the redemption of bonds as provided herein. Not less than five nor more than fifty per cent, as may be determined by

resolution of the board of county commissioners at their first meeting after the taking effect of this act for the year 1921 and at their January meeting in each succeeding year, of all moneys credited in any year to each county under this act and which shall be derived from taxes levied for the year 1912 and subsequent years shall be set aside and expended by the board of county commissioners, upon vouchers approved by such board, for maintaining and repairing roads constructed under the provisions of this act and other roads of like character, and no part of such per cent shall be expended for any other purpose. Whenever any county shall hereafter issue bonds of the county for the making or improving of permanent highways or roads equal in character within such county, the board of county commissioners of such county may, at the time of ascertaining and levying taxes to pay the interest on such bonds or at the time of ascertaining and levying taxes to accumulate a sinking fund for the redemption of such bonds, by resolution entered upon their minutes, apply the whole or any portion of the permanent highway fund, then standing to the credit of such county on the books of the state auditor in excess of the amount necessary to pay all contracts then outstanding for the payment of which such fund is or may become liable to the payment of such interest or to such sinking fund. There shall be set forth in such resolution statements showing, first, the amount of all taxes levied in such county for the permanent highway fund which have not been remitted to the state auditor or which remain uncollected and, second, all contracts for the payment of which the permanent highway fund credited to such county is or may become liable. The commissioners may apply such amount to the payment of interest or into the sinking fund without levying the tax required by law to be levied for such purposes, or the commissioners may, in addition to the amount so applied, levy a tax in addition thereto either to raise funds for the payment of interest or for the redemption of such bonds. A certified copy of such resolution shall be transmitted to the state auditor and upon receipt thereof, he shall transmit the amount so applied to the county treasurer who shall credit the same to the proper accounts for the purposes stated in such resolution. [L. '21, p. 248, § 1; L. '19, p. 149, § 1; L. '11, p. 126, § 14; L. '13, p. 491, § 5.]

§ 6820. [5879-15.] Transfer Fund.

Upon the taking effect of this act, the state treasurer shall transfer from the public highway fund to the permanent highway fund hereby created, and placed to the credit of each county, a sum equal to one-half of all taxes levied in such county for said public highway fund for the years 1907, 1908, 1909 and 1910, first deducting therefrom all sums expended from the public highway fund for state aid road purposes in such county under the provisions of chapter 150 of the Session Laws of 1907 prior to such transfer. All payments on contracts executed prior to the passage of this act for state aid roads shall, from and after the date of its passage, be paid out of the permanent highway fund and charged to the county in which such state aid road is situated: Provided, that if any county shall not have sufficient money to its credit in the permanent highway fund to carry out any such contract or contracts, then and in that event the state treasurer shall trans-

fer to the credit of such county from the public highway fund to the permanent highway fund sufficient money to complete the existing contracts for state aid roads. For the purpose of making the transfers from the public highway fund to the permanent highway fund, as provided in this section, there is hereby appropriated out of the public highway fund the sum of five hundred and eighty thousand dollars, or so much thereof as may be necessary. [L. '11, p. 127, § 15.]

§ 6821. County Permanent Highway Maintenance Fund.

There is hereby created in each county of the state a county fund to be known as the "Permanent Highway Maintenance Fund." The county officers of the various counties having the custody and disposition thereof are directed to set aside and place to the credit of said fund all moneys received from the state as provided in section 18, chapter 142, Laws of 1915, and all acts amendatory thereof and supplementary thereto, and the per centum of the permanent highway fund as provided in section 6819, which per centum of the permanent highway fund, as determined by the resolution of the board of county commissioners at their first meeting after the taking effect of this act for the year 1921 and at their January meeting in each succeeding year, shall be retained by the county treasurer and placed to the credit of the permanent highway maintenance fund of said county. [L. '21, p. 250, § 2; L. '17, p. 468, § 1.]

The act of 1915 referred to was Rem. Code, § 5562-18, which is repealed.

§ 6822. Moneys Derived from Automobile Licenses, etc.

The state auditor shall apportion and remit monthly by warrant all moneys derived from automobile licenses, fines and forfeited bail, after deductions as provided by section 18, chapter 142, Laws of 1915, as amended by Session Laws of 1917. [L. '17, p. 469, § 2.]

See note to last section.

§ 6823. Balance in State Permanent Highway Fund.

The state auditor is hereby directed to pay by warrant to each county the balance set aside in the permanent highway fund for the maintenance of permanent highways at the time this act takes effect. [L. '17, p. 469, § 3.]

§ 6824. Fund Expended for Maintenance of Highways of County.

The county auditor shall issue warrants for the expenditures from said fund on vouchers approved by the engineer in charge and allowed by the board of county commissioners, which expenditures shall be for the sole purpose of maintaining and repairing primary and permanent highways or highways of like character and for equipment for the maintenance thereof within the respective counties, and the same shall not be expended for any other purpose except as hereinafter provided. [L. '17, p. 469, § 4.]

§ 6825. [5878-9.] Transfer of Fund.

Hereafter the state treasurer shall transfer from the public highway fund to the permanent highway fund all taxes levied in counties composed entirely of islands respectively, for the public highway fund, and place

to the credit of each of said counties the amount of said levy, which shall be expended on permanent highways under the provisions of chapter XXVII of this Title. [L. '13, p. 304, § 1.]

§ 6826. Motor Vehicle License Fees of Island Counties.

All fees collected for motor vehicle licenses in counties composed entirely of islands shall be paid into the state treasury as other funds are paid, and, after deducting therefrom the expenses of issuing such licenses, the same shall be placed in the permanent highway fund to the credit of the county from which such fees came; such money shall be expended on permanent highways under the provisions of chapter XXVII of this Title. [L. '19, p. 108, § 1.]

CHAPTER XXXI.

CONSTRUCTION AND MAINTENANCE OF STATE ROADS.

§ 6827. [5897.] State Roads Defined.

The term "state roads" shall be construed to mean roads constructed in the sparsely settled and mountainous regions of the state, the entire expense of engineering and construction being borne by the state and paid for out of the highway fund. [L. '07, p. 308, § 1.]

See supra, § 6807, enumeration of state roads.

§ 6828. [5900.] Report on Proposed State Roads to Legislature.

No road shall hereafter be established as a state road until the same shall have been examined and if necessary surveyed, and shall have been found to be feasible and of public utility, and all facts concerning its feasibility and utility have been reported to the state legislature by the state highway commissioner. [L. '07, p. 309, § 2; L. '09, p. 37, § 2.]

§ 6829. [5878-7.*] Routes.

Whenever the general route of any state highway shall be designated and laid out by the legislature as running to, through or between certain designated points, without specifying the particular route to be followed to, through or between such points, the state highway board shall determine the particular route to be followed by said highway to, through or between said designated points, and shall be at liberty to select and adopt as a part of such highway, the whole or any part of any existing state or county road, or to deviate in whole or in part from any existing state or county road. The state highway board need not select and adopt the entire route for such highways at one time, but may select and adopt parts of such routes from time to time as it deems advisable. [L. '21, p. 118, § 1; L. '13, p. 224, § 7.]

§ 6830. [5878-4.*] County Maintenance of Primary Highways.

All primary highways when constructed shall be maintained at the expense of the permanent highway maintenance fund of the county in which such highway is located. In the event that there is not sufficient money to the credit of such permanent highway maintenance fund so to do,

the county commissioners shall expend such portion of the permanent highway fund credited to their county as shall be necessary, and in case the amount to the credit of the permanent highway fund apportioned to their county is not sufficient or available then they shall pay the remainder from the general road and bridge fund of the county. Such highways shall be maintained under such rules, regulations and requirements as may be prescribed by the state highway board. In the event that such highways shall not be maintained in accordance with the standard required by such rules, regulations and requirements, then the state highway board after fifteen days written notice of their intention so to do, directed to the county commissioners of such county, shall cause the maintenance of such highway to be brought up to the standard required by the rules, regulations and requirements of said state highway board and charge the expense thereof as follows: To the permanent highway maintenance fund credited to such county and in case the amount to the credit of such fund is not sufficient then to the available amount apportioned to the county from the permanent highway fund, and if the amount in either of said funds is still not sufficient then to the available amount in the general road and bridge fund of the county. When the maintenance work is done under the direction of the state highway board the payments from the permanent highway maintenance fund and general road and bridge fund shall be by warrants drawn by the county auditor upon vouchers approved by the state highway commissioner, and when any payments for maintenance purpose are made from the portion of the permanent highway fund credited to the county, the same shall be made upon warrants drawn by the state auditor on vouchers approved by the state highway commissioner and in such case the state auditor shall notify the county auditor of the county of all payments so made. In any county where no primary state highways have been constructed by the state, or the full amount of the permanent highway maintenance fund is not necessary for the maintenance of permanent highways, the remaining funds to the credit of the permanent highway maintenance fund shall be used in the maintenance or improvement of roads upon the route of primary state highways. The construction of all primary highways shall be under the immediate supervision and control of the state highway board. [L. '17, p. 469, § 5; L. '13, p. 223, § 4.]

§ 6831. [5878-8.] Width of Highway.

All primary highways when graded shall be graded so that they shall have a running surface of not less than sixteen (16) feet in width. [L. '13, p. 224, § 8.]

§ 6832. [5878-5.] Maintenance of Secondary Highways.

All secondary highways when constructed shall be maintained by the counties in which they are located, and in the event that any county does not desire to maintain such secondary highway it shall so indicate to the highway department of the state by the passage of a formal resolution to that effect spread upon the records of said board of county commissioners, a copy of which shall be forwarded to the office of highway commissioner; whereupon said highway, unless it is a way of necessity whereby certain persons residing thereon are connected with the county highway, the same

shall be abandoned as a public highway, and the right of way revert to the abutting property.

In the event that it is a private way of necessity the maintenance and upkeep of said highway shall devolve upon the persons whom it serves. [L. '13, p. 223, § 5.]

§ 6833. [5878-6.*] County and City Expenditure on State Roads.

Nothing in this act shall be construed to prevent the authorities of any county or road district from expending the road funds of such county or road district or funds obtained from the sale of bonds upon primary or secondary highways either for construction, maintenance or right of way, and they are hereby empowered so to do, the only exception being that when any section of the primary highway has been constructed by the state any expenditures made upon said portion of said primary highway shall be under the direction of the state highway commissioner: Provided, that the county commissioners may, when the estimated cost of such expenditure exceeds the sum of twenty-five thousand dollars (\$25,000), place the construction or improvement of such highway under the supervision and control of the state highway commissioner, who shall take full charge of the same, the actual expenses of said highway commissioner in the supervision of said construction to become a part of the expenses of the county in constructing said highway, and shall be audited and paid out of such county funds. [L. '17, p. 263, § 1; L. '13, p. 223, § 6.]

§ 6834. Constructions on Highways Unlawful Without Franchise.

It shall be unlawful for any person or corporation to construct on, over, across, or along any state highway any water-pipe, gas-pipe, telegraph, telephone, or electric light or power lines, without having first obtained a franchise so to do in the manner hereinafter in this act provided. [L. '21, p. 221, § 1.]

§ 6835. Granting of Franchises—Application—Hearing.

The state highway board or committee shall have the power to grant franchises to persons or corporations to use a state highway outside of incorporated cities and towns for the construction and maintenance of water-pipes, gas-pipes, telephone, telegraph, and electric light and power lines. All applications for such franchises shall be made in writing and subscribed by the applicant, and shall describe the state highway or portion thereof over which franchise is desired, and the nature of the franchise. Upon the filing of any such application a time and place for hearing the same shall be fixed and a notice thereof shall be given in the county or counties in which the state highway mentioned in the application is located, at the expense of the applicant, by posting written or printed notices in three public places at the county seat and in at least one conspicuous place on the state highway or part thereof over which the application for the franchise is made, at least fifteen days before the day fixed for such hearing, and by publishing a like notice in three successive weekly issues of the newspaper doing the county printing, the last publication to be at least five days before the day fixed for the hearing; which notice shall state the name or names of the applicant or applicants, a description of the state highway or part thereof over which the franchise is applied for, and time and place

for hearing which shall be at the state capital. In case the application is for a franchise over portions of a state highway in two or more counties, notice shall be given as above provided in each of the counties. It shall be the duty of the county auditor of the respective counties to cause such notices to be posted and published and to file proof of such posting and publication with the state highway board or committee. [L. '21, p. 221, § 2.]

Franchises on county roads, see *supra*, § 6428.

§ 6836. Franchises—Regulations and Conditions—Damages.

All hearings provided for in the preceding section may be adjourned from time to time and from place to place until completed. If after such hearing it is deemed to be for the public interest to grant such franchise in whole or in part, the board, or committee, may make and enter the appropriate order granting the franchise applied for, or such part thereof as it shall deem to be for the public interest, under such rules, regulations and conditions as it may prescribe, and may require any such utility and its appurtenances to be placed in such location on, over, across, or along the state highway as it finds will cause the least interference with other uses of the state highway. Any person or corporation constructing or operating such utility on, over, across, or along such state highway shall be liable to any person injured thereby for any damages incident to the work of installation or the continuation of the occupancy of such highway by such utility, and shall be liable to the state for all necessary expenses incurred in restoring such highway to a permanent suitable condition for travel. This act shall be construed as an addition to existing laws, and shall not limit powers or rights which may be exercised under existing laws: Provided, that no franchise shall be granted for a period of longer than fifty years; And, provided further, that no exclusive franchise or privilege shall be granted. [L. '21, p. 222, § 3.]

See note to § 6835.

§ 6837. Violations.

Any person violating the provisions of this act shall be guilty of a misdemeanor. [L. '21, p. 223, § 4.]

§ 6838. Road Construction—Approval of Plans by Supervisor of Highways.

Whenever any county of this state desires to undertake the construction or improvement of any primary state highway or any county road used as a part of such highway, or the construction or alteration of any bridge, culvert, cattle-pass, or other structure on the primary state highway, or any county road used as a part of such highway, plans and specifications for such work shall be first submitted to the supervisor of highways for approval, and no such work shall be done unless the supervisor of highways shall approve such plans and specifications, and all such work shall be done in accordance with the plans and specifications as approved. [L. '21, p. 85, § 1.]

§ 6839. Closing Road—Duty of Officials.

Whenever the condition of any city or town street, state or county road, either newly constructed, repaired or improved or of prior construc-

tion, or any part thereof, is such that its use or continued use by vehicles will greatly damage such road, the state highway commissioner, if it be a state road, or the board of county commissioners, if it be a county road, or the governing body of a city or town, if it be a city or town street, is authorized to close such road to travel by all vehicles or to any class of vehicles, for such period as they shall determine. [L. '21, p. 87, § 1.]

§ 6840. Notice of Closing Road.

Before any road is closed to vehicles or any class of vehicles under this act, a notice of the date on and after which the road, or any part thereof, shall be closed, and the period of such closing, and whether it shall be closed to all vehicles or to vehicles of particular class or classes, shall be published in one issue of a newspaper printed and published in the county, city or town in which the road or street is located; and a like notice shall be posted on or prior to the date of publication of such notice, in a conspicuous place at each end of the road or street or part of said road or street to be closed: Provided, that no such road shall be closed sooner than three days after the publication and posting of the notice herein provided for: Provided, however, in cases of emergency, the proper officers may, without publication or delay, close roads and streets temporarily by posting notices at each end of, and at, all cross-roads or streets and all roads or streets leading into, or out from, any road or street to be temporarily closed. In all emergency cases, as herein provided, the orders of the proper authorities shall be immediately effective. [L. '21, p. 87, § 2.]

§ 6841. Penalty.

When any road, or part thereof, shall have been closed as herein provided, any person, firm or corporation disregarding such closing and using such road or part thereof with any vehicle to which said road is closed by such notice, shall be deemed guilty of a misdemeanor. [L. '21, p. 88, § 3.]

§ 6842. Director of Public Works to Assume Authority.

The authority herein conferred upon the state highway commissioner shall be exercised by that officer until such time as the director of public works shall be appointed and qualified. Thereafter such authority shall be vested in and exercised by the director of public works through and by means of the division of highways. [L. '21, p. 88, § 3½.]

§ 6843. [5899.] Rights of Way Over County Roads.

It shall be lawful for boards of county commissioners to transfer and convey to the state of Washington rights of way over and along county roads for state road purposes, and it is hereby made their duty to make such transfer or conveyance upon receiving notice from the state highway board that a state road has been established and definitely located over a county road and that said road will be improved and maintained by the state and that funds are available for the immediate construction of such road. [L. '09, p. 102, § 1.]

§ 6844. Rural Post Roads—State's Assent to Federal Aid Road Act.

The state of Washington hereby assents to the purposes, provisions, terms and conditions of the grant of money provided in an act of con-

gress entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," approved July 11, 1916. [L. '17, p. 260, § 1.]

§ 6845. Agreement With United States.

The state highway commissioner and the state highway board, constituting the state highway department as provided by law, are hereby authorized and directed to act for and on behalf of the state of Washington, and of any civil subdivision of the state, in all things pertaining to the selection, construction and maintenance of roads under the provisions of said act of congress approved July 11, 1916; and to enter into such agreements with the United States secretary of agriculture as may from time to time be desirable or necessary to secure the money or aid for any section of road selected by law for improvement through an appropriation for the biennium in which said improvement is to be made. Said rural post road money to be added to and expended in connection with the appropriation aforesaid: And to apply thereto, as may be required, co-operative expenditures from the public highway fund, which may have been appropriated by the state legislature and from any road fund, including the permanent highway fund of any civil subdivision of the state set aside by the local authority of any such civil subdivision and is available for the construction and maintenance of any section of state highway selected as aforesaid for such aid and improvement. .

In all matters relating to the co-operative construction of any such rural post road the state highway commissioner and the state highway board shall act in the manner provided by state law for the construction of state highways from the public highway fund, so far as the same may be consistent with such rural post road act and the rules and regulations made by the secretary of agriculture pursuant to said act, to which the procedure shall be adapted as may be necessary. [L. '17, p. 260, § 2.]

§ 6846. Pledge of State to Equal Federal Appropriation.

For the construction or improvement and the maintenance of rural post roads which are a part of the public highway system, the good faith of the state of Washington is hereby pledged to make available funds sufficient to equal the sums appropriated to the state by or under the United States government during each of the five years for which federal funds are appropriated by section three (3) of the said act, and to maintain, or cause to be maintained the roads constructed or improved with the aid of funds so appropriated, and to make adequate provisions for carrying out such maintenance. [L. '17, p. 261, § 3.]

§ 6847. State Pledge to Equal Federal Contributions.

The good faith of the state of Washington is further pledged to make available funds at least sufficient, when combined with the funds made or to be made available by the several counties, to equal the sum apportioned to the state by the secretary of agriculture under the rules and regulations approved by him for carrying out the provisions of section eight (8) of said act of congress: Provided, that funds made so

available by the state shall be spent only upon the highways comprising the system of state roads, and the good faith of the state of Washington is further pledged to maintain such roads and to make adequate provisions for carrying out such maintenance: And provided further, that nothing herein shall be construed as preventing the several counties from entering into co-operative agreements with the secretary of agriculture for the construction and maintenance of county roads. [L. '19, p. 138, § 1. Cf. L. '17, p. 262, § 4.]

§ 6848. Co-operation Between State and Federal Authorities.

In all matters relating to the co-operative construction or improvement of any road or highway for which federal aid is secured under the provisions of said act of congress, the state highway department shall act in the manner provided by state laws relating to state highway construction from the public highway fund, so far as the same may be consistent with the provisions of said act of congress and the rules and regulations made by the secretary of agriculture pursuant to said act, to which the procedure shall be adapted as may be necessary. [L. '17, p. 262, § 5.]

§ 6849. State Treasurer Custodian of Federal Road Fund.

The state treasurer is hereby authorized and directed to receive and have the custody of such funds or warrants drawn by the secretary of agriculture as are made available for payment by the secretary of the treasury under the provisions of such rural post road act, accounting for the same as a trust fund, and disbursing the same only under such terms and conditions as may be prescribed by the secretary of agriculture or by the secretary of the treasury. [L. '17, p. 262, § 6.]

§ 6850. Federal Road Aid Act—Federal Funds.

That the state treasurer be and he is hereby authorized and directed to place to the state public highway fund any and all federal funds or warrants received as custodian under the operation of the federal aid road act and the state act assenting thereto, to be held in said public highway fund subject to disbursement therefrom only in accordance with the authority and appropriation set forth in section 6851. [L. '21, p. 235, § 1. Cf. L. '19, p. 110, § 1.]

§ 6851. Appropriation.

The sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, but not in excess of the amount of federal funds or warrants paid or pledged to be paid or reimbursed on account of lawfully obligated federal contributions under specific project agreements, be and the same is hereby appropriated from any moneys available in the public highway fund, the same to constitute a revolving fund to be used for the purpose specified in this act. The state auditor shall draw the necessary warrants and the state treasurer pay the same from this appropriation, only upon vouchers and estimates approved by the state highway commissioner for work actually done upon federal aid projects and only to the extent thereof charged to the federal contributing fund

under specific project agreements executed by state and federal authority. [L. '21, p. 235, § 2; L. '19, p. 110, § 2.]

CHAPTER XXXII.

ACQUISITION OF QUARRIES AND ROAD MATERIAL BY STATE.

§ 6852. [5907.] Geological Survey—Data.

The board of geological survey shall cause to be made, under the superintendence of the state geologist, a field examination and survey of the state for the purpose of ascertaining and determining the existence within the state of suitable road making materials; and shall likewise cause to be compiled and made a map or maps showing the locations and areas, as nearly as can be ascertained, of the various deposits of such material; and shall cause to be made suitable analyses and laboratory tests necessary to determine the relative merits or value for road building purposes of the various deposits so located. Upon final completion of said work, said board of geological survey shall file in the office of the state highway commissioner a complete report of said examination and survey, including all maps, analyses, tests and any other data which said board may have compiled touching the same: Provided, however, that pending the completion and final report thereof, all information gained by said state geologist during the progress of said examination and work shall at all times be available to the state highway commissioner, and a partial report showing such deposits of road-making materials as may in the meantime have been examined, together with such analyses and tests thereof as may in the meantime have been made, showing the relative value and merits of such materials for road making purposes, shall be furnished to said state highway commissioner by the first day of September, 1909. [L. '09, p. 810, § 1.]

See supra, § 6423, quarries for county road building.

See infra, § 10827, duties of geological survey devolve upon director of conservation and development.

See infra, § 10893, board of geological survey abolished.

§ 6853. [5908.] Selection of Quarry Sites.

Upon receipt of said partial report, together with maps, data, etc., the state highway commissioner shall, if there be found to exist materials suitable and in quantities and place sufficient therefor, select four or more sites best adapted for the location and establishment of rock quarries and crushing plants for supplying materials suitable and proper for the construction of highways, and, if found practicable, two or more of which sites shall be selected west of the summit of the Cascade Mountains and two or more east thereof. [L. '09, p. 811, § 2; L. '09, Ex. Sess., p. 39, § 1.]

See infra, § 10876, duties devolve upon director of public works.

See infra, § 10893, state highway commission abolished.

§ 6854. [5909.] Acquisition of Sites—Condemnation Proceedings.

Said state highway commissioner shall report such selections or locations to the state board of control, whose duty it shall then become

to acquire the said quarry sites so selected, together with sufficient area of land adjoining the same as may be necessary for the purpose of establishing and constructing thereon all such facilities, conveniences and plants as may be requisite, suitable and adequate to carry out the objects of this chapter. For this purpose said board of control is hereby authorized to accept on behalf of the state, any deed of gift or grant of any such site, or to purchase the same and accept deed of purchase thereof. In all cases where said board of control is unable to agree with the owners as to the reasonable and fair value of the premises sought, said board shall report such failure to the governor, who shall forthwith, by order, direct proceedings to acquire the same by condemnation, to be instituted by the attorney general in the superior court of the county wherein such premises are located, which proceeding shall be instituted therein by the attorney general in the manner provided by law for the taking of private property for public use, and to that end it is hereby declared necessary for the public uses of the state to acquire or appropriate the premises described in the order of the governor, and said attorney general is hereby authorized to institute and maintain, in the name of the state, the proceedings so far as applicable provided for in section 891 to section 900 inclusive, to the same extent and in like manner as if the legislature had by specific act declared it necessary for the public use of the state to acquire or appropriate the same. [L. '09, p. 811, § 3.]

See note to § 6853.

§ 6855. [5910.] Buildings for Convicts—Rock-crushers and Machinery.

Whenever under the provisions of this chapter any site and quarry is procured, the state highway commissioner shall take possession thereof, and may forthwith erect and construct at and upon the same such stockades, buildings and structures as may be necessary, suitable and adequate for the safe confinement and comfortable housing of such convicts as may from time to time be confined or worked therein, and may likewise purchase and install therein such suitable and proper rock-crushing plants, machinery, appliances and tools, and with such capacity as in the judgment of the highway commissioner may be necessary and adequate to keep continuously employed and occupied such force of convicts as may from time to time be worked therein. [L. '11, p. 517, § 1. Cf. L. '09, p. 812, § 4.]

See note to § 6853.

§ 6856. [5911.] Employment of Convicts.

It shall be the duty of the state highway commissioner to keep and employ in the several quarry sites so established and equipped as aforesaid, under charge of the superintendent of the penitentiary, and with his permission and that of the state board of control, in charge of such other persons in the employ of the state as the board of control shall direct, a sufficient number of able-bodied convicts when available to keep and maintain said plant therein installed in continuous operation to its full capacity, for which purpose said convicts may be transferred

from the penitentiary at Walla Walla. [L. '11, p. 517, § 1. Cf. L. '09, p. 812, § 5.]

See note to § 6853.

§ 6857. [5912.] Output for State Roads—Surplus—Free Labor.

All convicts maintained at said quarry sites shall, when physically able and so long as there is a demand for the output of such quarry, be kept and employed continuously (except Sundays and legal holidays) in the quarrying, crushing, preparation and handling of rock or other materials for roads or streets. All rocks so crushed shall be, upon the request of the state highway commissioner, loaded upon the car or vessel and there delivered to said state highway commissioner, who shall use the same in the construction or maintenance of state roads or state aid roads: Provided, however, that so much of said materials as the state highway commissioner may not at any time require for use on state roads or state aid roads shall be by said highway commissioner disposed of at not less than ten per cent above estimated cost f. o. b. the car, scow or boat at the place of production, to counties, cities or towns within the state in the order of application therefor, excepting in cases where the demands of such counties, cities or towns may be in excess of the supply, in which case the state highway commissioner shall apportion, deliver and distribute such material among the several counties, cities and towns applying, in such proportion as in his judgment may seem fair and equitable: Provided, further, that all materials used by the state highway commissioner on any state road shall be paid for out of the appropriation, apportionment or fund for the construction or improvement of the particular road upon which it is used, and all material sold to the state highway commissioner or to any county, city, town or other municipality, shall be at not less than ten per cent above the estimated cost of production at the place of delivery: Provided further, that when the quantity of material on hand is in excess of the amount demanded by the state highway commissioner for use upon state roads, or state aid roads, or for disposition to the counties, cities and towns as herein provided, then the same may be disposed of by the state highway commissioner, at such prices, not less than the cost of production, as said commissioner may deem most advantageous for the state, giving prior right of purchase to citizens of the state of Washington before applicants from another state. And provided further, that nothing in this act shall be so construed as to prohibit the state highway commissioner from employing within said stockades, or at said quarry sites, in the production of said material and in the operation of said quarry, such free labor as the commissioner may deem necessary or proper. [L. '11, p. 517, § 1. Cf. L. '09, p. 813, § 6; L. '09, Ex. Sess., p. 39, § 2.]

See notes to § 6853.

§ 6858. [5913.] Shipping Facilities to be Acquired.

If, after the acquisition of the quarry sites and the installation of the crushing plants, machinery and appliances herein provided for, there be sufficient funds left of the appropriation in this act provided it shall be the duty of the state board of control to acquire by purchase or otherwise, cars or scows sufficient in number, in their judgment most suitable and best adapted for the transportation of materials from the

said quarries to the place where the same is to be used. [L. '09, p. 814, § 7.]

See *infra*, § 10794, duties of board of control devolve upon director of business control.

§ 6859. [5914.] Appropriations—Application—Good Roads Fund.

All moneys received from the sale of products of the state quarries and all moneys that may be received on account of fire insurance and settlement of fire losses at such quarries shall be paid into the state treasury and shall be kept in a fund to be known as the "Quarries Rotary Fund." Such fund shall be used for the purpose of maintaining such rock quarries and all necessary expenses in connection therewith, including the repayment as herein provided, and the cost and expenses of transporting to and from, keeping and guarding the convicts working therein, the payment of the fire insurance premiums and for making such permanent improvements as the state highway commissioner shall deem necessary to be expended on the order of the state highway commissioner: Provided, however, no warrant shall be issued against said fund in excess of the amount remaining in such fund at the time of the issuance of the warrant. All warrants drawn against this fund shall be paid in the same manner as the state's general fund warrants are paid. All moneys heretofore paid out of the state general fund and the public highway fund for the purchasing and installing of crushing machinery, appliances, tools and cars for the maintenance of the state quarries, shall be repaid to the respective funds from which used, whenever the state highway commissioner shall deem sufficient funds have been received from the sale of the product of such quarries over and above the amount required for the operation of such plants. To secure the efficient, economical and satisfactory administration and maintenance of the several rock quarries under the jurisdiction of the state highway commissioner, the state highway commissioner is hereby authorized to appoint a superintendent of quarries who shall have and exercise such powers and perform such duties in connection with the various rock quarries of the state as shall be from time to time prescribed by the state highway commissioner. He shall receive an annual salary of not more than two thousand dollars and his necessary traveling expenses, to be paid out of the quarries rotary fund herein established, and in case there is insufficient in that fund he shall be paid out of the state highway fund. He shall be subject at all times to the jurisdiction, control and direction of the highway commissioner, and shall appoint such assistants with such compensation as shall be determined by the state highway commissioner. [L. '13, p. 556, § 1; L. '11, p. 517, § 1. Cf. L. '09, p. 814, § 8; L. '09, Ex. Sess., p. 40, § 3.]

See notes to § 6853.

Historical Society. See "Libraries, Museums, and Historical Society," § 8259.

Homesteads. See §§ 528—572.

In probate proceedings, see § 1466.

Hops. See "Inspection," § 7028.

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TITLE XLI-A.

HOTELS.

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§ 6860. [5914-1.] "Hotel" Defined.

Any building held out to the public to be an inn, hotel or public lodging-house or place where sleeping accommodations are furnished for hire to transient guests whether with or without meals in which fifteen or more rooms are used for the accommodation of such guests shall for the purposes of this act only, be defined to be a hotel, and whenever the word hotel shall occur in this act it shall be construed to mean a hotel as herein described. [L. '15, p. 695, § 1.]

See *infra*, § 6870, hotel defined.

Injury to Person of Guest from Dangerous Premises: See *Remington's Digest*, Inn., § 2; *Glass v. Colman*, 14 Wash. 635, 45 Pac. 310; *Armstrong v. Yakima Hotel Co.*, 75 Wash. 477, 135 Pac. 233.

Baggage intrusted to innkeeper or employee as establishing relation of guest. *Ann. Cas.* 1918A, 541; 23 *L. R. A. (N. S.)* 1107; 39 *L. R. A. (N. S.)* 1085.

Relation of innkeeper and guest as affected by payment for accommodation by week, month or the like. 12 *A. L. R.* 261; 14 *L. R. A. (N. S.)* 476; 42 *L. R. A. (N. S.)* 122.

Liability for personal injury to guest from condition of inn premises. 15 *Ann. Cas.* 925; *Ann. Cas.* 1912A, 1210; 43 *L. R. A. (N. S.)* 657.

Liability of innkeeper for injuries sustained by guest in fire. *Ann. Cas.* 1917A, 143; *Ann. Cas.* 1917E, 852.

Liability of innkeeper for injury to guest from defective lighting appliance. 6 *A. L. R.* 590.

Liability of innkeeper for serving unfit food to guest. 16 *Ann. Cas.* 498; 40 *L. R. A. (N. S.)* 480; *L. R. A.* 1915B, 481.

§ 6861. [5914-2.] Record of Guests.

Every hotel defined as such in this act shall keep a record of the arrival and departure of its guests in such a manner that the record will be a permanent one for at least one year from the date of departure. [L. '15, p. 695, § 2.]

§ 6862. [5914-3.] Liability for Loss of Property—Limitation.

No hotel-keeper, whether individual, partnership or corporation, who constantly has in his hotel a metal safe or suitable vault in good order and fit for the custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage books or tickets, negotiable or valuable papers and bullion, and who keeps on the doors of the sleeping-rooms used by guests, locks or bolts, and who keeps posted in each of said sleeping-rooms a notice of liability as hereinafter specified, shall be liable for the loss or injury to such property suffered by any guest unless such guest has offered to deliver the same to such hotel-keeper for custody in such metal safe or vault and such hotel-keeper has omitted or refused to take it and deposit it in such safe or vault for custody and to give such guest a receipt or claim check therefor: Provided, however, that the keeper of any hotel shall not be obliged to receive from any one guest for deposit in such safe or vault any property hereinbefore described exceeding a total value of one thousand dollars, and shall not be liable, for any excess of such property, whether received or not: Provided further, such hotel-keeper may by special arrangement with a guest receive for deposit in such safe or vault any property upon such terms as they may agree to in writing, but every hotel-keeper shall be liable for any loss of the above-enumerated articles of a guest in his inn or hotel after said articles have been accepted for deposit, if caused by the theft or negligence of the hotel-keeper or any of his servants. [L. '15, p. 695, § 3.]

Loss of or Injury to Property of Guest:
See Remington's Digest, Inn., § 3; Watt v. Kilbury, 53 Wash. 446, 102 Pac. 403.

Liability of innkeepers for goods of their guests. 69 Am. Dec. 221; 18 Am. Rep. 130; 99 Am. St. Rep. 577; 2 Ann. Cas. 16; Ann. Cas. 1914B, 1180.

Liability of innkeeper for commercial traveler's goods brought to inn for sale or show. Ann. Cas. 1913A, 449; 35 L. R. A. (N. S.) 350.

Liability of innkeeper for loss of baggage or effects of one making free use of inn. L. R. A. 1916E, 535; 4 A. L. R. 1222.

Liability of innkeeper for loss of guest's watch. 2 Ann. Cas. 491; Ann. Cas. 1912A, 961.

Necessity that guest declare value of property deposited with innkeeper for safekeeping. Ann. Cas. 1914D, 367.

§ 6863. [5914-4.*] Liability for Loss of Baggage—Limitation—Storage—Sale.

The liability of the keeper of any hotel whether individual, partnership or corporation, for loss of or injury to personal property belonging to a guest, other than that described in the preceding sections, shall be that of a depository for hire: Provided, however, that in no case shall such liability exceed the following: For a guest paying twenty-five cents per day, for lodging, the liability for loss shall not exceed the sum of fifty dollars for a trunk and contents, ten dollars for a suit case or valise and contents and five dollars for a box, bundle or package, and ten dollars for wearing apparel or miscellaneous effects. For a guest paying fifty cents a day for lodging, the liability for loss shall not exceed seventy-five dollars for a trunk and contents, twenty dollars for a suitcase or valise and contents, ten dollars for a box, bundle or package and contents, and twenty dollars for wearing apparel and miscellaneous effects.

For a guest paying more than fifty cents per day for lodging, the liability for loss shall not exceed one hundred and fifty dollars for a trunk and contents, fifty dollars for a suitcase or valise and contents, ten dollars for a box, bundle or package and contents, and fifty dollars for wearing apparel and miscellaneous effects, unless in each case such hotel-keeper shall have consented in writing to assume a greater liability: And provided further, whenever any person shall suffer his baggage or property to remain in any hotel after leaving the same as a guest, and after the relation of hotel-keeper and guest between such guest and the proprietor or manager of such hotel has ceased, or shall forward the same to such hotel before becoming a guest thereof and the same shall be received into such hotel, such keeper may at his option hold such baggage or property at the risk of such owner and when any personal property has been kept and stored by such hotel-keeper for one year after the relation of hotel-keeper and guest has ceased or when it does not exist, the hotel-keeper may if he so desires and acting as the agent of the owner deliver said property to a reliable storage or warehouse company for further storage. In the event the warehouseman declines to accept such property for storage and the hotel-keeper not desiring to retain it longer in his possession, he may sell the same at public auction after paying the expenses incurred by advertisement and sale, as well as any storage that may have accrued, and he shall hold the remaining money arising from such sale subject to the demand of the owner or his legal representatives. [L. '17, p. 214, § 1; L. '15, p. 695, § 4.]

What constitutes delivery or deposit of goods under statute limiting liability of innkeeper for effects of guest. 12 *Ann. Cas.* 100.

Effect of statute limiting innkeeper's

liability for goods not delivered into his custody. 22 *L. R. A. (N. S.)* 577; 51 *L. R. A. (N. S.)* 1168.

§ 6864. [5914-5.] Lien on Property of Guest.

The keeper of any hotel, whether individual, partnership or corporation, shall have a lien on all personal property brought into such hotel, belonging to his guest for the proper charges due him from such guest for accommodation, board and lodging, and for such extras as are furnished at their request, and for all money paid for or advanced to them, and said hotel-keeper shall have the right to retain and hold possession of such personal property until the amount of such charges be paid, and such personal property shall be exempt from attachment or execution until such hotel-keeper's lien and the cost of satisfying it are satisfied. [L. '15, p. 697, § 5.]

Liens of innkeepers: See §§ 1201—1203, *supra*.

Lien: See *Remington's Digest, Inn.*, § 4; *Wertheimer etc. Co. v. Hotel Stevens Co.*, 38 Wash. 409, 80 Pac. 563, 107 Am. St. Rep. 864, 3 *Ann. Cas.* 625.

Innkeeper's right of lien. 107 *Am. St. Rep.* 868; 21 *L. R. A.* 229.

Lien of innkeeper on property of third person in possession of guest. *Ann. Cas.* 1914D, 837; 21 *L. R. A.* 230; 24 *L. R. A. (N. S.)* 958.

§ 6865. [5914-6.] Sale to Satisfy Lien—Notice.

The hotel-keeper shall retain the personal property upon which he has a lien as above mentioned for a period of ninety days, at the expira-

tion of which time if such lien is not satisfied, he may proceed to sell such personal property, or any part thereof, at public auction, after giving ten days' notice of the time and place of sale by posting said notice in three conspicuous places in the city or town, one of which shall be the post-office and another the courthouse door, if the town be the county seat, and by mailing a notice of the time and place of sale to the person, guest or boarder at the place of residence registered by him on the register of said hotel, and after satisfying the lien and any expense of selling the property that may accrue, any residue remaining shall on demand be paid to such guest or boarder: Provided, however, that should the guest fail or refuse to register from any particular town or city, the notice herein required to be mailed shall be addressed to the name of the guest at the city or town wherein the hotel is located. [L. '15, p. 697, § 6.]

§ 6866. [5914-7.] Obtaining Hotel Accommodations by Fraud—Penalty.

Any person who shall willfully obtain food, money, lodging or accommodation at any hotel with the intent to defraud the owner or keeper thereof, shall be guilty of a gross misdemeanor. Proof that lodging, food or other accommodations were obtained by a false pretense or by false or fictitious show or pretense of any baggage or other property or that the person refused or neglected to pay for such food, lodging or other accommodation on demand, or that he gave in payment for such food, lodging or other accommodations negotiable paper executed by himself on which payment was refused or that he absconded without paying or offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to remove his property or baggage, shall be prima facie evidence of the fraudulent intent hereinbefore mentioned. [L. '15, p. 698, § 7.]

Validity of statute imposing criminal liability for food or accommodations fraudulently procured by hotel guest. 16 *Ann. Cas.* 1231;

Ann. Cas. 1915C, 1002; 21 *L. R. A.* (N. S.) 259; *L. R. A.* 1915B, 649; *L. R. A.* 1915C, 733.

§ 6867. [5914-8.] Posting Notice of Act in Rooms.

It shall be the duty of every hotel-keeper within this state to keep posted in each guest or sleeping-room of said hotel a notice, printed in plain type, to the effect that the liability of said hotel-keeper is as defined by this act, giving the title of this act and the date of its approval and stating that a copy of this act may be seen or secured by any guest at the office of said hotel, and it shall be the further duty of the hotel-keeper to furnish a copy of this act to any guest on request. No hotel-keeper who fails to comply with the provisions of this section shall have any benefit from or protection under this act. [L. '15, p. 698, § 8.]

§ 6868. [6028½.] Sanitary Condition—Drainage and Plumbing.

All buildings or rooms occupied as a kitchen in connection with hotels or restaurants, shall be drained and plumbed in a manner conducive to the proper and healthful condition thereof and shall be constructed with air-shafts, windows or ventilating tubes sufficient to assure an adequate ventilation, and no water or earth closet, privy or ash-pit shall be within, or directly communicate with any such kitchen. [L. '05, p. 77, § 1.]

Cited in 106 Wash. 70.

A contract requiring leased premises to be completely equipped for a restau-

rant kitchen is presumed to be made in contemplation of this section: *Manvell v. Weaver*, 53 Wash. 408, 102 Pac. 36.

§ 6869. [6029.] Violation and Penalty.

Any person who violates the provisions of the preceding section, by making use of any kitchen not fitted in conformity therewith, shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than twenty-five nor more than fifty dollars or imprisoned in the county jail not more than fifteen days for the first offense, and shall be fined not less than fifty nor more than one hundred dollars or imprisoned in the county jail not more than thirty days for the second or any succeeding offense. [L. '05, p. 78, § 2.]

§ 6870. [6030.] Hotel Defined.

Every building or structure kept, used, or maintained as, or advertised as, or held out to the public to be an inn, hotel, or public lodging-house, or place where sleeping accommodations are furnished to the public for hire in periods of less than one week in which five or more rooms are used for the sleeping accommodation of its guests, shall for the purpose of this act be defined to be a hotel, and whenever the word hotel shall occur in this act it shall be construed to mean and embrace every such structure as is described in this section. Tents or cottages when used in connection with such hotel for the accommodation of its guests shall be taken and considered as being a part of such hotel. Where any room of a hotel contains more than one bed, every bed in excess of one shall for the purpose of this act be counted as an additional room. [L. '15, p. 533, § 1. Cf. L. '09, p. 43, § 1.]

See *supra*, § 6860, hotel defined.

"Act" refers to the following sections of this chapter.

See *supra*, §§ 2625, 2848, 2849, frauds upon innkeepers.

Cited in 60 Wash. 100; 83 Wash. 487; 88 Wash. 273.

This act does not violate the constitutional prohibitions against class legisla-

tion, the delegation of powers or the invasion of private rights: *State v. McFarland*, 60 Wash. 98, 110 Pac. 792.

§ 6871. [6031.] Requirements—Fire-escapes, Landings, etc.

Every hotel that is more than two stories high shall be provided with a hall on each floor extending from one outside wall in such manner that every room upon such floor shall open upon such hall or a cross-hall connected therewith. Said hall to contain adequate lights which must be kept burning from darkness to daylight. There shall be equipped at the end of each hall an adequate iron fire-escape on the outside of the building. But if one fire-escape is not adequate to protect and care for the maximum number of guests to be accommodated on each floor additional fire-escapes shall be added; such fire-escape or fire-escapes to be connected on each floor above the first, with at least one opening, which shall be well fastened and secured with landings not less than six feet in length and three feet in width, guarded by an iron railing not less than three feet in height. Such landing shall be connected by iron stairs not less than two feet wide with steps of not less than six inches tread placed at an angle of not more than forty-five (45) degrees, and protected by a

well-secured handrail on both sides and reaching to within eight feet of the ground. An option shall be given to substitute a perpendicular iron ladder for the stairs above mentioned, provided such iron ladder is placed at the extreme outside of the platform and at least three feet away from the wall of the building and equipped with rounds not more than fifteen inches apart. The way of egress to such fire-escape shall at all times be kept free and clear of obstruction of any kind and nature. Ordinary doors, storm doors and windows shall be considered an obstruction for the purpose of this act, unless there shall be a glass therein at least twenty-four by thirty-six inches in size, on which there shall be printed in letters at least two inches high the words "fire-escape through this door," and such way of egress shall at all times be kept unlocked from the inside and no bars shall be placed across any of the openings filled by such glass. There shall be posted and maintained in a conspicuous place in each hall and in each guest's room except the halls and rooms on the ground floor of such hotel a printed notice in characters not less than two inches high calling attention to and directing the way to such fire-escape. The state hotel inspector shall prescribe the form of such notice and the manner in which it shall be posted. Subject to the approval of the state hotel inspector there shall be installed and maintained in a conspicuous place near the fire-escape of every hotel a light surrounded by a red globe of at least four inches in diameter. [L. '15, p. 534, § 2. Cf. L. '09, p. 44, § 2.]

"Act": See note to previous section.

Cited in 60 Wash. 101.

Duty of innkeeper to maintain fire-escapes, and liability for injury caused by lack or insufficiency of fire-escapes. 9 Ann. Cas. 1161; 15

Ann. Cas. 924; 15 L. R. A. 160; 10 L. R. A. (N. S.) 177; 21 L. R. A. (N. S.) 178; 39 L. R. A. (N. S.) 744; L. R. A. 1917C, 1153.

§ 6872. [6032.] Same—Rope-escapes.

Every hotel which is two stories in height or which is not provided with such fire-escapes as are described in section 6871, shall provide in every outside bedroom or sleeping apartment on any floor where the window of such room is more than twelve feet above the ground a manila rope at least five-eighths of an inch in diameter and of sufficient length to reach the ground, with knots or loops not more than fifteen inches apart, and of sufficient strength to sustain a weight and strain of at least five hundred pounds. Such rope shall be securely fastened to the joist or studding of the building as near the window as practicable and shall be kept coiled and in plain sight at all times, nor shall such rope be covered by curtains or other obstructions. Every such hotel shall provide and maintain in a conspicuous place in every bedroom or sleeping apartment above the ground floor a printed notice calling attention to such rope and giving directions for its use: Provided, however, that nothing in this section shall be construed to prevent the use of any automatic fire-escape, in place of a knotted rope, approved by the state hotel inspector. [L. '15, p. 535, § 3. Cf. L. '09, p. 45, § 3.]

§ 6873. [6033.] Same—Fire-extinguisher.

Each and every hotel shall be provided with at least one efficient chemical fire-extinguisher for every twenty-five hundred square feet or

less of floor area, which extinguisher or extinguishers shall be placed in a convenient location in a public hallway outside of the sleeping-rooms, and in all public rooms, and shall always be in condition for use; or, in lieu thereof, such hotel shall be equipped with a standpipe at least one and one-fourth inches in diameter, with hose connection and hose of sufficient length always attached in the hallway on each floor, which standpipe shall be supplied with a sufficient pressure of water at all times. [L. '09, p. 45, § 4.]

§ 6874. [6034.] Same—Gong.

Each and every hotel shall be provided with an electric gong or gongs at least nine inches in diameter controlled by automatic switches on each floor having bedrooms which shall be placed in the hallway or hallways in such a position that they will be easy of access and so that its or their ringing can be heard in every room; and means for ringing such gongs shall be provided so that they can be operated both from the office and from the location of each gong, and sufficient power shall be provided so as to keep all such gongs ringing continuously for at least three minutes after being started [L. '15, p. 536, § 4. Cf. L. '09, p. 46, § 5.]

§ 6875. [6035.] Length and Change of Bedding.

Every hotel shall furnish each guest with clean linen or cotton individual towels in each room occupied by such guests. A sufficient supply of clean sheets and pillow-slips shall be provided for the bed, bunk or cot to be occupied by a guest, and all sheets and pillow-slips after being used by one guest must be washed, ironed and dried before being furnished to another guest. Each sheet used shall be at least ninety-nine inches torn off length by eighty-one inches wide for full-size beds, and for narrower beds of sufficient width to completely cover the mattress and springs, but no sheet shall be used that measures less than ninety inches in length after being made and laundered: Provided that hotels shall be privileged to use sheets now on hand that comply with the present law. [L. '15, p. 536, § 5.]

§ 6876. [6036.] Ashes, How Kept.

No ashes from any hotel shall be dumped or kept in or adjacent thereto, or in any outhouse connected with any hotel unless the same shall be placed in a tight metal container, with a tight metal lid kept thereon. [L. '09, p. 46, § 7.]

§ 6877. [6037.] Towels.

Each and every hotel having a public wash-room shall keep therein at all times a sufficient supply of clean towels, in a place in sight at all times and easy of access to guests. [L. '09, p. 46, § 8.]

§ 6878. [6038.] Diseases—Fumigation, etc.

Whenever any room in any hotel shall have been occupied by any person sick with or exposed to any contagious, infectious or communicable disease such room shall be thoroughly fumigated in accordance

with the directions of the local health officer, and all bedding therein thoroughly disinfected before such room shall be occupied by another person. But in any event such room shall not be occupied by any person for at least forty-eight hours after such fumigation and disinfection. [L. '15, p. 536, § 6. Cf. L. '09, p. 46, § 9.]

§ 6879. [6039.] Sanitation.

Every hotel shall be well drained, constructed, and plumbed according to sanitary rules to be established by the state board of health and shall be kept clean and in a sanitary condition and free from effluvia arising from any sewer, drain, privy or other source within the control of the owner, manager, agent or other person in charge; and shall be provided with water-closets or privies properly screened for the separate use of males and females, which water-closets or privies shall be disinfected as often as may be necessary to keep them at all times in a sanitary condition. [L. '09, p. 46, § 10.]

§ 6880. [6040.] Penalty.

Every owner, manager, agent, or person in charge of a hotel who shall fail to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100) or shall be imprisoned in the county jail for not less than ten days nor more than three months or both, and every day that such hotel is carried on in violation of this act shall constitute a separate offense. [L. '09, p. 47, § 11.]

Cited in 83 Wash. 490.

§ 6882. [6042.] Deputies—Salary—Bond, etc.

Such [state hotel] inspector may appoint, and at pleasure remove, one deputy inspector for each congressional district, who shall assist under his direction in performing within his district the duties imposed by this act. They shall each give bond to the state in the sum of two thousand dollars with like conditions as that of the inspector to be approved by the secretary of state. They shall receive such compensation, not exceeding one hundred and twenty-five dollars per month and their necessary traveling expenses to be paid according to law, as the inspector may prescribe. [L. '09, p. 47, § 13.]

“Act”: See note to § 6870, *supra*.

See *infra*, § 10838, duties devolve upon director of labor and industries.

See *infra*, § 10893, hotel inspector abolished.

§ 6883. [6043.] Duties of Inspector—Powers and Records.

It shall be the duty of the inspector and his deputies to see that all of the provisions of this act are complied with, and said inspector, or the deputy for the district, shall personally inspect once in each year, every hotel as defined by this act. Said inspector and his deputies are hereby granted police power to enter any hotel at reasonable hours to determine whether the provisions of this act are being complied with. The inspector shall keep a complete set of books for public use and inspection, showing the conditions of each hotel so inspected, together

with the name or names of the owners, proprietors, and managers thereof, and showing its sanitary condition, the number and condition of its fire-escapes and any other information for the betterment of the public service. [L. '09, p. 48, § 14.]

See note to § 6882.

"Act": See note to § 6870.

Validity and construction of statute providing for official inspection of hotels or inns. *Ann. Cas.* 1912B, 827.

§ 6884. [6044.] Certificate of Inspection.

If the inspector shall find after examination of any hotel that this law has been fully complied with and the inspection fee has been paid to the inspector, he shall issue a certificate to that effect to the person operating the same, and said certificate shall be kept posted up in a conspicuous place in said inspected building. [L. '09, p. 48, § 15.]

See note to § 6882.

§ 6885. [6045.] False Certificate, Penalty.

Any inspector who shall willfully certify falsely regarding any building inspected by him, and who shall issue a certificate to any person operating any hotel when such person has not complied with the provisions of this act, shall, on conviction thereof, be fined not less than fifty dollars, nor to exceed five hundred dollars, and may be imprisoned not to exceed one year in the county jail, or both, at the discretion of the court, and upon conviction shall be forever disqualified to hold said office. [L. '09, p. 48, § 16.]

"Act": See note to § 6870.

§ 6886. [6046.] Refusing to Permit Inspection, Penalty.

Any owner, manager, agent or person in charge of a hotel who shall obstruct or hinder an inspector in the proper discharge of his duties under this act, or who shall refuse or neglect to pay the fee for inspection prescribed herein shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars (\$10) nor more than one hundred (\$100) dollars or shall be imprisoned in the county jail not less than ten days, nor more than three months or both. [L. '09, p. 48, § 17.]

"Act": See note to § 6870.

Cited in 60 Wash. 101, 104; 83 Wash. 492.

The unconstitutionality of this section, providing imprisonment for failure to pay the hotel inspection fee, does not affect the validity of the balance of the act providing for the inspection of inns and hotels: *State v. McFarland*, 60 Wash. 98, 110 Pac. 792, 140 Am. St. Rep. 909.

This section has reference to the owner of a hotel business (under lease without

restrictions upon the use or covenants to repair) and not the owner of the building (out of possession); and hence where fire-escapes are required upon a hotel building under the exercise of the police power, the duty and expense of construction devolves upon such a lessee where there is no covenant in the lease imposing such duty on the landlord: *Clarke v. Yukon Investment Co.*, 83 Wash. 485, 145 Pac. 624, *Ann. Cas.* 1916E, 625.

§ 6887. [6047.] Violation—Prosecution.

It shall be the duty of the inspector, upon ascertaining by inspection or otherwise that, after one year from the passage of this act, any

hotel is being carried on contrary to its provisions, to make complaint and cause the arrest of the person so violating same, and it shall be the duty of the prosecuting attorney in such case to prepare all necessary papers and conduct such prosecutions.. [L. '09, p. 49, § 18.]

See note to § 6882.

§ 6888. [6048.] Fees—Collection and Disposal of.

The hotel inspector shall collect an annual inspection fee for each hotel which shall be paid according to the following schedule:

Hotels containing from five to ten sleeping-rooms inclusive, three dollars; hotels containing from eleven to twenty sleeping-rooms inclusive, four dollars; hotels containing from twenty-one to sixty sleeping-rooms inclusive, seven dollars; hotels containing from sixty-one to one hundred sleeping-rooms, inclusive, ten dollars; hotels containing over one hundred sleeping-rooms, twelve dollars and fifty cents. Such fee shall be collected by the inspector at the time of the inspection and if not paid upon demand the inspector or deputy may sue therefor in his own name for the use of the state in the superior court of the state for the county in which such hotel is situated, and in such case the court shall allow and enter as a part of the judgment against the defendant all the costs of such action, including a reasonable fee for any attorney necessarily employed in such action by the inspector. Such inspection fees shall be a lien on the furniture and equipment of the owners or proprietors of the hotel and shall be paramount to all other liens excepting taxes and such furniture and equipment shall not be exempt from execution in the collection thereof. All moneys collected under the provisions of this act shall be paid into the state treasury in the manner provided by law. [L. '15, p. 537, § 7. Cf. L. '09, p. 49, § 19.]

See note to § 6882.

§ 6889. [6049.] Appropriation.

For the payment of salaries of the state hotel inspector and his deputies, for necessary traveling expenses, office stationery, supplies and incidentals there is hereby appropriated out of any funds in the state treasury not otherwise appropriated the sum of twenty-five thousand dollars, or so much thereof as may be necessary, to be paid according to law, but in no event shall the amount appropriated during any biennial period exceed the collections under this act during said period. [L. '09, p. 49, § 20.]

“Act”: See note to § 6870.

Cited in 60 Wash. 100.

Humane Societies. See “Animals,” § 3184.

TITLE XLII.

HUSBAND AND WIFE.

6890. Separate property of husband.
 6891. Separate property of wife.
 6892. Community property defined—Husband's control of personalty.
 6893. Community realty, conveyance of, etc.
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 6898. Liberal construction.
 6899. Chapter not retroactive.
 6900. Married persons may acquire and hold property, how.
 6901. Civil disabilities of wife abolished.
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 6904. Injuries committed by married woman, liability for.
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 6909. Punishment—Payment to family—Suspension of judgment—Working prisoners.
 6910. Prima facie proof.
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 6912. Evidence.

§ 6890. [5915.] Separate Property of Husband.

Property and pecuniary rights owned by the husband before marriage, and that acquired by him afterward by gift, bequest, devise or descent, with the rents, issues, and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber, or devise, by will, such property without the wife joining in such management, alienation, or encumbrance, as fully and to the same effect as though he were unmarried. [Cd. '81, § 2408; 1 H. C., § 1397.]

For former statutes on the subject of this chapter, see L. '69, pp. 318—323; L. '71, pp. 67—74; L. '73, pp. 450—455, and p. 486, repealing L. '71; L. '75, p. 53; L. '79, p. 151 and pp. 77—81.

Cited in 1 Wash. 79, 83; 7 Wash. 292, 293; 17 Wash. 491; 20 Wash. 205; 41 Wash. 195, 196; 46 Wash. 58; 52 Wash. 3; 57 Wash. 513; 74 Wash. 237; 75 Wash. 115; 82 Wash. 110; 83 Wash. 161; 86 Wash. 195; 93 Wash. 198; 97 Wash. 315; 107 Wash. 685; 113 Wash. 380.

Separate Property of Husband: See Remington's Digest, Hus. & W., § 2; Maynard v. Hill, 2 W. T. 321, 5 Pac. 717; Maynard v. Valentine, 2 W. T. 3, 3 Pac. 195; Eyres' Estate, In re, 7 Wash. 291, 34 Pac. 831; Guye v. Guye, 63 Wash. 340, 115 Pac. 731, 37 L. R. A. (N. S.) 186; Powers v. Munson, 74 Wash. 234, 133 Pac. 453.

Gifts: See Remington's Digest, Hus. & W., § 6; Yesler v. Hochstettler, 4 Wash. 349, 30 Pac. 398; Yake v. Pugh, 13 Wash. 78, 42 Pac. 528, 52 Am. St. Rep. 17; Sherlock v. Denny, 28 Wash. 170, 68 Pac. 452.

Marriage Settlements—Construction and Operation: See Remington's Digest, Hus.

& W., § 7; Clark v. Baker, 76 Wash. 110, 135 Pac. 1025.

SEPARATION AND SEPARATE MAINTENANCE: See Remington's Digest, Hus. & W., § 103-1—111, and cases cited. See, also: Mormile v. Denison, 109 Wash. 205, 186 Pac. 305.

§ 104. Fraud—Action on Separation Agreement—Pleading—Defenses: Normile v. Denison, 109 Wash. 205, 186 Pac. 305.

§ 106. Equity Powers: Larson v. Larson, 106 Wash. 305, 179 Pac. 841.

ENTICING AND ALIENATING: See Remington's Digest, Hus. & W., §§ 117—122, and cases cited. See, also:

§ 120. Evidence—Admissibility: Eklund v. Hackett, 106 Wash. 287, 179 Pac. 803; Cramer v. Cramer, 106 Wash. 681, 180 Pac. 915.

§ 122. Instructions: Eklund v. Hackett, 106 Wash. 287, 179 Pac. 803; Cramer v. Cramer, 106 Wash. 681, 180 Pac. 915.

Lands given by the sovereign to either spouse as separate property. 16 *Am. Dec.* 186.

Conveyances and contracts between husband and wife. 88 *Am. Dec.* 54; 99 *Am. Dec.* 599; 9 *Am. St. Rep.* 323; 133 *Am. St. Rep.* 607.

When gift from wife to husband inferable from use by him of the

income of real property. 58 *Am. Rep.* 261.

Investment by husband in his own name of wife's separate property in real estate as gift to husband. 6 *L. R. A. (N. S.)* 381; 26 *L. R. A. (N. S.)* 161.

§ 6891. [5916.] Separate Property of Wife.

The property and pecuniary rights of every married woman at the time of her marriage, or afterward acquired by gift, devise, or inheritance, with the rents, issues, and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property, to the same extent and in the same manner that her husband can, property belonging to him. [Cd. '81, § 2400; 1 H. C., § 1398.]

See supra, § 570, separate property of wife exempt, when.

Cited in 1 *Wash.* 79, 83; 4 *Wash.* 264; 6 *Wash.* 509, 512; 19 *Wash.* 550; 20 *Wash.* 202, 205; 21 *Wash.* 239; 28 *Wash.* 117; 46 *Wash.* 582; 52 *Wash.* 3; 58 *Wash.* 19; 74 *Wash.* 237; 76 *Wash.* 115; 78 *Wash.* 39; 82 *Wash.* 110; 86 *Wash.* 195; 93 *Wash.* 197; 97 *Wash.* 315; 113 *Wash.* 381.

WIFE'S SEPARATE ESTATE — What Constitutes: See Remington's Digest, *Hus. & W.*, §§ 15—23-1. See, also:

§ 15. **Separate Property of Wife—Lien of Mortgage—Record as Notice:** *Lincoln County State Bank v. Martin*, 112 *Wash.* 186, 191 *Pac.* 815.

§ 16. **Property of Wife at Time of Marriage:** *Forker v. Henry*, 21 *Wash.* 235, 57 *Pac.* 811.

See, also, *Blankenship Bros. v. Knox*, 105 *Wash.* 416, 178 *Pac.* 629.

§ 17. **Gifts to Wife:** *Abbott v. Wetherby*, 6 *Wash.* 507, 33 *Pac.* 1070, 36 *Am. St. Rep.* 176; *Yake v. Pugh*, 13 *Wash.* 78, 42 *Pac.* 528, 52 *Am. St. Rep.* 17; *Nixon v. Post*, 13 *Wash.* 181, 43 *Pac.* 23; *Corbett v. Sloan*, 52 *Wash.* 1, 99 *Pac.* 1025.

§ 18. **Property Conveyed to or for Use of Wife:** *Goodfellow v. Le May*, 15 *Wash.* 684, 47 *Pac.* 25; *Stewart v. Kleinschmidt*, 51 *Wash.* 90, 97 *Pac.* 1105; *Christopher v. Ferris*, 55 *Wash.* 534, 104 *Pac.* 818.

See, also, *Parke v. Case*, 113 *Wash.* 263, 193 *Pac.* 688.

§ 19. **Property Purchased by Wife:** *United States Fidelity & Guaranty Co. v. Lee*, 58 *Wash.* 16, 107 *Pac.* 870.

See, also, *Finn's Estate*, In re, 106 *Wash.* 137, 179 *Pac.* 103; *Rawlings v. Heal*, 111 *Wash.* 218, 190 *Pac.* 237.

§ 20. **Proceeds of Separate Property:** *Harris v. Van de Vanter*, 17 *Wash.* 489, 50 *Pac.* 50; *Elliott v. Hawley*, 31 *Wash.*

585, 76 *Pac.* 93, 101 *Am. St. Rep.* 1116; *Hester v. Stine*, 46 *Wash.* 469, 90 *Pac.* 594; *Smith v. Weed*, 75 *Wash.* 452, 134 *Pac.* 1070; *Carlson v. Rea*, 94 *Wash.* 218, 161 *Pac.* 1195.

See, also, *Finn's Estate*, In re, 106 *Wash.* 137, 179 *Pac.* 103; *Rawlings v. Heal*, 111 *Wash.* 218, 190 *Pac.* 237.

§ 21. **Earnings of Wife:** *Abbott v. Wetherby*, 6 *Wash.* 507, 33 *Pac.* 1070, 36 *Am. St. Rep.* 176; *Brookman v. State Ins. Co.*, 18 *Wash.* 308, 31 *Pac.* 395; *Sherlock v. Denny*, 28 *Wash.* 170, 68 *Pac.* 452; *Gage v. Gage*, 78 *Wash.* 262, 138 *Pac.* 886.

See, also, *Foy v. Pacific Power & Light Co.*, 105 *Wash.* 525, 178 *Pac.* 452.

§ 22. **Estoppel to Claim Property:** *Yesler v. Hochstettler*, 4 *Wash.* 349, 30 *Pac.* 398; *Kemp v. Folsom*, 14 *Wash.* 16, 43 *Pac.* 1100; *Harris v. Van de Vanter*, 17 *Wash.* 489, 50 *Pac.* 50; *Glaze v. Pullman State Bank*, 91 *Wash.* 187, 157 *Pac.* 488.

§ 23. **Presumptions as to Ownership:** *Webster v. Thorndyke*, 11 *Wash.* 390, 39 *Pac.* 677.

See, also, *Blankenship Bros. v. Knox*, 105 *Wash.* 416, 178 *Pac.* 629.

§ 23-1. **Evidence as to Ownership—Weight and Sufficiency:** *Donovan v. Olsen*, 47 *Wash.* 441, 92 *Pac.* 276; *Dobbins v. Dexter Horton & Co.*, 62 *Wash.* 423, 113 *Pac.* 1088; *Hetrick v. Smith*, 67 *Wash.* 664, 122 *Pac.* 363.

See, also, *Foy v. Pacific Power & Light Co.*, 105 *Wash.* 525, 178 *Pac.* 452.

RIGHTS AND LIABILITIES OF HUSBAND—Authority: See Remington's Digest, *Hus. & W.*, §§ 24, 24-1; *Forker v. Henry*, 21 *Wash.* 235, 57 *Pac.* 811; *Horr v. Hollis*, 20 *Wash.* 424, 55 *Pac.* 565;

Coonrod v. Studebaker, 53 Wash. 32, 101 Pac. 489.

See, also, Blankenship Bros. v. Knox, 105 Wash. 416, 178 Pac. 629.

LIABILITIES AND CHARGES: See Remington's Digest, Hus. & W., §§ 25—31-1. See, also:

§ 29. Presumptions: Blankenship Bros. v. Knox, 105 Wash. 416, 178 Pac. 629.

CONVEYANCES AND CONTRACTS TO CONVEY: See Remington's Digest, Hus. & W., §§ 32—34; Nixon v. Post, 13 Wash. 181, 43 Pac. 23; Goodfellow v. Le May, 15 Wash. 694, 47 Pac. 25; Whiting v. Doughton, 31 Wash. 327, 71 Pac. 1026.

See, also, Parke v. Case, 113 Wash. 263, 193 Pac. 688.

— **Contracts With Husband Jointly:** Katz v. Judd, 108 Wash. 557, 185 Pac. 613.

Conveyances by Husband and Wife: See Remington's Digest, Hus. & W., § 2-1; Heinemann v. Sullivan, 57 Wash. 346, 106 Pac. 911.

Agency of Husband for Wife: See Remington's Digest, Hus. & W., § 3; Cat-

tell v. Fergusson, 3 Wash. 541, 28 Pac. 750; Richmond v. Voorhees, 10 Wash. 316, 38 Pac. 1014.

See, also, Boyd v. Bondy, 113 Wash. 384, 194 Pac. 393.

Conveyances by Wife to or for Husband: See Remington's Digest, Hus. & W., § 5-1; Powers v. Munson, 74 Wash. 234, 133 Pac. 453; Yeager v. Yeager, 82 Wash. 271, 144 Pac. 22; Thompson v. Brozo, 92 Wash. 79, 159 Pac. 105; Brown v. Davis, 98 Wash. 442, 167 Pac. 1095.

— **Rights of Survivor and Creditors:** See Remington's Digest, Hus. & W., § 7-1; Scott v. Stark, 75 Wash. 610, 135 Pac. 643; Union Securities Co. v. Smith, 93 Wash. 115, 160 Pac. 304.

Statutes designating separate property of wife. 76 **Am. Dec.** 366.

Whether deed to wife can vest property as separate estate or create presumption that property so vested. 96 **Am. Dec.** 423.

Liability of wife for husband's torts. 12 **A. L. R.** 1459.

§ 6892. [5917.] Community Property Defined—Husband's Control of Personality.

Property, not acquired or owned as prescribed in the next two preceding sections, acquired after marriage by either husband or wife, or both, is community property. The husband shall have the management and control of community personal property, with a like power of disposition as he has of his separate personal property, except he shall not devise by will more than one-half thereof. [Cd. '81, § 2409; 1 H. C., § 1399.]

See supra, § 1342, descent of.

See infra, § 6905, liability for debts of each other.

Cited in 1 Wash. 79; 3 Wash. 483, 484; 4 Wash. 276; 5 Wash. 190; 6 Wash. 510; 7 Wash. 410; 13 Wash. 579; 20 Wash. 205; 39 Wash. 298; 46 Wash. 582; 48 Wash. 667; 54 Wash. 267; 57 Wash. 513; 59 Wash. 653; 61 Wash. 395; 65 Wash. 128; 66 Wash. 197; 75 Wash. 644; 76 Wash. 116; 78 Wash. 243, 477; 79 Wash. 134; 82 Wash. 110, 112; 83 Wash. 161; 86 Wash. 195, 534; 89 Wash. 41, 512; 93 Wash. 198; 96 Wash. 148; 97 Wash. 314, 315, 317; 98 Wash. 48, 545, 606; 101 Wash. 279; 103 Wash. 469; 105 Wash. 203; 108 Wash. 642; 110 Wash. 633; 113 Wash. 381.

See notes to § 6893, infra.

In an action for the death of a minor son, contributory negligence of the father is a defense to a recovery by the mother,

in view of this section: Crevelli v. Chicago, Milwaukee & St. Paul R. Co., 98 Wash. 42, 167 Pac. 66.

Character of property as community or separate where title is initiated before, but not completed until after, death of one spouse. 17 **L. R. A. (N. S.)** 154; 46 **L. R. A. (N. S.)** 1033.

Presumption as to common hoard when earnings of both spouses or of family are invested in the name of one spouse. 35 **L. R. A. (N. S.)** 713.

Applicability of the community laws of the state to real property acquired from the federal government. 26 **L. R. A. (N. S.)** 1117.

§ 6893. [5918.] Community Realty, Conveyance of, etc.

The husband has the management and control of the community real property, but he shall not sell, convey, or encumber the community

real estate, unless the wife join with him in executing the deed or other instrument of conveyance by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument of conveyance must be acknowledged by him and his wife: Provided, however, that all such community real estate shall be subject to the liens of mechanics and others for labor and materials furnished in erecting structures and improvements thereon as provided by law in other cases, to liens of judgments recovered for community debts, and to sale on execution issued thereon. [Cd. '81, § 2410; 1 H. C., § 1400.]

For provisions to protect innocent purchasers of community real property, see §§ 10577—10580, *infra*. As to conveyances of community property between husband and wife, and the execution of a power of attorney by either authorizing the sale of such property, see §§ 10572—10576, *infra*.

See *supra*, § 1145, community interest in land, how charged with mechanics' liens.

See *infra*, § 5828, burden of proof in transactions between husband and wife.

See *infra*, § 10577, record title, effect of on community lands.

See *infra*, § 10578, inventory of separate claims.

See *infra*, § 10575, power of attorney to convey community property.

Cited in 1 Wash. 79, 81, 82, 85; 3 Wash. 367, 481, 483, 484; 6 Wash. 502; 9 Wash. 459, 471; 10 Wash. 244; 17 Wash. 87; 20 Wash. 52; 21 Wash. 544; 23 Wash. 390; 25 Wash. 463; 31 Wash. 395; 40 Wash. 591; 57 Wash. 595; 60 Wash. 79; 69 Wash. 462; 75 Wash. 644; 78 Wash. 39; 89 Wash. 41, 472; 97 Wash. 315; 98 Wash. 606; 110 Wash. 633.

COMMUNITY PROPERTY: See Remington's Digest, Hus. & W., §§ 44—103.

§ 44. **Nature of Community Relation:** Lemon v. Waterman, 2 W. T. 485, 7 Pac. 899; Holyoke v. Jackson, 3 W. T. 235, 3 Pac. 841; Ryan v. Ferguson, 3 Wash. 356, 28 Pac. 910; Brotton v. Langert, 1 Wash. 73, 23 Pac. 688.

§ 45. **What Law Governs:** Freeberger v. Gazzam, 5 Wash. 772, 32 Pac. 732; Armstrong v. Oakley, 23 Wash. 122, 62 Pac. 499; Dormitzer v. German Sav. & Loan Soc., 23 Wash. 132, 62 Pac. 862; Elliott v. Hawley, 34 Wash. 585, 76 Pac. 93, 101 Am. St. Rep. 1116; Brookman v. Durkee, 46 Wash. 578, 90 Pac. 914, 123 Am. St. Rep. 944, 13 Ann. Cas. 839, 12 L. R. A. (N. S.) 921; Stewart v. Klien-schmidt, 51 Wash. 90, 97 Pac. 1105; Celpe v. Lindblom, 57 Wash. 106, 106 Pac. 634; Meyers v. Albert, 76 Wash. 218, 135 Pac. 1003.

§ 46. **Statutory Provisions:** Holyoke v. Jackson, 3 W. T. 235, 3 Pac. 841; Board of Trade v. Hayden, 4 Wash. 263, 30 Pac. 87, 32 Pac. 224, 31 Am. St. Rep. 919, 16 L. R. A. 530; Warburton v. White, 18 Wash. 511, 52 Pac. 233, 532; Ross v. Howard, 31 Wash. 393, 72 Pac. 74; Guye v. Guye, 63 Wash. 340, 115 Pac. 731, 37 L. R. A. (N. S.) 186.

§ 47. **Existence of Community:** Stans v. Bailey, 9 Wash. 115, 37 Pac. 316; Bunker v. Tattrup, 20 Wash. 318, 55 Pac. 122; Sloan's Estate, *In re*, 50 Wash.

86, 96 Pac. 684, 17 L. R. A. (N. S.) 960; Morse v. Johnson, 88 Wash. 57, 152 Pac. 677.

See, also, Engstrom v. Peterson, 107 Wash. 523, 182 Pac. 623.

§ 47-1. **Property Acquired Before Marriage:** Beneke v. Beneke, 47 Wash. 178, 91 Pac. 641; Loeper v. Loeper, 56 Wash. 647, 106 Pac. 183; Morse v. Johnson, 88 Wash. 57, 152 Pac. 677.

See, also, Slasor v. Slasor, 111 Wash. 90, 189 Pac. 546.

§ 48. **Property Acquired During Marriage in General:** Lemon v. Waterman, 2 W. T. 485, 7 Pac. 899; Yesler v. Hochstettler, 4 Wash. 349, 30 Pac. 398; Calhoun v. Leary, 6 Wash. 17, 32 Pac. 1070; Mabie v. Whittaker, 10 Wash. 656, 39 Pac. 172; Kromer v. Friday, 10 Wash. 621, 39 Pac. 229, 32 L. R. A. 671; Empire State Surety Co. v. Ballou, 66 Wash. 76, 118 Pac. 923; Sortore v. Sortore, 70 Wash. 410, 126 Pac. 915; Converse v. La Barge, 92 Wash. 282, 158 Pac. 958; Schweiter v. Hooker, 94 Wash. 642, 162 Pac. 981; Mason's Estate, *In re*, 95 Wash. 564, 164 Pac. 205.

See, also, Beyerle v. Bartsch, 111 Wash. 287, 190 Pac. 239.

— Time of Acquisition: Folsom v. Folsom, 106 Wash. 315, 179 Pac. 847.

— Acquired During Marriage — Presumption: Halffman v. Halffman, 113 Wash. 320, 194 Pac. 371.

§ 49. **Public Lands Acquired by Grant or Entry:** Gardner v. Port Blakely Mill Co., 8 Wash. 1, 35 Pac. 402; Bolton v. La Camas Water Power Co., 10 Wash. 216, 38 Pac. 1043; Kromer v. Friday, 10 Wash. 621, 39 Pac. 229, 32 L. R. A. 671; Phoenix Min. etc. Co. v. Scott, 20 Wash. 48, 54 Pac. 777; Forker v. Henry, 21 Wash. 235, 57 Pac. 811; Carratt v. Carratt, 32 Wash. 517, 73 Pac. 481; Cox

v. Tompkinson, 39 Wash. 70, 80 Pac. 1005; Cunningham v. Krutz, 41 Wash. 190, 83 Pac. 109, 7 L. R. A. (N. S.) 967; Hall v. Hall, 41 Wash. 186, 83 Pac. 108, 111 Am. St. Rep. 1016; Rogers v. Minneapolis Threshing Machine Co., 48 Wash. 19, 92 Pac. 774, 95 Pac. 1014; James v. James, 51 Wash. 60, 97 Pac. 1113; Delacey v. Commercial Trust Co., 51 Wash. 542, 99 Pac. 574, 130 Am. St. Rep. 1112; Krieg v. Lewis, 56 Wash. 196, 105 Pac. 483, 26 L. R. A. (N. S.) 1117; Curry v. Wilson, 57 Wash. 509, 107 Pac. 367; Eckert v. Schmidt, 60 Wash. 23, 110 Pac. 635; Guye v. Guye, 63 Wash. 340, 115 Pac. 731, 37 L. R. A. (N. S.) 186; Teynor v. Heible, 74 Wash. 222, 133 Pac. 1, 46 L. R. A. (N. S.) 1033; Card v. Cerini, 86 Wash. 419, 150 Pac. 610.

§ 50. **Estoppel to Deny Nature of Property:** Castor v. Peterson, 2 Wash. 204, 26 Pac. 223, 26 Am. St. Rep. 854; Frederick v. Shorey, 4 Wash. 75, 29 Pac. 766; Sadler v. Niesz, 5 Wash. 182, 21 Pac. 630, 1030; Nuhn v. Miller, 5 Wash. 405, 31 Pac. 1031, 34 Pac. 152, 34 Am. St. Rep. 868; Calhoun v. Leary, 6 Wash. 17, 32 Pac. 1070; Adams v. Black, 6 Wash. 528, 33 Pac. 1074; Graves v. Smith, 7 Wash. 14, 34 Pac. 213; Canadian etc. Trust Co. v. Bloomer, 14 Wash. 491, 45 Pac. 34; Sengfelder v. Hill, 21 Wash. 371, 58 Pac. 250; Dormitzer v. German Sav. & L. Soc., 23 Wash. 132, 62 Pac. 862; Dane v. Daniel, 23 Wash. 379, 63 Pac. 268; Standard Furniture Co. v. Van Alstine, 31 Wash. 499, 72 Pac. 119; Tresidder's Estate, In re, 70 Wash. 15, 125 Pac. 1034.

§ 51. — **Confusion of Separate and Community Funds:** Yesler v. Hochstettler, 4 Wash. 349, 30 Pac. 398; Hanna v. Reeves, 22 Wash. 6, 60 Pac. 62; Doyle v. Langdon, 80 Wash. 175, 141 Pac. 352; Buchanan's Estate, In re, 89 Wash. 172, 154 Pac. 129.

§ 52. **Property Purchased—In General:** Kromer v. Friday, 10 Wash. 621, 39 Pac. 229, 32 L. R. A. 671; Katterhagen v. Meister, 75 Wash. 112, 134 Pac. 673; Baker v. Murrey, 78 Wash. 241, 138 Pac. 890.

See, also, Finn's Estate, In re, 106 Wash. 137, 179 Pac. 103.

§ 53. — **Property Purchased by Wife or Conveyed to Her:** Yesler v. Hochstettler, 4 Wash. 349, 30 Pac. 398; Abbott v. Wetherby, 6 Wash. 507, 33 Pac. 1070, 36 Am. St. Rep. 176; Brookman v. State Ins. Co., 18 Wash. 308, 51 Pac. 395 (overruled in part in Main v. Scholl, 20 Wash. 201, 54 Pac. 1125); Heintz v. Brown, 46 Wash. 387, 90 Pac. 211, 123 Am. St. Rep. 937.

See, also, Finn's Estate, In re, 106 Wash. 137, 179 Pac. 103.

§ 54. — **On Consideration or Security of Separate Property:** Yesler v. Hoch-

stettler, 4 Wash. 349, 30 Pac. 398; Freeburger v. Gazzam, 5 Wash. 772, 32 Pac. 732; Holly Street Land Co. v. Beyer, 48 Wash. 422, 93 Pac. 1065; Dobbins v. Dexter Horton & Co., 62 Wash. 423, 113 Pac. 1088; Deschamps' Estate, In re, 77 Wash. 514, 137 Pac. 1009.

See, also, Finn's Estate, In re, 106 Wash. 137, 179 Pac. 103.

§ 55. — **Effect of Recitals in Conveyances:** Yesler v. Hochstettler, 4 Wash. 349, 30 Pac. 398; Murphy's Estate, In re, 46 Wash. 574, 90 Pac. 916.

See, also, Slasor v. Slasor, 111 Wash. 90, 189 Pac. 546.

§ 56. **Rent, Profits and Products of Separate Property:** Cannon v. Snipes, 24 Wash. 166, 64 Pac. 167; Guye v. Guye, 63 Wash. 340, 115 Pac. 731, 37 L. R. A. (N. S.) 186.

See, also, Finn's Estate, In re, 106 Wash. 137, 179 Pac. 103.

§ 56-1. **Improvements on Separate Property:** Deschamps' Estate, In re, 77 Wash. 514, 137 Pac. 1009; Glaze v. Pullman State Bank, 91 Wash. 187, 157 Pac. 488.

§ 57-1. **Damages for Injuries to Husband or Wife:** Schneider v. Biberger, 76 Wash. 504, 136 Pac. 701.

§ 58. **Evidence as to Character of Property—Presumptions and Burden of Proof:** Lemon v. Waterman, 2 W. T. 485, 7 Pac. 899; Yesler v. Hochstettler, 4 Wash. 349, 30 Pac. 38; Freeburger v. Caldwell, 5 Wash. 769, 32 Pac. 732; Curry v. Catlin, 9 Wash. 495, 37 Pac. 678, 39 Pac. 101; Woodland Lumber Co. v. Link, 16 Wash. 72, 47 Pac. 222; Armstrong v. Oakley, 23 Wash. 122, 62 Pac. 499; Dormitzer v. German Sav. & Loan Soc., 23 Wash. 132, 62 Pac. 862; Hill v. Young, 7 Wash. 33, 34 Pac. 144; Wooding v. Crain, 10 Wash. 35, 38 Pac. 756; Spurlock v. Port Townsend South R. Co., 13 Wash. 29, 42 Pac. 520; Weymouth v. Sawtelle, 14 Wash. 32, 44 Pac. 109; Brookman v. State Ins. Co., 18 Wash. 308, 51 Pac. 395; Sackman v. Thomas, 24 Wash. 660, 64 Pac. 819; Mattson v. Mattson, 29 Wash. 417, 69 Pac. 1087; Denny v. Schwabacher, 54 Wash. 689, 104 Pac. 137, 132 Am. St. Rep. 1140; Guye v. Guye, 63 Wash. 340, 115 Pac. 731, 37 L. R. A. (N. S.) 186; Patterson v. Bowes, 78 Wash. 476, 139 Pac. 225; Sloan v. West, 63 Wash. 623, 116 Pac. 272; Stewart v. Bank of Endicott, 82 Wash. 106, 143 Pac. 458; Battiany v. McNeley, 83 Wash. 666, 145 Pac. 978; Slocum's Estate, In re, 83 Wash. 158, 145 Pac. 204; Plath v. Mullins, 87 Wash. 403, 151 Pac. 811; Marston v. Rue, 92 Wash. 129, 159 Pac. 111; Union Securities Co. v. Smith, 93 Wash. 115, 160 Pac. 304.

See, also, Finn's Estate, In re, 106 Wash. 137, 179 Pac. 103.

— **Presumptions—Evidence to Overcome—Sufficiency:** Boyd v. Bondy, 113 Wash. 384, 194 Pac. 393.

§ 59. — **Admissibility:** *Graham v. Smart*, 42 Wash. 205, 84 Pac. 824.

§ 60. — **Weight and Sufficiency:** *Hill v. Young*, 7 Wash. 33, 34 Pac. 144; *Curry v. Catlin*, 9 Wash. 495, 37 Pac. 678, 39 Pac. 101; *Woodland Lumber Co. v. Link*, 16 Wash. 72, 47 Pac. 222; *Austin v. Clifford*, 24 Wash. 172, 64 Pac. 155; *Sackman v. Thomas*, 24 Wash. 660, 64 Pac. 819; *Sherlock v. Denny*, 28 Wash. 170, 68 Pac. 452; *Mattson v. Mattson*, 29 Wash. 417, 69 Pac. 1087; *Hill v. Gardner*, 35 Wash. 529, 77 Pac. 808; *O'Sullivan v. O'Sullivan*, 35 Wash. 481, 77 Pac. 806; *Guye v. Plimpton*, 40 Wash. 234, 82 Pac. 596; *Graham v. Smart*, 42 Wash. 205, 84 Pac. 824; *Ballard v. Slyfield*, 47 Wash. 174, 91 Pac. 642; *Dueber v. Wolfe*, 47 Wash. 634, 92 Pac. 455; *Graves v. Graves*, 48 Wash. 664, 94 Pac. 481; *Denny v. Schwabacher*, 54 Wash. 689, 104 Pac. 137, 132 Am. St. Rep. 1140; *Palmer v. Abrahams*, 55 Wash. 352, 104 Pac. 648; *Guye v. Guye*, 63 Wash. 340, 115 Pac. 731, 37 L. R. A. (N. S.) 186; *Worthington v. Crapser*, 63 Wash. 380, 115 Pac. 849; *Clark v. Baker*, 76 Wash. 110, 135 Pac. 1025; *Deschamps' Estate, In re*, 77 Wash. 614, 137 Pac. 1009; *Glaze v. Pullman State Bank*, 91 Wash. 187, 157 Pac. 488; *Lanigan v. Miles*, 102 Wash. 82, 172 Pac. 894.

See, also, *Foy v. Pacific Power & Light Co.*, 105 Wash. 525, 178 Pac. 452.

— **Gifts—Evidence—Sufficiency:** *Bushnell's Estate, In re*, 107 Wash. 331, 182 Pac. 89.

— **Evidence as to Character—Evidence—Sufficiency:** *Slasor v. Slasor*, 111 Wash. 90, 189 Pac. 546.

§ 61. **Rights of Husband and Wife During Existence of Community—Management:** *Castor v. Peterson*, 2 Wash. 204, 26 Pac. 223, 26 Am. St. Rep. 854; *Littell & Smythe Mfg. Co. v. Miller*, 3 Wash. 480, 28 Pac. 1035; *Douthitt v. MacClusky*, 11 Wash. 601, 40 Pac. 186; *Hawkins v. Front St. Cable R. Co.*, 3 Wash. 592, 28 Pac. 1021, 28 Am. St. Rep. 72, 16 L. R. A. 808; *Belt v. Washington Water P. Co.*, 24 Wash. 387, 64 Pac. 525; *Bowers v. Good*, 52 Wash. 384, 100 Pac. 848; *Merrian v. Patrick*, 103 Wash. 442, 174 Pac. 641.

See, also, *Roche v. Madar*, 104 Wash. 21, 175 Pac. 314, 181 Pac. 857.

§ 62. — **Agency for Wife:** *Anderson v. Bigelow*, 16 Wash. 198, 47 Pac. 426.

§ 66. **Sales, Conveyances and Encumbrances—In General:** *Hoover v. Chambers*, 3 W. T. 26, 13 Pac. 547; *Andrews v. Andrews*, 3 W. T. 286, 14 Pac. 68; *Isaacs v. Holland*, 4 Wash. 54, 29 Pac. 976; *Colcord v. Leddy*, 4 Wash. 791, 31 Pac. 320; *Adams v. Black*, 6 Wash. 528, 33 Pac. 1074; *Holyoke v. Jackson*, 3 W. T. 235, 3 Pac. 841; *Sadler v. Niesz*, 5 Wash. 182, 31 Pac. 630, 1030; *Mabie v. Whittaker*, 10 Wash. 656, 39 Pac. 172;

Katterhagen, v. Meister, 75 Wash. 112, 134 Pac. 673.

§ 67. — **Sale by Husband:** *Graves v. Smith*, 7 Wash. 14, 34 Pac. 213; *Thygesen v. Neufelder*, 9 Wash. 455, 37 Pac. 672; *Mabie v. Whittaker*, 10 Wash. 656, 39 Pac. 172; *Fowler v. Burke*, 13 Wash. 13, 42 Pac. 624; *Gunderson v. Gunderson*, 25 Wash. 459, 65 Pac. 791; *O'Connor v. Jackson*, 33 Wash. 219, 74 Pac. 372; *Washington State Bank v. Dickson*, 35 Wash. 641, 77 Pac. 1067; *Koth v. Kessler*, 59 Wash. 641, 110 Pac. 540; *Marston v. Rue*, 92 Wash. 129, 159 Pac. 111.

§ 68. — **Sale by Wife:** *Castor v. Peterson*, 2 Wash. 204, 26 Pac. 223, 26 Am. St. Rep. 854; *Grippen v. Benham*, 5 Wash. 589, 32 Pac. 555; *Anders v. Bouska*, 61 Wash. 393, 112 Pac. 523; *Blum v. Smith*, 66 Wash. 192, 119 Pac. 183; *Marston v. Rue*, 92 Wash. 129, 159 Pac. 111; *McAlpine v. Kohler & Chase*, 96 Wash. 146, 164 Pac. 755; *Litzell v. Hart*, 96 Wash. 471, 165 Pac. 393.

§ 69. — **Leases and Contracts to Lease:** *Hoover v. Chambers*, 3 W. T. 26, 13 Pac. 547; *Tibbals v. Iffland*, 10 Wash. 451, 39 Pac. 102; *Ryan v. Lambert*, 49 Wash. 649, 96 Pac. 232; *Monroe v. Stayt*, 57 Wash. 592, 107 Pac. 517, 30 L. R. A. (N. S.) 1102; *Spreitzer v. Miller*, 98 Wash. 601, 168 Pac. 179.

See, also, *Zinn v. Knopes*, 111 Wash. 606, 191 Pac. 822.

— **Lease by Husband Alone—Validity:** *Hinkhouse v. Wacker*, 112 Wash. 253, 191 Pac. 881.

§ 70. — **Estoppel to Assert Invalidity:** *Sadler v. Niesz*, 5 Wash. 182, 31 Pac. 630, 1030; *Konnerup v. Frandsen*, 8 Wash. 551, 36 Pac. 493; *Canadian etc. Trust Co. v. Bloomer*, 14 Wash. 491, 45 Pac. 34; *Whiting v. Doughton*, 31 Wash. 327, 71 Pac. 1026; *Daly v. Rizzutto*, 59 Wash. 62, 109 Pac. 276, 29 L. R. A. (N. S.) 467; *Olson v. Springer*, 60 Wash. 77, 110 Pac. 807; *Magee v. Risley*, 82 Wash. 178, 143 Pac. 1088; *Hargrave v. Colfax*, 89 Wash. 467, 154 Pac. 824; *Schweiter v. Hooker*, 94 Wash. 642, 162 Pac. 981.

§ 71. — **Rights and Liabilities of Purchasers:** *Holyoke v. Jackson*, 3 W. T. 235, 3 Pac. 841; *Isaacs v. Holland*, 4 Wash. 54, 29 Pac. 976; *Dietz v. Winchill*, 6 Wash. 109, 32 Pac. 1056; *Colcord v. Leddy*, 4 Wash. 791, 31 Pac. 320; *Tryon v. Davis*, 8 Wash. 106, 35 Pac. 598; *Wooding v. Crain*, 10 Wash. 35, 38 Pac. 756; *Payne v. Still*, 10 Wash. 433, 38 Pac. 994; *Norgren v. Jordon*, 46 Wash. 437, 90 Pac. 597; *Daly v. Rizzutto*, 59 Wash. 62, 109 Pac. 276, 29 L. R. A. (N. S.) 467.

§ 72. — **Mortgage by Husband:** *Schwabacher Bros. & Co. v. Van Reypen*, 6 Wash. 154, 32 Pac. 1061; *First Nat. Bank v. Fowler*, 54 Wash. 65, 102 Pac. 1038.

§ 73. — **Mortgage by Wife:** Humphries v. Sorenson, 33 Wash. 563, 74 Pac. 690; Olson v. Springer, 60 Wash. 77, 110 Pac. 807.

§ 74. **Community and Separate Debts—In General:** Ross v. Howard, 31 Wash. 393, 72 Pac. 74; Graham v. Smart, 42 Wash. 205, 84 Pac. 824; Johns v. Clother, 78 Wash. 602, 139 Pac. 755; Williams v. Beebe, 79 Wash. 133, 139 Pac. 867.

See, also, **Contracts With Husband Jointly:** Katz v. Judd, 108 Wash. 557, 185 Pac. 613.

— **Community Debts—Credit to Husband:** Northern Bank & Trust Co. v. Coffin, 113 Wash. 326, 194 Pac. 404.

§ 75. — **What Law Governs:** La Selle v. Woolery, 11 Wash. 337, 39 Pac. 663, 32 L. R. A. 73 (overruled in La Selle v. Woolery, 14 Wash. 70, 44 Pac. 115, 53 Am. St. Rep. 855, 32 L. R. A. 75); Deering v. Holcomb, 26 Wash. 588, 67 Pac. 240, 561; Clark v. Eltinge, 29 Wash. 215, 69 Pac. 736; Clark v. Eltinge, 34 Wash. 323, 75 Pac. 866; Elliott v. Hawley, 34 Wash. 585, 76 Pac. 93, 101 Am. St. Rep. 1116; Mantle v. Dabney, 44 Wash. 193, 87 Pac. 122.

See, also, Huyvaerts v. Roedtz, 105 Wash. 657, 178 Pac. 801.

§ 76. — **Property Subject to Liability in General:** Lemon v. Waterman, 2 W. T. 485, 7 Pac. 899; Brotton v. Langer, 1 Wash. 73, 23 Pac. 688; Stockand v. Bartlett, 4 Wash. 730, 31 Pac. 24; Hill's Estate, In re, 6 Wash. 285, 33 Pac. 585; Sweet, Dempster & Co. v. Dillon, 13 Wash. 521, 43 Pac. 637; Kemp v. Folsom, 14 Wash. 16, 43 Pac. 1100; Harris v. Van de Vanter, 17 Wash. 489, 50 Pac. 50; Freundt v. Hahn, 28 Wash. 117, 68 Pac. 184; Goodfellow v. Le May, 15 Wash. 684, 47 Pac. 25; Conrad v. Mertz, 45 Wash. 119, 87 Pac. 1118, 122 Am. St. Rep. 889; Bramel v. Ratliff, 54 Wash. 581, 103 Pac. 817; Glaze v. Pullman State Bank, 91 Wash. 187, 157 Pac. 488.

§ 77. — **Community Personal Property:** Powell v. Pugh, 13 Wash. 577, 43 Pac. 879; Gund v. Parke, 15 Wash. 393, 46 Pac. 408; Morse v. Estabrook, 19 Wash. 92, 52 Pac. 531, 67 Am. St. Rep. 723 (all overruled in Schramm v. Steele, 97 Wash. 309, 166 Pac. 634); Olive Co. v. Meek, 103 Wash. 467, 175 Pac. 33.

§ 78. **Debts Contracted by Husband in General:** Oregon Imp. Co. v. Sagmeister, 4 Wash. 710, 30 Pac. 1058, 19 L. R. A. 233; Calhoun v. Leary, 6 Wash. 17, 32 Pac. 1070; Bryant v. Stetson & Post Mill Co., 13 Wash. 692, 43 Pac. 931; McDonough v. Craig, 10 Wash. 239, 38 Pac. 1034; Exchange Nat. Bank v. Wolverton, 11 Wash. 108, 39 Pac. 248; Solicitors' Loan & T. Co. v. Robins, 14 Wash. 507, 45 Pac. 39; Barrett v. O'Loughlin, 14 Wash. 259, 44 Pac. 267;

Shuey v. Adair, 24 Wash. 378, 64 Pac. 536; Rea v. Eslick, 87 Wash. 125, 151 Pac. 256; Loutzenhiser v. Peck, 89 Wash. 435, 154 Pac. 814; Thomas v. Seougale, 90 Wash. 162, 155 Pac. 847, Ann. Cas. 1918C, 452.

§ 79. — **Necessaries and Family Expenses:** Littell & Smith Mfg. Co. v. Miller, 3 Wash. 480, 28 Pac. 1035.

§ 80. — **Debts Incurred in Separate or Community Business:** Abbott v. Wetherby, 6 Wash. 507, 33 Pac. 1070, 36 Am. St. Rep. 176; Oregon Imp. Co. v. Sagmeister, 4 Wash. 710, 30 Pac. 1058, 19 L. R. A. 233; Beil v. Waudby, 4 Wash. 743, 31 Pac. 18; McDonough v. Craig, 10 Wash. 239, 38 Pac. 1034; Diamond v. Turner, 11 Wash. 189, 39 Pac. 379; Wortman v. Vorhies, 14 Wash. 152, 44 Pac. 129; Lumberman's Nat. Bank v. Gross, 37 Wash. 18, 79 Pac. 470; Philips & Co. v. Langlow, 55 Wash. 385, 104 Pac. 610; Peacock v. Ratliff, 62 Wash. 653, 114 Pac. 507; Godefroy v. Hupp, 93 Wash. 371, 160 Pac. 1056.

§ 81. — **Authority of Wife:** McGlaulin v. Merriam, 7 Wash. 111, 34 Pac. 561; Thygesen v. Neufelder, 9 Wash. 455, 37 Pac. 672; Young v. Porter, 27 Wash. 551, 68 Pac. 362; Anderson v. Harper, 30 Wash. 378, 70 Pac. 965; Hammond v. Jackson, 89 Wash. 510, 154 Pac. 1106; Balkeman v. Grolimund, 92 Wash. 326, 159 Pac. 127; Jones, Rosquist, Killen Co. v. Nelson, 98 Wash. 539, 167 Pac. 1130.

§ 82. — **Bills and Notes:** Bierer v. Blurock, 9 Wash. 63, 36 Pac. 975; McDonough v. Craig, 10 Wash. 239, 38 Pac. 1034; Gund v. Parke, 15 Wash. 393, 46 Pac. 408; McKee v. Whitworth, 15 Wash. 536, 46 Pac. 1045; Reed v. Loney, 22 Wash. 433, 61 Pac. 41; Way v. Lyric Theater Co., 79 Wash. 275, 140 Pac. 320; Northern Bank & Trust Co. v. Graves, 79 Wash. 411, 140 Pac. 328; Fielding v. Ketler, 86 Wash. 194, 149 Pac. 667; Peter v. Hensen, 86 Wash. 413, 150 Pac. 611; McLean v. Burginger, 100 Wash. 570, 171 Pac. 518.

§ 83. — **Guaranty and Suretyship:** Spinning v. Allen, 10 Wash. 570, 39 Pac. 151; Horton v. Donohoe-Kelly Banking Co., 15 Wash. 399, 46 Pac. 409, 47 Pac. 435; Allen v. Chambers, 22 Wash. 304, 60 Pac. 1128; Shuey v. Holmes, 20 Wash. 13, 54 Pac. 540; Shuey v. Holmes, 22 Wash. 193, 60 Pac. 402; Reed v. Loney, 22 Wash. 433, 61 Pac. 41; Floding v. Denholm, 40 Wash. 463, 82 Pac. 738; Bird v. Steele, 74 Wash. 68, 132 Pac. 724; Peter v. Hensen, 86 Wash. 413, 150 Pac. 611; Williams v. Hitchcock, 86 Wash. 536, 150 Pac. 1143; Case Threshing Machine Co. v. Wiley, 89 Wash. 301, 154 Pac. 437; Union Securities Co. v. Smith, 93 Wash. 115, 160 Pac. 304; Kanters v. Kotick, 102 Wash. 523, 173 Pac. 329.

§ 84. — **Torts:** *Brotton v. Langert*, 1 Wash. 73, 23 Pac. 688; *Oudin v. Crossman*, 15 Wash. 519, 46 Pac. 1047; *McGregor v. Johnson*, 58 Wash. 78, 107 Pac. 1049, 27 L. R. A. (N. S.) 1022; *Milne v. Kane*, 64 Wash. 254, 116 Pac. 659, Ann. Cas. 1913A, 318, 36 L. R. A. (N. S.) 88; *Strom v. Toklas*, 78 Wash. 223, 138 Pac. 880; *Prentiss v. Bogart*, 84 Wash. 481, 147 Pac. 39; *Day v. Henry*, 81 Wash. 61, 42 Pac. 439; *Miller v. Gerry*, 81 Wash. 217, 142 Pac. 668; *Kangley v. Rogers*, 85 Wash. 250, 147 Pac. 898; *Wilson v. Stone*, 90 Wash. 365, 156 Pac. 12; *Killingsworth v. Keen*, 89 Wash. 597, 154 Pac. 1093; *Bice v. Brown*, 98 Wash. 416, 167 Pac. 1097; *Schramm v. Steele*, 97 Wash. 309, 166 Pac. 634.

See, also, *Hendrickson v. Smith*, 111 Wash. 82, 189 Pac. 550.

§ 85. **Rights and Remedies of Creditors During Existence of Community:** *Meacham Arms Co. v. Swarts*, 2 W. T. 412, 7 Pac. 859; *Calhoun v. Leary*, 6 Wash. 17, 32 Pac. 1070; *Curry v. Catlin*, 9 Wash. 495, 37 Pac. 678, 39 Pac. 101.

Rights of Action By and Against Husband and Wife as to Community Rights: See *Remington's Digest*, Hus. & W., §§ 86—95. See, also:

§§ 86, 87. **Right of Action—Personal Injuries—Defenses:** *Ostheller v. Spokane & Inland Empire R. Co.*, 107 Wash. 678, 182 Pac. 630.

— **Personal Injuries—Parties:** *Hynes v. Colman Dock Co.*, 108 Wash. 642, 185 Pac. 617.

§ 88. **Right of Wife to Defend:** *Nishimoto v. Vernon*, 107 Wash. 555, 182 Pac. 617.

§ 92. **Liability for Torts of Husband—Presumptions—Pleading:** *Hendrickson v. Smith*, 111 Wash. 82, 189 Pac. 550.

§ 93. **Liability for Tort of Husband—Evidence—Sufficiency:** *Henderickson v. Smith*, 111 Wash. 82, 189 Pac. 550.

§ 94. **Judgment—Form:** *Katz v. Judd*, 108 Wash. 557, 185 Pac. 513; *Western Hdw. & Metal Co. v. Nordeen*, 110 Wash. 150, 188 Pac. 1; *Hendrickson v. Smith*, 111 Wash. 82, 189 Pac. 550.

— **Separate Property of Wife—Personal Judgment Against Husband:** *Turner v. Eddy*, 112 Wash. 652, 192 Pac. 978.

Administration: See *Remington's Digest*, Hus. & W., §§ 99—101; *Ryan v. Fergusson*, 3 Wash. 356, 28 Pac. 910; *Lawrence v. Bellingham Bay etc. R. Co.*, 4 Wash. 664, 30 Pac. 1099; *Hill's Estate*, In re, 6 Wash. 285, 33 Pac. 585; *Magee v. Big Bend Land Co.*, 51 Wash. 406, 99 Pac. 16; *Wiley v. Verhaest*, 52 Wash. 475, 100 Pac. 1008; *Guye's Estate*, In re, 54 Wash. 264, 103 Pac. 25, 132 Am. St. Rep. 1111; *Gamble v. Dawson*, 67 Wash. 72, 120 Pac. 1060, Ann. Cas. 1913D, 501; *Crowe & Co. v. Adkinson Construction Co.*, 67 Wash. 420, 121 Pac. 841, Ann. Cas. 1913D, 273; *First National Bank v. Cunningham*, 72 Wash. 532, 130 Pac. 1148.

Actions by or Against Representatives: See *Remington's Digest*, Hus. & W., § 102; *Churchill v. Stephenson*, 14 Wash. 620, 45 Pac. 28; *Daniels v. Spear*, 65 Wash. 121, 117 Pac. 737.

Subsequent Marriage of Survivor: See *Remington's Digest*, Hus. & W., § 103; *Cannon's Estate*, In re, 18 Wash. 101, 50 Pac. 1021.

Debts or claims for which community property is liable. Ann. Cas. 1913A, 319; 19 L. R. A. 233; 27 L. R. A. (N. S.) 1022; 36 L. R. A. (N. S.) 88.

Profits accruing during marriage in connection with property belonging to separate estate of either spouse as community property. 31 L. R. A. (N. S.) 1092.

Effect of conveyance of community property by husband to wife. 69 L. R. A. 378.

§ 6894. [5919.] **Agreements as to Status of.**

Nothing contained in any of the provisions of this chapter, or in any law of this state, shall prevent the husband and wife from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterward to be acquired, to take effect upon the death of either. But such agreement may be made at any time by the husband and wife by the execution of an instrument in writing under their hands and seals, and to be witnessed, acknowledged, and certified in the same manner as deeds to real estate are required to be, under the laws of the state, and the same may at any time thereafter be altered or amended in the same manner: Provided, however, that such agreement shall not derogate from the rights of creditors, nor be construed to curtail the

powers of the superior court to set aside or cancel such agreement for fraud, or under some other recognized head of equity jurisdiction, at the suit of either party. [Cd. '81, § 2416; 1 H. C., § 1401.]

"Chapter": See note to § 6898, *infra*.

As to burden of proof in cases involving transactions between husband and wife, see § 5828.

As to the manner in which deeds may be executed, consult § 10551 et seq.

Instruments relating to, to be recorded: See *infra*, § 10601.

Cited in 4 Wash. 274, 277, 284; 34 Wash. 101; 82 Wash. 111; 102 Wash. 87; 105 Wash. 118, 120; 113 Wash. 381.

An act entitled "An act relating to and defining the property rights of husband and wife" is sufficient to support the provisions of this section, authorizing an agreement between husband and wife passing the title to community realty to the survivor upon the death of either spouse, as such provision is germane thereto: McKnight v. McDonald, 34 Wash. 98, 74 Pac. 1060.

Contracts and Conveyances Between Husband and Wife: See Remington's Digest, Hus. & W., §§ 63—65; **Statutory Provisions:** McKnight v. McDonald, 34 Wash. 98, 74 Pac. 1060; Stewart v. Bank of Endicott, 82 Wash. 106, 143 Pac. 458.

See, also:

Conveyance of Separate Property to the Community—Effect: Volz v. Zang, 113 Wash. 378, 194 Pac. 409.

Since simultaneous deeds of community property by husband and wife to each other, placed in escrow to be delivered to the survivor on the death of either, take effect presently, if at all, and since

they negative one another, there can be no effective delivery: Bloor v. Bloor, 105 Wash. 110, 177 Pac. 722.

§ 64. — Transfers and Conveyances: Ewing v. Wagenen, 6 Wash. 39, 32 Pac. 1009; Klosterman v. Harrington, 11 Wash. 138, 39 Pac. 376; Dillon v. Dillon, 13 Wash. 594, 43 Pac. 894; Sawtelle v. Weymouth, 14 Wash. 21, 43 Pac. 1101; Churchill v. Stephenson, 14 Wash. 620, 45 Pac. 28; Zeimantz v. Blake, 39 Wash. 6, 80 Pac. 822; Hayden v. Zerbst, 49 Wash. 103, 94 Pac. 909; Carpenter v. Brackett, 57 Wash. 460, 107 Pac. 359; Shorett v. Signor, 58 Wash. 89, 107 Pac. 1033; Sponogle v. Sponogle, 86 Wash. 649, 151 Pac. 43.

§ 65. — Gifts: Abbott v. Wetherby, 6 Wash. 507, 33 Pac. 1070, 36 Am. St. Rep. 176; Deering v. Holcomb, 26 Wash. 588, 67 Pac. 240, 561; Sherlock v. Denny, 28 Wash. 170, 68 Pac. 452; Smith v. Weed, 75 Wash. 452, 136 Pac. 691; Chase & Baker Co. v. Olmsted, 93 Wash. 306, 160 Pac. 952.

See, also, Bushnell's Estate, *In re*, 107 Wash. 331, 182 Pac. 89.

§ 6895. [5920.] Separate Earnings of Wife, etc.

A wife may receive the wages of her personal labor, and maintain an action therefor in her own name, and hold the same in her own right, and she may prosecute and defend all actions at law for the preservation and protection of her rights and property as if unmarried. [Cd. '81, § 2404; 1 H. C., § 1402.]

See *supra*, § 181, husband and wife must join in actions, when.

See *supra*, § 182, wife as party to actions.

See *infra*, § 7348, injuries to intoxicated husband.

Cited in 6 Wash. 512; 28 Wash. 176; 86 Wash. 195.

Earnings of Husband or Wife: See Remington's Digest, Hus. & W., § 57; Abbott v. Wetherby, 6 Wash. 507, 33 Pac. 1070, 36 Am. St. Rep. 176; Yake v. Pugh, 13 Wash. 78, 42 Pac. 528, 52 Am.

St. Rep. 17; Marsh v. Fisher, 69 Wash. 570, 125 Pac. 951.

See, also, Rawlings v. Heal, 111 Wash. 218, 190 Pac. 237.

Right of wife not living with husband to her own earnings. 10 A. L. R. 778.

§ 6896. [5921.] Earnings of Wife and Minor Children.

The earnings and accumulations of the wife and of her minor children living with her, or in her custody while she is living separate from her

husband, are the separate property of the wife. [Cd. '81, § 2413; 1 H. C., § 1403.]

See supra, § 570, separate property of wife exempt, when.

Cited in 28 Wash. 176; 86 Wash. 195.

§ 6897. [5922.] Tenancy in Dower and by Curtesy Abolished.

No estate is allowed the husband as tenant by curtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband. [Cd. '81, § 2414; 1 H. C., § 1405.]

See supra, § 1343, tenancy in dower and curtesy abolished.

§ 6898. [5923.] Liberal Construction.

The rule of common law that statutes in derogation thereof are to be strictly construed has no application to this chapter. This chapter establishes the law of the state respecting the subject to which it relates, and its provisions and all proceedings under it shall be liberally construed with a view to effect its object. [Cd. '81, § 2417; 1 H. C., § 1406.]

"This chapter" is chapter 183 of the Code of 1881, the provisions of which, as modified by subsequent legislation, are embodied in this title, and in §§ 1342, 10573, 10579.

Cited in 4 Wash. 265, 283, 284; 13 Wash. 581.

§ 6899. [5924.] Chapter not Retroactive.

This chapter shall not be construed to operate retrospectively, and any right established, accrued, or accruing, or in anything done prior to the time this chapter goes into effect, shall be governed by the law in force at the time such right was established or accrued. [Cd. '81, § 2418; 1 H. C., § 1407.]

"This chapter": See note to last section.

§ 6900. [5925.] Married Persons may Acquire and Hold Property, How.

Every married person shall hereafter have the same right and liberty to acquire, hold, enjoy, and dispose of every species of property, and to sue and be sued as if he or she were unmarried. [Cd. '81, § 2396; 1 H. C., § 1408.]

See notes to § 6902, *infra*.

Cited in 1 Wash. 79, 81; 3 Wash. 483; 58 Wash. 19; 74 Wash. 237; 98 Wash. 4 Wash. 264, 278, 280, 283, 364; 18 Wash. 605; 102 Wash. 87, 584; 113 Wash. 382, 310; 20 Wash. 202, 269; 46 Wash. 472; 383.

§ 6901. [5926.] Civil Disabilities of Wife Abolished.

All laws which impose or recognize civil disabilities upon a wife, which are not imposed or recognized as existing as to the husband, are hereby abolished, and for any unjust usurpation of her natural or property rights she shall have the same right to appeal in her own individual name to the courts of law or equity for redress and protection that the husband has: Provided always, that nothing in this chapter shall be construed to confer upon the wife any right to vote or hold office, except as otherwise provided by law. [L. '79, p. 151, § 1; Cd. '81, § 2398; 1 H. C., § 1409.]

"This chapter": See note to § 6898.

See notes to next section.

Cited in 1 Wash. 79; 3 Wash. 483, 484; 4 Wash. 264, 283; 20 Wash. 202, 269; 65 Wash. 498; 76 Wash. 508; 102 Wash. 584.

§ 6902. [5927.] Contracts and Liabilities of Wife.

Contracts may be made by wife, and liabilities incurred, and the same may be enforced by or against her to the same extent and in the same manner as if she were unmarried. [Cd. '81, § 2406; 1 H. C., § 1410.]

Cited in 4 Wash. 278, 280, 364; 15 Wash. 144; 16 Wash. 529; 20 Wash. 202; 24 Wash. 683; 46 Wash. 473; 74 Wash. 237; 79 Wash. 134; 89 Wash. 513; 98 Wash. 547, 605; 102 Wash. 584; 113 Wash. 381.

DISABILITIES AND PRIVILEGES OF COVERTURE: See Remington's Digest, Hus. & W., §§ 8—14.

§§ 8, 9. Status of Married Women in General: Phelps v. Steamship City of Panama, 1 W. T. 518; Rosencrantz v. Territory, 2 W. T. 267, 5 Pac. 305; Board of Trade v. Hayden, 4 Wash. 263, 30 Pac. 87, 32 Pac. 224, 31 Am. St. Rep. 919, 16 L. R. A. 530; Kimble v. Kimble, 17 Wash. 75, 49 Pac. 216; Littell & Smythe Mfg. Co. v. Miller, 3 Wash. 480, 28 Pac. 1035.

§ 10. Eligibility for Office or Public Employment: Rosencrantz v. Territory, 2 W. T. 267, 5 Pac. 305; Shilling v. Territory, 2 W. T. 283, 5 Pac. 926; Walker v. Territory, 2 W. T. 286, 5 Pac. 315 (overruled); Harland v. Territory, 3 W. T. 131, 13 Pac. 453.

§ 11. Effect of Incapacity or Absence of Husband or Separation: State ex rel. Achey v. Creech, 18 Wash. 186, 51 Pac. 363.

§ 12. Capacity to Take and Hold Property: Brookman v. State Ins. Co., 18 Wash. 308, 51 Pac. 395.

§ 14. Contracts Before Marriage: Anderson v. Hilker, 38 Wash. 632, 80 Pac. 848.

This section was not intended to authorize a wife to establish a domicile

for herself, irrespective of her husband's domicile, during the existence of the marital relation: Buchholz v. Buchholz, 63 Wash. 213, 115 Pac. 88, Ann. Cas. 1912D, 395.

§ 29. Contracts Jointly With Husband: See Remington's Digest, Hus. & W., § 29; Stubblefield v. McAuliff, 20 Wash. 442, 55 Pac. 637; Oates v. Shuey, 25 Wash. 597, 66 Pac. 58; Graves v. Columbia Underwriters, 93 Wash. 196, 160 Pac. 436.

Bills and Notes: See Remington's Digest, Hus. & W., § 30; Hemrich v. Wist, 19 Wash. 516, 53 Pac. 710; Lumbermen's Nat. Bank v. Gross, 37 Wash. 18, 79 Pac. 470; Northern Bank & Trust Co. v. Graves, 79 Wash. 411, 140 Pac. 328; Churchill v. Miller, 90 Wash. 694, 156 Pac. 851; Knickerbocker Co. v. Hawkins, 102 Wash. 582, 173 Pac. 628.

Guaranty and Suretyship: See Remington's Digest, Hus. & W., § 31; Kittitas County v. Travers, 16 Wash. 528, 48 Pac. 340.

Torts: See Remington's Digest, Hus. & W., § 31-1; Guignon v. Campbell, 80 Wash. 543, 141 Pac. 1031.

Power of wife to contract and convey under American statutes. 99 Am. Dec. 599.

Liability of wife for medical attendance upon, or funeral expenses of, husband. 5 Ann. Cas. 832; 18 Ann. Cas. 856.

Liability of separate estate of wife for her funeral expenses. 6 L. R. A. (N. S.) 917; 37 L. R. A. (N. S.) 754.

§ 6903. [5928.] May Sue Each Other.

Should either husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried. [Cd. '81, § 2401; 1 H. C., 1411.]

Cited in 4 Wash. 265; 24 Wash. 683; 46 Wash. 473.

ACTIONS: See Remington's Digest, Hus. & W., §§ 35—43-2.

§§ 35, 36. Capacity to Sue and be Sued: Judson v. Parry, 38 Wash. 37, 80 Pac. 194; McCain v. Gibbons, 7 Wash. 314, 35 Pac. 64; Sawyer v. Vermont Loan etc. Co., 41 Wash. 524, 84 Pac. 8.

§ 36-1. Rights of Action Between Husband and Wife—Rights of Action in General: Schultz v. Christopher, 65 Wash.

496, 118 Pac. 629, 38 L. R. A. (N. S.) 780.

§ 37. — Conveyances or Acts in Fraud of Wife: Fields v. Fields, 2 Wash. 441, 27 Pac. 267; Kimble v. Kimble, 17 Wash. 75, 49 Pac. 216; Erfurth v. Erfurth, 90 Wash. 521, 156 Pac. 523.

See, also, Normile v. Denison, 109 Wash. 205, 186 Pac. 305.

§ 38. Rights of Action by Husband or Wife or Both—On Contracts: Latimer v. Baker, 25 Wash. 192, 64 Pac. 899.

§ 39. — **For Personal Injuries:** Phelps v. Steamship City of Panama, 1 W. T. 518; Apker v. Hoquiam, 51 Wash. 567, 99 Pac. 746; Horton v. Seattle, 53 Wash. 316, 101 Pac. 1091; Zolawenski v. Aberdeen, 72 Wash. 95, 129 Pac. 1090.

§ 40. — **In Respect of Wife's Separate Property:** Board of Trade v. Hayden, 4 Wash. 263, 30 Pac. 87, 32 Pac. 224, 31 Am. St. Rep. 919, 16 L. R. A. 530; Loewenberg v. Glover, 19 Wash. 544, 53 Pac. 839; Harvey v. Sparks Brothers, 45 Wash. 578, 88 Pac. 1108.

§ 41. **Defenses by Husband or Wife:** Delta County Bank v. McGranahan, 37 Wash. 307, 79 Pac. 796.

§ 42. **Parties:** Davis v. Seattle, 37 Wash. 223, 79 Pac. 784; Dean v. Oregon R. & Nav. Co., 38 Wash. 565, 80 Pac. 842; Magnuson v. O'Dea, 75 Wash. 574, 135 Pac. 640, Ann. Cas. 1915B, 1230, 48 L. R. A. (N. S.) 327; Schneider v. Biberger, 76 Wash. 504, 136 Pac. 701.

See, also, Chapman v. Edwards, 113 Wash. 224, 193 Pac. 712.

§ 43. **Pleading:** Freeburger v. Caldwell, 5 Wash. 769, 32 Pac. 732; Freeburger v. Gazzam, 5 Wash. 772, 32 Pac. 732; Hester v. Stine, 46 Wash. 469, 90 Pac. 594; Bush & Lane Piano Co. v. Woodard, 103 Wash. 612, 175 Pac. 329.

§ 43-1. **Evidence — Weight and Sufficiency:** Zent v. Sullivan, 47 Wash. 315, 91 Pac. 1088, 15 Ann. Cas. 19, 13 L. R. A. (N. S.) 244.

§ 43-2. **Judgment — In General:** James v. Seattle, 57 Wash. 318, 106 Pac. 1114.

When suits maintainable between spouses. 73 Am. St. Rep. 268; 3 Ann. Cas. 145; 6 Ann. Cas. 1032; 14 Ann. Cas. 881; 21 Ann. Cas. 924; Ann. Cas. 1915D, 73; Ann. Cas. 1917C, 903; Ann. Cas. 1918C, 777.

§ 6904. [5929.] Injuries Committed by Married Woman, Liability for.

For all injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefor, except in case where he would be jointly responsible with her if the marriage did not exist. [Cd. '81, § 2402; 1 H. C., § 1412.]

See infra, § 7348, action for injuries to intoxicated husband.

Cited in 58 Wash. 19; 89 Wash. 598.

§ 6905. [5930.] Antenuptial and Separate Debts.

Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other. [Cd. '81, § 2405; 1 H. C., § 1413.]

Cited in 2 Wash. 334; 10 Wash. 572.

§ 6906. [5931.] Family Expenses, Liability for.

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately. [Cd. '81, § 2407; 1 H. C., § 1414.]

Cited in 1 Wash. 79, 81; 3 Wash. 483; 15 Wash. 686; 20 Wash. 203; 40 Wash. 669; 51 Wash. 439; 54 Wash. 18; 78 Wash. 229; 86 Wash. 535; 98 Wash. 545; 103 Wash. 615.

Necessaries and Family Expenses: See Remington's Digest, Hus. & W., § 28; Russell v. Graumann, 40 Wash. 667, 82 Pac. 998, 5 Ann. Cas. 830; Butterworth & Sons v. Teale, 54 Wash. 14, 102 Pac. 768, 18 Ann. Cas. 854; Zent v. Sullivan, 47 Wash. 315, 91 Pac. 1088, 15 Ann. Cas. 19, 13 L. R. A. (N. S.) 244; Butterworth v. Bredemeyer, 74 Wash. 524, 133 Pac. 1061; Jones, Rosquis, Killen Co. v. Nelson, 98 Wash. 539, 167 Pac. 1130;

Bush & Lane Piano Co. v. Woodard, 103 Wash. 612, 175 Pac. 329.

This section providing that expenses of the family and education of the children are chargeable upon the property of both husband and wife, raises a joint and several obligation therefor; and a divorced wife, who thereafter maintained a child awarded to her without provision for its support, is entitled only to contribution from the husband, and cannot recover from him the whole of the sums expended by her: Hector v. Hector, 51 Wash. 434, 99 Pac. 13.

What are necessaries, and when husband or wife chargeable therefor.

10 Am. Dec. 462; 31 Am. Rep. 697;
98 Am. St. Rep. 627; 33 L. R. A.
(N. S.) 426; L. R. A. 1915D, 1184;
L. R. A. 1917F, 861.

What constitute "family expenses"
within statute rendering wife or
her property liable therefor. 21

L. R. A. (N. S.) 277; 32 L. R. A.
(N. S.) 940; L. R. A. 1917F, 861.
Articles or services for husband per-
sonally as "family expenses" or
"necessaries" within statute mak-
ing wife liable therefor. 13 A. L.
R. 1396.

§ 6907. [5932.] Custody of Children.

Henceforth the rights and responsibilities of the parents, in the absence of misconduct, shall be equal, and the mother shall be as fully entitled to the custody, control, and earnings of the children as the father; and in case of the father's death, the mother shall come into as full and complete control of the children and their estate as the father does in case of the mother's death. [L. '79, p. 151, § 2; Cd. '81, § 2399; 1 H. C., § 1415.]

See supra, § 988, custody of children in divorce proceedings.

Cited in 67 Wash. 316; 75 Wash. 578,
579; 104 Wash. 266; 112 Wash. 515.

A presentation of a claim by a widow for herself and minor children for the death of her husband through the fall of a county bridge is a sufficient presentation on behalf of the children, in view of this section giving such parent

control of the children and their estate: Fraiser v. Cowlitz County, 67 Wash. 312, 121 Pac. 459.

This section repealed Rem. Code, § 1643, providing that a father may by will appoint a guardian for his minor children: Hogen, In re, 104 Wash. 265, 176 Pac. 339.

§ 6908. [5933-1.] Family Desertion.

Every person who,

1st: Having any child under the age of sixteen years dependent upon him or her for care, education or support, deserts such child in any manner whatever, with intent to abandon it;

2d: Willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his or her child or children or ward or wards;

3d: Having sufficient ability to provide for his wife's support, or who is unable to earn the means for such wife's support, who willfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter, or medical attendance, unless by her misconduct he is justified in abandoning her.

Shall be guilty of a gross misdemeanor. [L. '13, p. 71, § 1.]

Cited in 79 Wash. 571; 82 Wash. 385;
92 Wash. 647.

ABANDONMENT: See Remington's Digest, Hus. & W., §§ 112-116.

§ 112. Defenses: State v. McPherson, 72 Wash. 371, 130 Pac. 481, Ann. Cas. 1914D, 587.

§ 113. Indictment or Information: State v. McPherson, 72 Wash. 371, 130 Pac. 481, Ann. Cas. 1914D, 587.

See, also, State v. Gipson, 92 Wash. 646, 159 Pac. 792.

§ 114. Evidence: State v. McPherson, 72 Wash. 371, 130 Pac. 481, Ann. Cas.

1914D, 587; State v. Bracking, 82 Wash. 385, 144 Pac. 530.

§ 115. Trial: State v. McPherson, 72 Wash. 371, 130 Pac. 481, Ann. Cas. 1914D, 587.

§ 116. Judgment or Order: State v. McPherson, 72 Wash. 371, 130 Pac. 481, Ann. Cas. 1914D, 587.

Validity of statute making it crime for husband to abandon or fail to support wife. Ann. Cas. 1912B, 280.

What amounts to nonsupport by husband within criminal statutes. 49 L. R. A. (N. S.) 588.

Criminal liability of infant husband for nonsupport of wife. *Ann. Cas.* 1914D, 590; 36 *L. B. A.* 208; *L. B. A.* 1916E, 762.

Criminal responsibility of husband for abandonment or nonsupport of wife who refuses to live with him. 3 *A. L. B.* 107; 8 *A. L. B.* 1314.

§ 6909. [5933-2.] Punishment—Payment to Family—Suspension of Judgment—Working Prisoners.

In any case enumerated in the previous section, the court may render one of the following orders:

1st: Should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife, or to the guardian, or to the custodian of the child or children, or to an individual appointed by the court as trustee.

2d: Before trial, or after conviction, with the consent of the defendant, the court, in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly during such time as the court may direct, to the wife or to the guardian, or custodian of the minor child or children, or to an individual appointed by the court, and to release the defendant from custody or probation during such time as the court may direct, upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the recognizance to be such that if the defendant shall make his or her appearance in court whenever ordered to do so, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise to remain in full force and effect.

3d: Where conviction is had and sentence to imprisonment in the county jail is imposed, the court may direct that the person so convicted shall be compelled to work upon the public roads or highways, or any other public work, in the county where such conviction is had, during the time of such sentence. And it shall be the duty of the board of county commissioners of the county where such conviction and sentence is had, and where such work is performed by persons under sentence to the county jail, to allow and order the payment, out of the current fund, to the wife, or to the guardian, or the custodian of the child or children, or to an individual appointed by the court as trustee, at the end of each calendar month, for the support of such wife, child or children, ward or wards, a sum not to exceed one and fifty one-hundredths dollars for each day's work of such person. [L. '13, p. 71, § 2.]

Cited in 79 Wash. 573.

This section, subdivision 2, has no application to the provisions for punishment by confinement in the county jail at hard labor, under subdivision 3 of the act; and hence does not authorize the justice to commute a sentence once imposed under subdivision 3: *State ex rel. Brown v. Superior Court*, 79 Wash. 570, 140 Pac. 555.

This section, subdivision 3, clearly indicates an intent to make a distinction between "conviction" and "sentence," so that the words "after conviction" as used in subdivision 2, authorizing a judgment of weekly payments to the wife, means before sentence and precludes the justice from subsequently commuting a sentence of imprisonment: *State ex rel. Brown v. Superior Court*, 79 Wash. 570, 140 Pac. 555.

§ 6910. [5933-3.] Prima Facie Proof.

Proof of the abandonment or nonsupport of a wife, or the desertion of a child or children, ward or wards, or the omission to furnish necessary

food, clothing, shelter or medical attendance for a child or children, ward or wards, is prima facie evidence that such abandonment or nonsupport or omission to furnish food, clothing, shelter, or medical attendance is willful. The provisions of section 6908 are applicable whether the parents of such child or children are married or divorced and regardless of any decree made in said divorce action relative to alimony or to the support of the wife or child or children. [L. '13, p. 72, § 3.]

Cited in 82 Wash. 386.

§ 6911. [5934.] Procedure on Failure to Comply With Order.

If the court be satisfied by information or complaint and due proof under oath, that at any time the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original indictment or information, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children. [L. '07, p. 200, § 2.]

As to repeal of this section, see § 2304, and note. Features of the act of 1907 partaking of a civil nature may not be affected by the repeal in the Penal Code of 1909. See, also, Laws 1913, p. 73, § 4.

§ 6912. [5935.] Evidence.

No other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under this act any existing provisions of law prohibiting the disclosure of confidential communications between husband and wife shall not apply, and both husband and wife shall be competent witnesses to testify for or against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect to furnish such wife, child or children necessary and proper food, clothing or shelter is prima facie evidence that such desertion or neglect is willful. [L. '07, p. 201, § 3.]

As to repeal of this section, see note to § 6911, supra.

Wife as witness against husband in prosecution for abandonment. **L. R. A.** 1917E, 1134.

Indemnity. See "Insurance," § 7128.

Indians. Alienation of lands by, see "Real Property," § 10593.

Indictments. See §§ 2025—2076.

Infants. Age of majority, see "Real Property," § 10548.

Guardianship of, see §§ 1621—1639.

Informations. See §§ 2025—2076.

Inheritance Tax. See "Taxation," § 11201.

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Liens and liability of, see §§ 1201—1203.

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INSANE.

TITLE XLIII:

INSANE.

Guardianship of: See supra, §§ 1621—1639.

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CHAPTER I.

ESTABLISHMENT OF HOSPITALS FOR INSANE.

§ 6913. [5936.] Establishment at Steilacoom.

A hospital for the insane in Washington shall be and hereby is permanently located and established at Fort Steilacoom, in Pierce county. [L. '86, p. 141, § 1; 1 H. C., § 1234.]

For former laws on the subject of care of the insane, see L. '62, pp. 59, 60; L. '66, p. 109; L. '67, pp. 111—113; L. '69, p. 357; L. '75, pp. 83—89; L. '77, p. 225; Cd. '81, §§ 2247—2283; L. '86, pp. 144, 145; L. '88, pp. 108—114.

§ 6914. [5937.] Establishment at Medical Lake.

A state hospital for the insane shall be and is hereby permanently established and located in the town of Medical Lake, Spokane county. [L. '88, p. 108, § 1; 1 H. C., § 1235.]

§ 6915. [5938.] Hospital at Steilacoom—Western State Hospital.

The hospital for insane situated at Fort Steilacoom in Pierce county shall hereafter be styled and known as "The Western State Hospital." [L. '15, p. 255, § 2. Cf. L. '90, p. 482, § 1; 1 H. C., § 1236.]

§ 6916. [5939.] Hospital at Medical Lake—Eastern State Hospital.

The hospital for insane situated at Medical Lake in Spokane county, shall hereafter be styled and known as "The Eastern State Hospital." [L. '15, p. 255, § 3. Cf. L. '90, p. 482, § 2; 1 H. C., § 1237.]

§ 6917. [5940.] Northern State Hospital.

That the Western Washington Hospital Farm situated near the town of Sedro-Woolley in Skagit county be and the same is hereby established as a state hospital for the insane and shall hereafter be styled and known as the "Northern State Hospital." [L. '15, p. 254, § 1. Cf. L. '09, p. 754, § 1.]

§ 6918. [5941.] Expenses, How Paid.

All expenses incurred by the commission in the performance of its duties as defined herein shall be certified by the secretary and chairman to the board having control of the Western Washington hospital for the insane, and such amounts shall by such board be drawn on vouchers to the state auditor as other accounts are paid by such board. [L. '09, p. 755, § 3.]

§ 6919. [5942-1.] Repealing Clause.

Section 5942 of Rem. & Bal. Code and all other acts and parts of acts in conflict herewith are hereby repealed. [L. '15, p. 258, § 9. See L. '09, p. 756, § 4.]

§ 6920. [5943.] Patients Removed—Products of Farm.

Upon the completion of the proper buildings on such farm the superintendent shall remove thereto such patients in the Western Washington hospital for the insane as in his judgment are physically able to perform manual labor and are otherwise fitted to be kept on such farm, and shall from time to time remove others from such hospital to such farm, and may when in his judgment it is necessary or expedient, return patients from such farm to the hospital. It shall be the endeavor to make such farm self-sustaining. The products of such farm over and above what is necessary for use thereon may be shipped to other state institutions, and may, when the board shall deem best, be sold as ordinary farm produce is sold and the proceeds thereof shall be turned into the state treasury. [L. '09, p. 756, § 5.]

CHAPTER II.**GOVERNMENT OF HOSPITALS FOR INSANE.****§ 6921. [5944.] Powers and Duties of Board.**

The state board of control shall have power to make all the repairs and improvements that, in their judgment, may be necessary for the conduct of the hospitals under their charge and to hold, manage, dispose of and convey all personal property made over to them by purchase, gift, devise or bequest, and the proceeds and increase thereof, for the use of said hospitals. They shall take charge of the general interests of said hospitals and shall manage and conduct the same in such manner as may appear to them best and most economical. They shall appoint a superintendent for each of said hospitals, and may ordain by-laws for the government of said hospitals, and therein may prescribe, in any manner consistent with the laws of the state, the duties of all persons connected in any way with the management of the hospitals under their charge. [L. '15, p. 255, § 4. Cf. L. '90, p. 484, § 7; 1 H. C., § 1243.]

See *infra*, § 10794, duties of state board of control devolve upon director of business control.

See *infra*, § 10817, advisory powers of state institutional board of health.

See *infra*, § 10893, state board of control abolished.

See *infra*, § 10899, board of control to have charge.

See *infra*, § 10912, accounts of hospitals how kept.

See *infra*, § 10914, contingent fund of.

§ 6922. [5945.] Members—Not to be Employed or Interested in Contracts.

No member of the state board of control shall be appointed to or employed in any office under the authority of the board except as provided in section 5 of this act, nor be directly or indirectly interested in any contract, debt, or account to be made by said board for any purpose whatever. [L. '90, p. 485, § 12; 1 H. C., § 1244.]

"Section 5," omitted as impliedly repealed.

§ 6923. [5946.] Qualifications, Powers and Term of Superintendent.

The superintendent shall be a skillful practicing physician, and shall reside in the hospital. [He shall hold his office for such time as the state board of control may deem wise, and for the efficiency and economy of the institution;] he shall have entire control of the medical, moral and dietetic treatment of the patients, and, so far as is not inconsistent with the by-laws and regulations of the hospital, of all other internal government and economy of the institution, and he shall, in such manner and under such restrictions, and for such terms of time as the by-laws may prescribe, appoint all subordinate officers and employees, and shall have entire direction of them in their duties. [L. '90, p. 484, § 8; 1 H. C., § 1245.]

Superseded as to the bracketed words by § 10902, *infra*.

§ 6924. [5947.] Testimony of Superintendent, How Obtained—Jury Duty.

The superintendent shall not be required to attend any court as a witness in a civil suit, but parties desiring his testimony can take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the judge of the court before which his testimony shall be desired shall, upon being satisfied of the materiality of his testimony, require his attendance; and he and all other persons employed at the hospital shall be exempt from serving on juries, and, in time of peace, from performing military duty; and the certificate of the superintendent shall be evidence of such employment. [L. '90, p. 485, § 9; 1 H. C., § 1246.]

§ 6925. [5948.] Superintendent to Provide Seal—Use of.

The superintendent shall provide an official seal, upon which shall be inscribed the statute name of the hospital under his charge and the name of the state. He shall affix the seal of the hospital to any notice, order of discharge, or other paper required to be given by him or issued. [L. '90, p. 491, § 36; 1 H. C., § 1247.]

CHAPTER III.

ACCEPTANCE OF DONATIONS TO HOSPITALS FOR THE INSANE.

§ 6926. [5949.] Superintendent Authorized to Accept Donations.

The superintendent of either of the asylums for the insane of this state is authorized to accept and receive from any person or association desiring to make a payment or contribution of money for the assistance or support of such asylum any sum so offered to said superintendent and to issue to such person under his hand and seal a receipt for any amount so paid or contributed. [L. '03, p. 192, § 1.]

§ 6927. [5950.] Superintendent to Report to State Treasurer.

On the first day of January of each year and every three months thereafter, the superintendent of each of the asylums for the insane shall report to the state treasurer the names and addresses of all persons that have during the preceding three months paid any money to such superintendent as contemplated in the preceding section, and said superintendent shall with such report, remit to the state treasurer all moneys theretofore received. [L. '03, p. 192, § 2.]

§ 6928. [5951.] Fund of Special Contributions.

The state treasurer shall credit all moneys received under the provisions of this chapter to a fund which shall be known as the "Fund of special contributions for the insane," and shall also keep a book alphabetically arranged in which shall be entered the name and address of all persons contributing to said fund and the date and amount of any such payments, as reported by the superintendents of the hospitals for the insane. [L. '03, p. 193, § 3.]

§ 6929. [5952.] Use of Such Funds.

It is hereby declared to be the policy, and to be understood, that all moneys accumulating in the said "Fund of special contributions for the insane" shall only be appropriated or used for the benefit and maintenance of the hospitals for the insane of the state of Washington. [L. '03, p. 193, § 4.]

CHAPTER IV.**COMMITMENT OF PATIENTS.****§ 6930. [5953.] Person Charged With Insanity—Examination of.**

The superior court of any county in this state, or the judge thereof, upon the application of any person under oath, setting forth that any person, by reason of insanity, is unsafe to be at large, shall cause such person to be brought before him, and he shall summon to appear at the same time and place two or more witnesses, who shall testify, under oath, as to conversations, manners, and general conduct upon which said charge of insanity is based; and shall also cause to appear before him, at the same time and place, two reputable physicians, before whom the judge shall examine the charge, unless the accused, or anyone in his or her behalf, shall demand a jury to decide upon the question of insanity. If such demand be made, the trial shall be by jury. If no jury be demanded, and the physicians, after a careful hearing of the case, and a personal examination of the alleged insane person, shall certify under oath that the person examined is insane, and the case is of a recent or curable character, or that the said insane person is of a homicidal, suicidal, or incendiary disposition, or that from any other violent symptoms, the said insane person would be dangerous to his or her own life, or the lives and property of the community in which he or she may live; and if said physicians shall also certify to the name, age, nativity, residence, occupation, length of time in this state, state last from, previous habits, premonitory symptoms, apparent cause, and class of insanity, duration of the disease, and present condition,

as nearly as can be ascertained by inquiry and examination; and if the judge shall be satisfied that the facts revealed in the examination establish the existence of the insanity of the person accused, and that it is of a recent or curable nature, or of a homicidal, suicidal, or incendiary character, or that from the violence of the symptoms the said insane person would be dangerous to his or her own life, or to the lives and property of others, if at large, he shall order such insane person sent to the hospital for the insane. If the trial has been by jury, and the accused declared insane by said jury, and the insanity be of the character above described, the said insane person shall be ordered by the judge to be sent to the hospital for the insane. [Cf. L. '73, p. 321, § 327; L. '77, p. 209, § 2; Cd. '81, § 1632; L. '83, p. 37, § 1; L. '90, p. 486, § 16; 1 H. C., § 1248.]

See supra, § 85, inquest before court commissioner.

See supra, § 982, insanity ground for divorce.

See supra, § 1211, incompetent as witness.

See supra, § 2173 et seq., commitment and discharge of criminal insane.

See supra, § 5112, incompetent as voters.

See infra, § 6969 et seq., custody and release of criminal insane.

Cited in 45 Wash. 252, 255, 257, 260; 46 Wash. 329, 331; 90 Wash. 484; 93 Wash. 285.

Determination of Insanity: See Remington's Digest, Crim. Law, § 195-1; State v. Peterson, 90 Wash. 479, 156 Pac. 542; Roberts v. Pacific Telephone & Telegraph Co., 93 Wash. 274, 160 Pac. 965.

See, also, State ex rel. Thompson v. Snell, 46 Wash. 327, 89 Pac. 931, 9 L. R. A. (N. S.) 1191; State ex rel. Mackintosh v. Superior Court, 45 Wash. 248, 88 Pac. 207.

This section has no application to a person convicted of crime and already in the custody of the court, and does not divest the trial court of its power to exercise its discretion as to an inquiry touching the defendant's sanity: State v. Peterson, 90 Wash. 479, 156 Pac. 542.

Responsibility in General: See Remington's Digest, Ins. Per., § 18; State v. Strasburg, 60 Wash. 106, 110 Pac. 1020, Ann. Cas. 1912B, 917, 32 L. R. A. (N. S.) 1216.

Insanity at Time of Trial: See Remington's Digest, Ins. Per., § 19; State ex rel.

Mackintosh v. Superior Court, 45 Wash. 248, 88 Pac. 207.

Confinement of Insane Criminals: See Remington's Digest, Ins. Per., § 21; Brown, In re, 39 Wash. 160, 81 Pac. 552, 109 Am. St. Rep. 868, 4 Ann. Cas. 488, 1 L. R. A. (N. S.) 540; State ex rel. Mackintosh v. Superior Court, 45 Wash. 248, 88 Pac. 207; State ex rel. Thompson v. Snell, 46 Wash. 327, 89 Pac. 931, 9 L. R. A. (N. S.) 1191.

Necessity and sufficiency of notice to lunatic of inquisition proceedings. 10 Ann. Cas. 216; 23 L. R. A. 737; 26 L. R. A. (N. S.) 232.

Due process of law in commitment of insane persons. 1 Ann. Cas. 733; 13 Ann. Cas. 877; Ann. Cas. 1913C, 323.

Right, without judicial proceeding, to arrest and detain one who is, or is suspected of being, mentally deranged. 10 A. L. R. 488; Ann. Cas. 1917D, 536.

Recommitment without further hearing of person discharged from insane hospital. 14 L. R. A. (N. S.) 468.

§ 6931. [5953-1.] Preliminary Commitment and Observation.

There shall be set aside in each county in the state of Washington having a county hospital, such portions of such hospital as may be necessary for observation detention wards for those charged with insanity, and in each such hospital there shall be separate detention wards for males and females, and any judge of the superior court of the state of Washington before whom a person is charged with insanity may order the sheriff arresting said person to forthwith commit such person to said observation detention ward for a period not to exceed thirty (30) days, except as hereinafter provided: Provided, that in all cases where the person so arrested is

found by the court to be insane beyond all reasonable doubt the court may order such person immediately committed to the proper state hospital for insane. Said detention wards shall be under the supervision and control of the county physician of the county in which situated, who shall make careful observation of the patients under his charge and testify at the trial of the patient as to such observation, and should said physician require longer time for observation of said patient than thirty days, he shall make application to the court for an extension of time of not more than thirty days: Provided, that in all counties having no county hospital, the judge of the superior court thereof may designate as a detention hospital, such other place of detention and treatment as he may deem suitable for the purposes of this act, and shall order the sheriff of that county to forthwith convey all persons charged with insanity before him to the place so designated, upon such terms and under such conditions as said court may determine. [L. '15, p. 303, § 1.]

"This act" refers to this section.

§ 6932. [5953-2.] Investigation of Nationality—Report.

Whenever any person shall be brought before any judge of the superior court on a charge of insanity, the judge shall, if such person be found insane, inquire into the nationality of such person and may summon witnesses and require the production of documentary evidence for that purpose. If it shall appear that such insane person is an alien, the judge shall cause the clerk of the court to make out and transmit to the United States commissioner of immigration in the state of Washington and to the superintendent of the hospital to which such person is committed a report showing the names and addresses of all witnesses who appeared and testified as to the nationality of such insane person, a synopsis of the testimony of each witness and copies of the documentary evidence tending to show such nationality produced at the hearing. [L. '15, p. 315, § 1.]

§ 6933. [5953-3.*] Deportation of Insane Aliens.

It shall be the duty of the director of business control to, in cooperation with the United States bureau of immigration, arrange for the deportation of all alien insane persons who are now confined in or who may hereafter be committed to any state hospital for the insane in this state, such alien insane persons to be transported to such point or points as may be designated by the United States bureau of immigration. [L. '21, p. 633, § 1. Cf. L. '15, p. 259, § 1.]

§ 6934. Deportation of Nonresidents.

The director of business control shall also return all nonresident insane persons who are now confined in or who may hereafter be committed to a state hospital for the insane in this state to the state or states in which they may have a legal residence. For the purpose of facilitating the return of such persons the director may enter into a reciprocal agreement with any other state or states for the mutual exchange of insane persons now confined in or hereafter committed to any hospital for the insane in one state whose legal residence is in the other, and he is authorized and empowered to give written permission for the return of any resident or

residents of Washington now or hereafter confined in a hospital for the insane in another state: Provided, however, that the state making the request for the return of such insane person or persons, shall have, through the proper authorities, entered into the agreement herein authorized.

A person shall be deemed to be a resident of this state within the meaning of this act who shall have lived continuously in the state for a period of two years and who has not acquired a residence in another state by living continuously therein for at least two years subsequent to his residence in this state: Provided, however, that the time spent in a hospital for the insane or on parole therefrom shall not be counted in determining the matter of residence in this or another state.

All expenses incurred in returning insane persons from this to another state may be paid by the state of Washington, but the expense of returning residents of this state shall be borne by the state making the return. [L. '21, p. 633, § 2.]

Laws of 1905, page 253, directing the deportation, to their legal residences, of nonresidents who are adjudged insane, was invalid for the reason that it can-

not be enforced: *State ex rel. Mackintosh v. Superior Court*, 45 Wash. 248, 88 Pac. 207.

§ 6935. Expense of Deportation.

For the purpose of carrying out the provisions of this act the director of business control may employ all help necessary in arranging for and transporting such alien and nonresident insane persons, and the cost and expenses of providing such assistance and all expenses incurred in effecting the transportation of such alien and nonresident insane persons shall be paid from the funds appropriated for that purpose upon vouchers approved by the director of business control and the superintendent of the hospital for the insane from which such persons are transported. [L. '21, p. 634, § 3.]

§ 6936. Bringing Insane Persons into State.

Any person who shall bring or in any way aid in bringing any insane person into the state of Washington without having first obtained permission in writing from the director of business control shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state penitentiary or state reformatory for a term of not less than six months nor more than fifteen years: Provided, however, that this section shall not apply to an officer, agent or employee of a common carrier for anything done in the line of duty, nor to a person who through necessity brings or aids in bringing an insane person into the state without an intent to make such person a permanent charge upon the state of Washington. [L. '21, p. 634, § 4.]

§ 6937. Care and Maintenance—Contracts With United States Government.

The director of business control shall have the power, in the name of the state, to enter into contracts with any duly authorized representative of the United States government providing for the admission to, and the separate or joint observation, maintenance, care, treatment and custody in, the state hospital for the insane, of persons entitled to, or requiring the same,

at the expense of the United States, and contracts providing for the separate or joint maintenance, care, treatment and custody of such persons committed to such hospitals in the manner provided by law, and to execute and perform such contracts, which contracts shall provide that all payments due the state of Washington from the United States, for service rendered under said contracts, shall be paid into the state treasury and covered into the state institutional revolving fund, to the credit of the institution furnishing the service. [L. '21, p. 153, § 1.]

§ 6938. [5954.] Warrant of Commitment—Issuance of—Form, etc.

Whenever any superior judge shall order an insane person committed to a hospital for the insane he shall direct the sheriff to notify the superintendent of the hospital to which such person is committed and such insane person shall be conveyed to such hospital in the manner now provided by law, and copies of the complaint, the commitment and the physician's certificate shall be transmitted to the superintendent of the hospital to which such person is committed. The physician's certificate shall be upon a form to be furnished the courts by the state board of control. [L. '15, p. 255, § 5. Cf. L. '90, p. 487, § 17; 1 H. C., § 1249.]

§ 6939. [5955.] Proceedings Where Superior Judge is Disabled.

Whenever the superior judge of any county shall, by reason of sickness or other cause, be unable to attend at his office and perform the duties required by this act, said duties shall be performed by any judge of the superior court of any adjacent county, upon the applicant filing an affidavit setting forth the inability of the proper superior judge to attend to the duties of his office. [Cf. L. '88, p. 113, § 1; L. '90, p. 487, § 19; 1 H. C., § 1250.]

"This act" includes §§ 6915, 6916, and most of chapters II, III and IV of this title, and §§ 10911—10916, *infra*.

See *infra*, § 6956, proceedings on escape of patient.

§ 6940. [5956.] Liabilities of Counties for Costs of Commitment.

When any person shall be found to be insane, or come within the provisions of this act, the costs of commitment shall be paid by the county: Provided, that when such insane person is a resident of another county, the county wherein such proceedings were had shall recover from the county of which such insane person is a resident, all costs and expenses so paid as aforesaid. [Cf. Cd. '81, § 1636; L. '83, p. 37, § 2; L. '90, p. 487, § 18; 1 H. C., § 1251.]

§ 6941. [5957.] Commitment of Arraigned Person—Costs.

The superior courts of the state shall have power to commit to the hospital for the insane any person who, having been arraigned for an indictable offense, shall be found by the jury to be insane at the time of such arraignment, and the costs of such commitment shall be paid in the same manner. [Cf. L. '79, p. 126, §§ 1, 2; L. '90, p. 487, § 20; 1 H. C., § 1252.]

See *supra*, § 2176, commitment of insane prisoners acquitted.

§ 6942. [5958.] Proceedings in Case Convict Becomes Insane.

The governor of the state may, in his discretion, order the removal of any prisoner to the hospital for the insane when the physician, board of penitentiary commissioners, and wardens of the penitentiary, after examination, are of the opinion that such prisoner is insane, and shall certify the fact under oath to the governor. As soon as the superintendent of the hospital for the insane to which such prisoner is sent ascertains that he is not insane, or has recovered, he shall immediately notify the warden of the penitentiary of that fact, and thereupon the said warden shall cause such prisoner to be at once returned to the penitentiary, if his term of imprisonment has not expired. [Cf. L. '88, p. 170, § 16; L. '90, p. 488, § 21; 1 H. C., § 1253.]

See *infra*, § 6972 et seq., later enactment providing a ward for the criminal insane.

§ 6943. [5959.] Exemptions from Being Committed as Insane.

No case of idiocy, imbecility, harmless chronic mental unsoundness, or acute mania a potu shall be committed to the hospital for the insane; and whenever, in the opinion of the superintendent, after a careful examination of the case of any person committed, it shall be satisfactorily ascertained by him that the party has been unlawfully committed, and that he or she comes under the rule of exemptions provided for in this section, he shall have the authority to discharge such person so unlawfully committed, and return him or her to the county from which committed, at the expense of such county. [L. '90, p. 490, § 29; 1 H. C., § 1254.]

Who deemed to be insane. 29 Am. Dec. 38.

§ 6944. [5960.] Nonresident Persons shall not be Admitted.

Nonresidents of this state conveyed or coming herein while insane shall not be committed to nor supported in the hospital for the insane; but this prohibition shall not prevent the commitment to and temporary care in said hospital of persons stricken with insanity while traveling or temporarily sojourning in the state, or sailors attacked with insanity upon the high seas, and first arriving thereafter in some port within this state. [L. '90, p. 490, § 30; 1 H. C., § 1255.]

See *supra*, § 6934, deportation of nonresidents.

§ 6945. [5961.] Infected Person shall not be Admitted.

No person laboring under any contagious or infectious disease shall be admitted into the hospitals for the insane. [Cf. L. '75, p. 87, § 14; L. '77, p. 227, § 14; Cd. '81, § 2260; L. '90, p. 490, § 31; 1 H. C., § 1256.]

§ 6946. [5962.] Judge may Order Patient Removed, When—Return.

The relatives or friends of an inmate of the hospital for the insane may receive such inmate therefrom on their giving a bond or other satisfactory evidence to the superior judge issuing the commitment, that they, or any of them, are capable and suited to take care of and give proper care to such insane person, and give protection against any of his acts as an insane person. If such satisfactory evidence appear to the judge, he may issue an order, directed to the superintendent of the hospital for the insane, for the removal of such person. If, after such removal, it is brought

to the knowledge of the judge, by verified statement, that the person thus removed is not cared for properly, or is dangerous to persons or property by reason of such want of care, he may order such person returned to the hospital. [L. '90, p. 491, § 33; 1 H. C., § 1266.]

State board of control to convey patient to hospital: See § 10920.

Cited in 83 Wash. 344.

The fact that this section provides for the discharge of inmates of the hospital upon application of relatives, etc., by an order of court, after notice to the superintendent and a hearing with provisions for the return of the inmate in case he is not properly cared for is dan-

gerous, does not negative the superintendent's power to exercise discretion other than in relation to an absolute discharge; since the above section has nothing to do with the superintendent's discharge on his own motion: *Emery v. Littlejohn*, 83 Wash. 334, 145 Pac. 423, Ann. Cas. 1915D, 767.

§ 6947. [5964.] Preference of Admission—To Whom Given.

If at any time it may become necessary, for want of room, or other cause, to discriminate in the general reception of patients into the hospital, a selection shall be made as follows:

1. Recent cases, i. e., cases of less than one year's duration, shall have the preference over all others;
2. Chronic cases, i. e., when the disease is of more than one year's duration, presenting the most favorable prospects of recovery, shall be next preferred;
3. Those for whom application has been longest on file, other things being equal, shall be next preferred;
4. Where cases are equally meritorious in all other respects, the indigent shall have the preference. [Cf. L. '75, p. 87, § 15; L. '77, p. 227, § 15; Cd. '81, § 2261; L. '90, p. 492, § 40; 1 H. C., § 1260.]

§ 6948. [5965.] History of Patient to be Ascertained.

It shall be the duty of the superintendent to ascertain, by diligent inquiry and correspondence, the history of each and every patient admitted to the hospital. [L. '77, p. 229, § 21; Cd. '81, § 2267; L. '83, p. 38, § 5; 1 H. C., § 1261.]

§ 6949. [5966.] Provisions as to Receiving Patients.

Persons found to be insane by the superior courts of the respective counties shall be committed to the respective hospitals for the insane as follows: From the counties of Chehalis, Clarke, Cowlitz, Lewis, Mason, Pacific, Pierce, Thurston, Wahkiakum, Kittitas and Yakima to the Western State Hospital at Fort Steilacoom in Pierce county; from the counties of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Klickitat, Lincoln, Okanogan, Pend Oreille, Skamania, Spokane, Stevens, Walla Walla, Whitman, to the Eastern State Hospital at Medical Lake in Spokane county; and from the counties of Clallam, Island, Jefferson, King, Kitsap, San Juan, Skagit, Snohomish and Whatcom, to the Northern State Hospital at Sedro-Woolley in Skagit county: Provided, that if it shall be made to appear to the satisfaction of the judge ordering the commitment, upon the application of relatives or friends of such insane person or by the recommendation of the examining physician, that by reason of climatic conditions or the nature of the insanity of such person it would be to his interest to be committed to another

hospital and that such other hospital has room and accommodations for receiving and caring for such person, the judge may commit such person to one of the other hospitals: And, provided further, that whenever the state board of control shall certify to the superior court of any county that the hospital above specified to receive insane persons committed from that county is for the time being unable to care for additional patients, and shall designate one of the other hospitals, the judge of such court shall, until further advised by the state board of control, commit patients to such other hospital: And, provided further, that nothing in this section or in any commitment shall be construed as preventing the state board of control from, upon the recommendation of the superintendent of any hospital, transferring a patient in such hospital to another hospital when it shall appear that the interest of the state or of such patient demands such transfer, and in the case of any such transfer the superintendent of the hospital from which the transfer is made shall immediately certify the fact and the reasons therefor to the clerk of the court which committed such patient and shall notify the next of kin or the next friend of such patient of the transfer. [L. '15, p. 256, § 6. Cf. L. '90, p. 483, § 3; 1 H. C., § 1262.]

§ 6950. [5967.] Discharge of Patients—Provision for Indigent.

Whenever in the judgment of the superintendent of any hospital for the insane any person in his charge shall have so far recovered as to make it safe for such patient and for the public to allow him to be at large, the superintendent may parole such patient and allow him to leave such hospital, and whenever in the judgment of the superintendent any patient under his charge has become sane, mentally responsible and probably free from danger of relapse or recurrence of mental unsoundness, the superintendent shall discharge such patient from the hospital. Indigent patients, when paroled or discharged, may be returned to the county from which committed, at the expense of said county. No indigent patient shall be paroled or discharged without suitable clothing, and the state board of control shall furnish the same, together with such sum of money, not exceeding ten dollars, as they may deem expedient; and for that purpose are hereby authorized to make requisition on the state auditor for such sum or sums, from time to time, as they may need for the purpose above mentioned, not exceeding, however, the sum of five hundred (\$500) dollars per annum for each hospital, and the state auditor on receipt of such requisition, signed by the president and secretary of the said board, shall issue a warrant on the state treasurer for the amount thereof, with the limitations prescribed herein. Whenever it shall be made to appear to the judge of the superior court of any county that any paroled patient found in such county has become unsafe to be at large, such judge shall order such patient returned to the hospital from which he was paroled and shall direct the sheriff to notify the superintendent of the hospital to which such person was committed and such person shall be conveyed to such hospital in the manner now provided by law. [L. '15, p. 257, § 7. Cf. L. '75, p. 87, §§ 18, 19; L. '77, p. 228, §§ 18, 19; Cd. '81, §§ 2264, 2265; L. '90, p. 492, § 38; 1 H. C., § 1263.]

See *infra*, § 6972, discharge of criminal insane.

Cited in 13 Wash. 321; 83 Wash. 343; 100 Wash. 324; 101 Wash. 93, 97; 106 Wash. 19.

Liabilities of Public Authorities: See Remington's Digest, Ins. Per., § 15; Emery v. Littlejohn, 83 Wash. 334, 145 Pac. 423, Ann. Cas. 1915D, 767.

Under this section authorizing the superintendent of any hospital for the insane to discharge any person who has become sane, a person claiming restoration to sanity since a valid commitment must first apply to the superintendent before seeking a discharge by habeas corpus proceedings: State ex rel. Thomson v. Clifford, 106 Wash. 16, 179 Pac. 90.

Where restoration to sanity is claimed since a valid commitment to the asylum, the superior court of that county has jurisdiction in habeas corpus to determine the question, although the commitment was by the superior court of another county: State ex rel. Thomson v. Clifford, 106 Wash. 16, 179 Pac. 90.

Liability for Torts in General: See Remington's Digest, Ins. Per., § 17-1; Kusah v. McCorkle, 100 Wash. 318, 170 Pac. 1023.

The power of the superintendent of the state insane hospital, given by this section, to discharge inmates includes the power to discharge them conditionally or upon parole: Emery v. Littlejohn, 83 Wash. 334, 145 Pac. 423, Ann. Cas. 1915D, 767.

The superintendent acts in an official capacity in a matter involving his discretion in discharging an inmate, temporarily out on parole; hence he is not liable for damages sustained by a third person by reason of turning the inmate at large, where he did not act maliciously or corruptly: Emery v. Littlejohn, 83 Wash. 334, 145 Pac. 423, Ann. Cas. 1915D, 767.

Right of one restrained as insane person to discharge upon ground of irregularity or invalidity of commitment. 44 L. B. A. (N. S.) 389.

§ 6951. [5968.] Notice of Death or Discharge to be Given.

Whenever the superintendent of any hospital shall parole or discharge a patient, and whenever any patient of such hospital shall die, it shall be the duty of the superintendent to immediately certify the facts to the clerk of the superior court of the county from which such patient was committed and send a copy of such certificate to the next of kin or next friend of such patient if his name and address is known or can with reasonable diligence be ascertained, and in the case of discharge the superintendent shall give a copy of such certificate to the patient discharged. Such certificate shall give the date of the parole, discharge or death of such patient and shall state the reasons for parole or discharge, or the cause of death, and shall be signed by the superintendent. [L. 15, p. 258, § 8. Cf. L. '90, p. 492, § 39; 1 H. C., § 1264.]

§ 6952. [5969.] Friends may Take Charge of Patients, When—Bond.

The relatives or friends of any person charged with insanity, or who shall be found to be insane under this act, shall in all cases have the right to take charge of and keep said insane person if they shall desire so to do; but the superior judge may require a bond of such relatives or friends, conditioned for the proper and safe keeping of such person. [L. '81, p. 7, § 1; L. '90, p. 490, § 32; 1 H. C., § 1265.]

"This act": See note to § 6939.

§ 6953. [5970.] Order of Commitment to be Filed Before Account Allowed.

In all cases of the adjudged insanity and commitment of any person or persons to the hospital, it shall be the duty of the superior judge to make out a copy of the commitment [with an order for the appointment of a guard to assist in conveying the patient or patients to the hospital], which commitment and order shall be filed with the state auditor before

any amount for the expenses of such conveyance shall be allowed. [Cf. L. '86, p. 147, § 6; L. '90, p. 489, § 26; H. C., § 2683.]

The extent to which this section is in force seems doubtful. It is superseded as to the bracketed words, at least, by § 10920, *infra*.

CHAPTER V.

TREATMENT OF PATIENTS.

§ 6954. [5971.] Duty of Superintendent Respecting Mail of Patients.

The superintendent shall furnish each patient in the hospital for the insane with material for writing one letter a week, if he shall request the same, unless otherwise provided with it. These letters shall be subject to the inspection of the superintendent, who shall mail to the proper address such of them as, in his judgment, should be sent, and he shall return [retain] such letters as he considers objectionable, and submit them to the trustees at their next meeting, for such disposition as they deem proper. All letters directed to patients shall be delivered to them if, in the judgment of the superintendent, their contents are not prejudicial to the mental condition of the patients. [Cf. L. '79, p. 115, § 1; Cd. '81, § 2273; L. '90, p. 491, § 34; 1 H. C., § 1257.]

"Trustees," abolished, duties devolving upon the board of control.

§ 6955. [5972.] Coroner's Inquest shall be Held, When—Expenses.

In the event of the sudden and mysterious death of any inmate of the hospital for the insane, such fact shall be reported by the superintendent thereof to the coroner of the county in which such death occurs, or to the nearest justice of the peace therein, and a coroner's inquest shall be held as provided by law in other cases, and the expenses of said coroner's inquest shall be paid from the funds appropriated for the support of the hospital for the insane. [Cf. L. '79, p. 115, § 2; Cd. '81, § 2274; L. '90, p. 491, § 35; 1 H. C., § 1258.]

§ 6956. [5973.] Proceedings upon Escape of Patient.

If any patient shall escape from the hospital, the superintendent shall cause immediate search to be made for him, and if he cannot soon be found, shall cause notice of such escape to be forthwith given to the superior judge of the county where the patient belongs; and if such patient is found in his county, the superior judge shall cause him to be returned, and shall issue his warrant therefor as in other cases, unless he does not consider his return necessary, of which fact he shall notify the superintendent. [L. '90, p. 492, § 37; 1 H. C., § 1259.]

§ 6957. Superintendents of Institutions to Make Reports.

It shall be and is hereby declared the duty of the superintendents of all state institutions having the care of individuals held in restraint to report quarterly to the institutional board of health, all feeble-minded, insane, epileptic, habitual criminals, moral degenerates and sexual perverts, who are persons potential to producing offspring who, because of inheritance of inferior or anti-social traits, would probably become a social menace or wards of the state. [L. '21, p. 162, § 1.]

§ 6958. Sterilization of Insane.

It shall be the duty of the institutional board of health to examine into the innate traits, the mental and physical condition, the personal records, and the family traits and histories of all persons so reported so far as the same can be ascertained, and for this purpose said board shall have the power to summon witnesses, and any member of said board may administer an oath to any witness whom it is desired to examine; and if in the judgment of the majority of said board procreation by any such person would produce children with an inherent tendency to feeble mindedness, insanity, epilepsy, criminality or degeneracy, and there is no probability that the condition of such person so examined will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of any such person will be substantially improved thereby, then it shall be the duty of said board to make an order directing the superintendent of the institution in which such inmate is confined to perform or cause to be performed upon such inmate such a type of sterilization as may be deemed best by said board. [L. '21, p. 163, § 2.]

§ 6959. Purpose of Sterilization.

The purpose of said investigation, findings and orders of said board shall be for the betterment of the physical, mental, neural, or psychic condition of the inmate, or to protect society from the menace of procreation by said inmate, and not in any manner as a punitive measure; and no person shall be emasculated under the authority of this act except that such operation shall be found to be necessary to improve the physical, mental, neural or psychic condition of the inmate. [L. '21, p. 163, § 3.]

§ 6960. Notice of Order for Operation.

After fully inquiring into the condition of each of such inmates said board shall make separate written findings for each of the inmates whose condition has been examined into, and the same shall be preserved in the records of said board, and a copy thereof shall be furnished to the superintendent of the institution in which the inmate is confined, and if an operation is deemed necessary by said board, then a copy of the order of said board shall forthwith be served on said inmate, or in the case of an insane person, upon his legal guardian, and if such insane person have no legal guardian then upon his nearest known kin within the state of Washington, and if such insane person have no known kin within the state of Washington, then upon the custodial guardian of such insane person. [L. '21, p. 164, § 4.]

§ 6961. Appeal—Notice.

Any such inmate desiring to appeal from the decision of said board, or in the case the person is under guardianship or disability, then the guardian of said inmate may take an appeal into the superior court of the county in which the institution in which the inmate is confined, is located. An informal notice of appeal filed with the secretary of said board, either by the inmate or someone in his behalf, shall be all that

is necessary to make the appeal: Provided, said notice shall be filed within fifteen days of the date when notice of the board's decision is served on the inmate or his guardian, and said notice of appeal shall stay all proceedings of said board on said matter until the same is heard and determined on said appeal: Provided, further, that no operation shall be performed, upon any inmate until the time for appeal from the decision of the board has expired. [L. '21, p. 164, § 5.]

§ 6962. Procedure on Appeal.

Upon an appeal being taken, the secretary of said board where the notice of appeal is filed, must within fifteen days thereafter, or such further time as the court or the judge thereof may allow, transmit a certified copy of the notice of appeal and transcript of the proceedings, findings and order of the board, to the clerk of the court appealed to. The trial shall be a trial de novo at law as provided by the statutes of the state, for the trial of actions at law. Upon such appeal, if the inmate be without sufficient financial means to employ an attorney, then the court shall appoint an attorney to represent the said inmate, and such attorney shall be compensated by the state upon order of the court; and it shall be the duty of the district attorney of the county wherein such trial is had to represent the said board. [L. '21, p. 165, § 6.]

§ 6963. Entry of Judgment.

If the court or jury shall affirm the finding of the said board, said court shall enter a judgment, adjudging that the order of said board shall be carried out as herein provided; if the court fail to affirm the decision of said board appealed from, then said order shall be null and void and of no further effect. [L. '21, p. 165, § 7.]

§ 6964. Operations.

Upon the receipt of the order from the institutional board of health, the superintendent of the institution to which it is directed shall, after the time for appeal has expired, or in case of appeal upon the entering of a judgment affirming the order of the board, and it is hereby made his lawful duty, to perform, or cause to [be] performed such surgical operation as may be specified in the order of the institutional board of health. All such operations shall be performed with a due regard for the physical condition of the inmate and in a safe and humane manner. [L. '21, p. 165, § 8.]

§ 6965. Surgeon's Liability.

No surgeon performing the operation provided for in the preceding section under the direction of the superintendent, or other officer in charge of such institution, shall be held criminally liable therefor or civilly liable for any loss or damage on account thereof, except in case of negligence in the performance of such operation. [L. '21, p. 165, § 9.]

§ 6966. Persons Affected.

The criminals who shall come within the operation of this law shall be those who have been convicted three or more times of a felony and sentenced to serve in the penitentiary therefor.

Moral degenerates and sexual perverts are those who are addicted to the practice of sodomy or the crime against nature, or to other gross, bestial and perverted sexual habits and practices prohibited by statute. [L. '21, p. 166, § 10.]

§ 6967. Sex.

The provisions of this act shall apply to both male and female inmates of any of the institutions designated herein. [L. '21, p. 166, § 11.]

§ 6968. Expense.

The state shall be liable, under this act, only for the actual traveling expenses of the members of the board incurred in the performance of their duties, and the actual and necessary expenses incident to the investigations of said board and an appeal therefrom, which shall be paid upon vouchers signed by the person receiving such compensation and expense from the moneys appropriated for the maintenance of the institution where such examination is held. [L. '21, p. 166, § 12.]

CHAPTER VI.

CUSTODY AND RELEASE OF THE CRIMINAL INSANE COMMITTED TO PRISON.

§ 6969. [5974.] Certification of Statement of Facts, etc.—Return of Record.

Either party to the cause may have the evidence and all of the matters not of record in the cause made a part of the record by the certifying of a statement of facts or bill of exceptions as in other cases. If an appeal should be not taken, such statements of facts or bill of exceptions shall remain on file in the office of the clerk of the court where the cause was tried, and if an appeal be taken, the statement of facts or bill of exceptions shall be returned from the supreme court to the court where the cause was tried when the supreme court shall have rendered its final judgment in the cause. [L. '07, p. 34, § 5.]

This section has reference to a trial of the question of insanity of the accused in a criminal case. See § 2173 et seq.

See supra, §§ 2174—2176, trial, commitment and discharge of criminal insane.

See infra, § 10222, rules, insane convicts.

§ 6970. [5975.] Procedure to Secure Discharge.

When any person committed hereunder shall claim to have become sane or mentally responsible and to be free from danger of any relapse or recurrence of mental unsoundness and a safe person to be at large, he shall apply to the physician in charge of the criminal insane for an examination of his mental condition and fitness to be at large. If the physician shall certify to the warden that there is a reasonable cause to believe that such person has become sane since his commitment and is a safe person to be at large, the warden shall permit him to present a petition to the court that committed him, setting up the facts leading to his commitment, and that he has since become sane and mentally responsible, and is in such condition that he is a safe person to be at

large, and shall pray his discharge from custody. The petition shall be served upon the prosecuting attorney of the county, whose duty it shall be to resist the application. No other pleadings than the petition need be filed, and the court shall set the cause down for trial before a jury, and the trial shall proceed as in other cases. The sole issue to be tried in the case shall be whether the person petitioning for a discharge has, since his commitment, become a safe person to be at large, and the burden of proof shall be upon him. If the evidence given upon his trial upon the criminal charge shall have been preserved by statement of facts or bill of exceptions as hereinbefore provided, either party may read such parts of the record as may be desired as evidence upon the hearing. The jury shall be required to find whether the petitioner has become sane since his commitment, is not liable to a recurrence of the mental unsoundness or relapse, and is a safe person to be at large. If they so find, he shall be entitled to discharge. If not, his petition shall be dismissed, and he shall be remitted to custody. Either party may appeal to the supreme court from the judgment discharging the petitioner or remitting him to custody, in the same manner that appeals in other cases are taken. The judgment of remission shall be conclusive that the petitioner is an unsafe person to be at large at the time of its entry; but if he shall subsequently claim to have become sane and a safe person to be at large, he may upon a certificate of probable cause by the attending physician, which shall show a change in his mental condition since the last trial, his present sanity and fitness to be at large, again petition for discharge, and the proceedings thereon shall be as hereinabove provided. [L. '07, p. 35, § 6.]

Cited in 52 Wash. 73.

§ 6971. [5976.] Recommitment After Discharge—Procedure.

Should any criminally insane person discharged hereunder again become insane or mentally irresponsible, or be found to be an unsafe person to be at large because of mental unsoundness, the prosecuting attorney of the county from which he was committed may file a petition in the name of the state, setting up the facts leading to his commitment and subsequent discharge, and the relapse which is the basis of the petition. A warrant shall be issued for the defendant as in criminal cases, the defendant taken into custody, and the case tried to a jury, as in other cases provided herein; but the burden of proof, showing reasons for commitment, shall be upon the state. Should the jury find the defendant sane, and a safe person to be at large, he shall be discharged. Should they find that since his discharge he has suffered a relapse or recurrence of his mental unsoundness, and by reason thereof he is an unsafe person to be at large, the court shall issue an order remitting him to custody as criminally insane. The evidence given upon the former trial or trials, if preserved by statement of facts or bill of exceptions as hereinbefore prescribed, may be read upon such hearing, and either party may appeal to the supreme court as in other cases. [L. '07, p. 36, § 7.]

§ 6972. [5977.] Ward for Criminal Insane—Discharge—Custody.

The authorities charged with the maintenance and conduct of the state penitentiary shall forthwith provide a ward or department in the state penitentiary wherein shall be confined persons committed as criminally insane persons under the provisions of this act. Such persons shall be under the custody and control of the warden of the penitentiary to the same extent that are other persons committed to his custody, but such provision shall be made for their control, care and treatment as shall be proper in view of their derangement. Any person so committed shall not be discharged from the custody of the warden save upon the order of a court of competent jurisdiction made after a trial and judgment of discharge as herein provided. When any person so committed shall petition for a discharge, the warden of the penitentiary shall send him to the county where the hearing is to be held at the time the case shall be called for trial in the custody of a guard. During the time he shall be absent from the penitentiary, he shall be confined in the county jail, but shall at all times be deemed to be in the custody of the guard. If he shall be remitted to custody, the guard shall forthwith return him to the penitentiary. If he shall be discharged, the state may forthwith appeal from the order of discharge, and such appeal shall operate as a stay of the order and he shall remain in custody and be forthwith returned to the penitentiary until the supreme court shall have rendered a final decision in the cause. If the state does not desire to appeal, the order of discharge shall be sufficient acquittal to the warden. [L. '07, p. 36, § 8.]

"This act" includes this chapter and §§ 2173—2176, *supra*.

Cited in 63 Wash. 487.

§ 6973. [5978.] Criminal Insane to be Transferred to Penitentiary.

All the criminal insane now confined in the state hospitals for the insane shall be forthwith sent by the authorities of those hospitals to the state penitentiary and placed in the control of the warden and confined by him in the ward or department for the criminal insane, herein provided for, and shall not thereafter be discharged from his custody save in the manner herein provided. Any criminally insane person now confined in the state penitentiary shall be transferred to the ward for the criminally insane, and shall not be discharged, save as herein provided. [L. '07, p. 37, § 9.]

See *supra*, § 6942, when convict becomes insane.

§ 6974. [5979.] Commitment of Persons After Acquittal—Procedure.

The prosecuting attorney of any county wherein a person may have been acquitted of a crime because of his insanity or mental irresponsibility may cause any such person who is not in custody to be brought before the superior court of that county for trial as to the question of his sanity or mental responsibility by filing a petition in the name of the state setting up the commission of a crime by such person, his acquittal thereof because of his insanity, and his insanity or mental irresponsibility at the present time. The cause shall be tried to a jury as hereinbefore provided. The evidence given upon the trial of the

INSOLVENCY.

criminal charge, if preserved by statement of facts or bill of exceptions, may be read in evidence, or the witnesses testifying upon the former trial may themselves be called. The jurors trying the criminal charge may testify as to the ground of acquittal. If the jury shall find that the defendant committed a crime, that he was acquitted thereof because of insanity, and that he is now insane or mentally irresponsible and an unsafe person to be at large, such person shall be committed to the penitentiary as a criminally insane person and be confined under the provisions of this act; otherwise, he shall be discharged. Either party may appeal to the supreme court as in other cases. [L. '07, p. 37, § 10.]

"This act": See note to § 6972.

Compare § 2173 et seq., commitment and discharge of criminal insane.

Compare § 2283, inquest at trial of criminal insane.

Cited in 52 Wash. 73.

Insolvency. See §§ 1086—1183.

Preference rights of employees, see § 1204.

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INSPECTION.

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- Of bakeries, see "Health," § 6285.
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- Of nursery stock, orchards, etc., see "Agriculture," § 2864.
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- Of public offices, see "Officers," § 9952.
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CHAPTER I.

INSPECTION AND GRADING OF AGRICULTURAL SEED CROPS.

§ 6975. Agricultural Seed Revolving Fund.

There is hereby created in the state treasury a special fund to be known as the agricultural seed revolving fund. [L. '19, p. 407, § 1.]

§ 6976. Power to Regulate Seed Inspection.

The commissioner of agriculture shall have the power and it shall be his duty to adopt, promulgate and enforce rules and regulations for the inspection, grading and certification of growing crops of agricultural or vegetable seed grown in this state, and to inspect, grade and certify the same at the request of the grower and to fix and collect fees for such inspection, grading and certification, and to pay the same into the state treasury to the agricultural seed revolving fund. [L. '19, p. 407, § 2.]

See *infra*, §§ 7008, 10848, duties devolve upon director of agriculture.

See *infra*, § 7014, duties as to rates devolve upon director of public works.

See *infra*, § 10893, commissioner of agriculture abolished.

§ 6977. Appropriation.

For the purpose of carrying out the provisions of this act, there is hereby appropriated out of the agricultural seed revolving fund the sum of fifty thousand dollars (\$50,000): Provided, that no warrant shall be drawn upon the agricultural seed revolving fund in excess of the amount in the state treasury to the credit of the seed fund. [L. '19, p. 407, § 3.]

CHAPTER II.

INSPECTION OF GRAIN AND HAY AND REGULATION OF WAREHOUSES.

§ 6978. Definitions.

The term public warehouse when used in this act includes any elevator, mill, warehouse or structure in which grain, hay or peas are received from the public for storage, shipment or handling, whenever such grain, hay or peas are carried or intended to be carried to or from such warehouse, elevator, mill or structure by a common carrier.

The term terminal warehouse, when used in this act, includes any public warehouse situated in Seattle, Tacoma, Spokane or other cities in the state which may be hereafter designated as inspection points.

The term warehouseman when used in this act, includes any firm, person, company, corporation or association of persons owning, operating or controlling any public warehouse.

The term commission when used in this act means the Public Service Commission of Washington. [L. '19, p. 589, § 1. Cf. L. '11, p. 398, § 1.]

Cited in 87 Wash. 317; 98 Wash. 387.

The title to the act of 1911 was not broad enough to cover the inspection of grain shipped by an owner to himself, and not stored in a public warehouse: Puget Sound Warehouse Co. v. Northern Pac. R. Co., 58 Wash. 322, 108 Pac. 955.

The act, Rem. & Bal. Code, § 5980 et seq., was designed to protect the owner

or shipper of grain from frauds practiced by public warehousemen, and is not broad enough to cover the inspection of grain shipped by an owner to himself, the same not being stored in a public warehouse: Puget Sound Warehouse Co. v. Northern Pac. R. Co., 58 Wash. 322, 108 Pac. 955.

§ 6979. Duties of Public Service Commission.

The commission shall exercise general supervision over the handling, weighing, inspecting and storage of grain, hay and peas and the inspection, grading and weighing of other commodities included in the provisions of this act and the regulation of public and terminal warehouses. Such commission shall investigate all complaints of fraud and injustice in the grain and hay trade and in the trade in the other commodities included in the provisions of this act, fix the charges of public and terminal warehouses and make all necessary rules and regulations for carrying out and enforcing the provisions of this act, and of all laws of the state relating to this subject. [L. '19, p. 590, § 2. Cf. L. '11, p. 398, § 2.]

See infra, §§ 7008, 10848, duties devolve upon director of agriculture.

See infra, § 7014, duties as to rates devolve upon director of public works.

See infra, § 10893, commissioner of agriculture abolished.

§ 6980. Chief Inspector—Bond—Salary.

The commission, with the approval of the governor, shall appoint a chief inspector, who shall be thoroughly familiar with the grains, grain products and forage crops of Washington and who shall have had at least five years' experience in the handling of such products. He shall before entering upon the duties of his office, give a surety company bond (the cost to be paid by the state) to the state of Washington in the sum of ten thousand dollars (\$10,000) to be approved by the commission and the attorney general, and conditioned upon the faithful discharge of his duties, and take the usual oath required of state officers. He shall receive such salary as the commission may determine upon, in no event to exceed twenty-five hundred dollars (\$2500) per annum, and necessary traveling expenses and shall reside at Tacoma. [L. '19, p. 590, § 3. Cf. L. '11, p. 399, § 3.]

See infra, § 10893, grain inspector abolished.

See infra, § 10848, duties devolve upon director of agriculture.

§ 6981. Appointment of Deputies, etc.

The chief inspector, with the approval of the commission, shall appoint such number of deputies, inspectors, samplers and weighers, who shall be designated as inspectors, as may be necessary to properly and thoroughly inspect and weigh the commodities included in the provisions of this act and such other employees as may be necessary. One of such inspectors in each of the cities of Seattle, Tacoma, Spokane, Everett and Yakima and such other places as may be designated by the commission, shall be styled chief deputy inspector. The chief deputy inspectors shall each give a surety company bond (the cost to be paid by the state) to the state of Washington in the sum of five thousand dollars (\$5,000) to be approved by the public service commission of Washington (hereinafter referred to as "commission") and the attorney general, conditioned upon the faithful discharge of their duties. Such chief deputies shall receive such salaries per annum as the commission may determine and necessary traveling expenses. Each of the other inspectors and bookkeepers shall give a surety company bond (the cost to be paid by the state) to the state of Washington in the sum of three thousand dollars (\$3,000) to be approved by the commission and the attorney general, conditioned upon the faithful discharge of his duties; the inspectors and other employees shall receive such salaries as the commission may determine. The chief deputy inspectors, inspectors, and other employees shall be required to take an oath to faithfully perform their duties. [L. '21, p. 540, § 1; L. '19, p. 590, § 4. Cf. L. '11, p. 399, § 4.]

See notes to §§ 6979, 6980.

§ 6982. Action upon Bonds.

All bonds provided for by this act shall be filed in the office of the secretary of state of Washington, and any person injured by official act or the neglect of duty of any such bonded employee, or by reason of neglect or failure of such bonded employee or warehouseman to comply with the provisions of this act or of the rules and regulations of the commission shall have a right of action upon such bond for the recovery of all damages suffered thereby. [L. '19, p. 591, § 5. Cf. L. '11, p. 400, § 5.]

§ 6983. Interest in Commodities Prohibited.

No chief inspector, or other employee, shall, during his term of office, be interested, directly or indirectly, in the handling, storing, shipping, purchasing or selling of the commodities included in the provisions of this act. [L. '19, p. 591, § 6. Cf. L. '11, p. 400, § 6.]

§ 6984. Inspector's Neglect of Duty—Penalty.

Any inspector who shall be guilty of any neglect of duty, or who shall knowingly or carelessly inspect, sample or weigh any commodity included within the provisions of this act improperly, or who shall, directly or indirectly, accept any money or other consideration for any neglect of duty or any improper performance of duty as such inspector, or any person, persons, corporation or agent who shall improperly influence or attempt to improperly influence any inspector in the perform-

ance of his duties as such inspector, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) or imprisoned in the county jail not less than six months nor more than one year, or by both such fine and imprisonment, in the discretion of the court. [L. '19, p. 592, § 7. Cf. L. '11, p. 400, § 7.]

§ 6985. Inspection Points.

The cities of Seattle, Tacoma, Spokane, Everett and Yakima shall be provided with state inspection and weighing under this act. Such other cities and towns or districts where commodities included in the provisions of this act, are received or shipped by common carrier, and the shipments are such as would reasonably justify and render necessary the inspection and weighing thereof, may be designated by the commission as inspection points and be provided with state inspection and weighing: Provided, that the expenditure for the inspection and weighing at each of such points designated by the commission shall not exceed the receipts of the fees at such place. [L. 21, p. 541, § 2; L. '19, p. 592, § 8; L. '11, p. 400, § 8.]

§ 6986. Employees.

All employees under this act may be removed at any time by the commission. They shall be paid in the same manner as other employees of the commission. [L. '19, p. 592, § 9. Cf. L. '11, p. 401, § 9.]

§ 6987. Warehouse Charges.

All charges and regulations made by any public warehouse hereunder for the handling or storage of grain, hay and peas shall be just, fair and reasonable; and the commission is hereby vested with power and authority upon the complaint of any person interested or upon its own motion, after a full hearing, to declare any existing charge for the handling or storage of grain, hay or peas or any regulation whatsoever affecting such charge, or the receipt, handling or storage, to be unreasonable or unjust, and to determine and order what shall be a just and reasonable charge or regulation to be imposed or enforced in place of that found to be unreasonable or unjust. [L. '19, p. 592, § 10. Cf. L. '11, p. 401, § 10.]

See note to § 6979.

§ 6988. Regulative Procedure of Commission.

All provisions of law relating to the method of procedure by the commission in fixing the rates to be charged by railroad companies for the transportation of freight and passengers and the review of the acts or orders of the commission with reference thereto, and the enforcement of such orders, shall, so far as the same are applicable, govern the procedure of such commission in regulating public or terminal warehouses, and the review and enforcement of the acts and orders of the commission under the provisions of this act. [L. '19, p. 593, § 11. Cf. L. '11, p. 401, § 11.]

See notes to § 6979.

§ 6989. Grades to be Fixed—Changes—Hearings—Copies of Grades.

The commission shall fix and establish standard grades to apply to all grain and hay, bought or handled by the public or terminal warehouses in this state. The commission shall adopt as state grade standards all grades for grain and hay now or hereafter established by the United States Department of Agriculture. Standards for grain and hay not provided for by the United States Department of Agriculture shall be established or changed only after a public hearing, notice thereof to be given by publication in three newspapers of the state, at least ten days prior to such hearing. The commission may by resolution authorize the weighing and grading, upon request of any interested party, of commodities of commerce, other than grain or hay, such as grain or hay products, rice, beans and other similar articles, nitrates and other fertilizers, sulphur and other chemicals used in the arts or in manufacturing, when same are received from or delivered to any rail or water carrier in the state in commercial transportation, and may authorize the certification of the weights and grades thereof. Fees for such service, sufficient to cover the cost thereof, shall be fixed by the commission. Grades may be established or changed by the commission and rules and regulations governing warehousemen be promulgated after a public hearing, notice thereof to be given by publication once each week for two successive weeks in at least three newspapers of general circulation in the state, two of which, at least, shall be in eastern Washington. All interested persons desiring to be heard shall be permitted to give testimony and such other witnesses may be subpoenaed as the commission may deem necessary, which witnesses shall be entitled to the same fees and mileage as are provided for witnesses in civil actions. The commission shall after such hearing, make and issue reasonable rules and regulations governing the dockage which shall be made on inferior grades and in all executory contracts thereafter entered into where the price or amount to be paid therefor depends upon terminal weight or grade, such rules and regulations shall control the dockage in so far as the same affects the price to be paid, and such rules and regulations shall become part of the contract of sale unless expressly agreed to the contrary in such executory contract.

It shall be the duty of the chief inspector, immediately after the establishment of grades for grain, hay, grain and hay products and peas, and the promulgation of rules and regulations fixing dockage, as herein provided, to supply each public and terminal warehouseman, which the records in his office show is then or thereafter engaged in operating such warehouses, with a copy of such grades, rules and regulations. It shall be the duty of every public or terminal warehouseman to keep such copy on file in a convenient place in every such warehouse and, if an office is maintained in connection with such warehouse, a copy of such grades, rules and regulations shall be kept on file in such office and a placard notice posted in a conspicuous place in every such warehouse and such office, reading as follows:

“A Copy of Washington Grades, Rules and Regulations is on File Here
for Information of Interested Parties.”

Every such warehouseman shall exhibit such copy of grades, rules and regulations to any interested party applying therefor at any such

warehouse or office and permit such interested party to examine and consult such copy. In all contracts hereinafter entered into for the sale of unscoured wheat, pertaining to the classes soft red winter, common white, and white club wheat, under the official grain standards of the United States Department of Agriculture, and under rules adopted in Washington by the public service commission where the price or amount to be paid depends upon the weight or grade, no discount or differential shall be made on account of test weight per bushel if the grain delivered under said contract weighs not less than fifty-eight pounds to the measured bushel: Provided, however, that the grain so delivered grades number two or better under the standards above described. For wheat weighing in excess of fifty-eight pounds to the measured bushel and grades No. 2 or better, there shall be paid a premium over the price at country point for said grade at a rate of not less than eight-tenths of one per cent for each pound test weight over the minimum of said grade when test weight is the determining factor and in case of delivery on contract of grain of lower grade on account of test weight per bushel the discount or differential shall be at a rate not to exceed eight-tenths of one per cent of the price for said grade at country point for each pound test below the minimum test weight for the grade on which the contract is based unless the test weight be below fifty-five and at a rate not to exceed one and six-tenths per cent of the price at country point for each pound test below fifty-five down to and including wheat having a test weight of fifty-one pounds per measured bushel. The discount on mixed wheat may not exceed two per cent below the purchase price paid at country point for the same grade of the class of wheat which predominates in the mixture. Said discounts, together with the rules and regulations above provided, shall become part of every contract of sale of wheat of the classes named. [L. '21, p. 536, § 1; L. '19, p. 593, § 12. Cf. L. '11, p. 401, § 12.]

See notes to §§ 6979, 6980.

Cited in 87 Wash. 319.

§ 6990. Partial Validity.

That if any clause, sentence, paragraph, or part of this act shall, for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof, directly involved in the controversy in which such judgment shall have been rendered. [L. '21, p. 539, § 2.]

§ 6991. Fees and Charges—Disposition.

The director of agriculture shall fix the fees for inspection, grading and weighing of the commodities included in the provision of this act, which fees shall not exceed eight cents a ton for sack grain and six cents a ton for bulk grain. The fees for inspection, grading and weighing of such commodities shall be a lien upon such commodity so weighed, graded and or inspected to be paid by the carrier transporting the same and treated by it as an advanced charge, except when the bill of lading contains the notation "Not for terminal weight and grade" and the

commodity is not unloaded at a terminal warehouse. The director of agriculture shall so adjust the fees to be collected under this act as to meet the expenses necessary to carry out the provisions hereof, and may prescribe a different scale of fees for different localities. The director of agriculture may also prescribe a reasonable charge for service performed at places other than public terminal warehouses in addition to the regular fees when necessary to avoid rendering the service at a loss to the state. All moneys collected under the provisions of this act and all fines and penalties for violation thereof, shall be paid into the state treasury. The state auditor may anticipate the receipts and issue warrants to cover the same to any amount not exceeding fifteen thousand dollars (\$15,000). [L. '21, p. 212, § 1; L. '19, p. 595, § 13. Cf. L. '11, p. 402, § 13.]

§ 6992. Inspectors' Certificates Conclusive — Records — Certificates of Inspection.

The chief inspector, and inspectors, shall, at the places provided for state inspection under this act, have exclusive control of the weighing and grading of the commodities which shall be inspected under the provisions of this act and the action and certificates of such inspectors in the discharge of their duties, as to all commodities weighed or inspected by them, shall be conclusive upon all parties interested: Provided, however, an appeal may be taken to the commission, whose decision shall be final. Suitable books and records shall be kept in which shall be entered a faithful and true record of every carload, or cargo or part of cargo or commodities inspected or weighed by them, showing the number and initial or other designation of the vehicle or boat containing such carload, or cargo, or part of cargo, its weight, the kind of commodity, and its grade, and if graded below standard No. 1 grade, the reason for such grade, if of inferior grade, the amount of such dockage, the amount of fees and forfeitures and disposition of same, and for each vehicle or cargo, or part of cargo, of commodity inspected, they shall give a certificate of inspection showing the kind and grade of the same and the reason for all grades below No. 1, the amount to be allowed for dockage, if any, the number of sacks, bales or other parcels thereof, with the grade or grades and weight of same, if requested to do so by consignor or consignee. They shall also furnish the agent of the railroad company, or other carrier over which such commodity was shipped or carried, a certificate showing the weight thereof, if requested to do so. They shall also keep a true record of all appeals, decisions and a complete record of every official act, which books and records shall be open to inspection by any party in interest. [L. '19, p. 596, § 14. Cf. L. '11, p. 403, § 14.]

See notes to §§ 6979, 6980.

Cited in 87 Wash. 318.

Where the purchaser of wheat had paid for it according to the state grain inspector's grading, under this section, making such grading conclusive on all parties interested, with right of appeal to the public service commission, he is

one of the "parties interested" within section 6994, *infra*, entitling him to notice of the hearing on the appeal, without which notice the decision on the appeal is a nullity: *Reardan Union Grain Co. v. Smith*, 87 Wash. 316, 151 Pac. 772.

§ 6993. Misconduct of Inspectors.

Upon written complaint filed with the commission charging any inspector with official misconduct, inefficiency, incompetency or neglect of duty, the commissioner shall investigate such charge, and if it be found sustained, shall remove such officer. [L. '19, p. 597, § 15. Cf. L. '11, p. 404, § 15.]

See notes to § 6979.

§ 6994. Appeals from Inspector's Grading—Notice.

In case any owner, consignee or shipper of any commodity included in the provisions of this act, or his agent or broker, or any public or terminal warehouseman shall be aggrieved at the grading of such commodity, such aggrieved person may appeal to the commission from such decision within thirty days from the date of certificate by giving notice of appeal, and paying a fee to be fixed by the commission, which shall be retained if the decision appealed is sustained. Such notice of appeal may be given by a letter or other written notice by commission stating that such party appeals from the decision of the inspector and specifying the initials, number and designation of vehicle or the name of the ship in which such commodity was contained when inspected and graded.

The party taking such appeal shall also file with the commission a list containing the names and addresses of all parties interested in the subject matter of appeal. It shall be the duty of the commission, upon receiving such notice and list of interested parties to immediately notify the parties interested of the time and place designated by it for a hearing and at such time and place, which shall be within twenty days from the date of receiving such notice, hold a hearing and inquire into the reasonableness and correctness of such original grading and such evidence shall be received, as the parties thereto may desire to offer. After such hearing the commission shall make such order affirming or modifying the grade so established by the inspector as the facts may justify.

If the grading of any grain for which federal standards have been fixed and the same adopted as official state standards, has not been the subject of a hearing in accordance with paragraph one of this section, any interested party, who is aggrieved with the grading of such grain, may, with the approval of the secretary of the United States Department of Agriculture, appeal to the federal grain supervisor of the supervision district in which the state of Washington may be located.. Such federal grain supervisor shall confer with the chief inspector or his deputies and any other interested party and shall make such tests as he may deem necessary to determine the correct grade of the grain in question.

The federal grain supervisor shall issue, or cause to be issued, a federal grade certificate to all interested parties, which shall state the grade of the grain as determined by such tests, also number of inspector's certificate, which is superseded by the federal appeal grade certificate and the following statement "This certificate is issued pursuant to the United States Grain Standards Act of Section Sixteen, Chapter 189, Laws of Washington 1919." Such federal appeal grade certificate shall be prima facie evidence of the correct grade of the grain in any court in the state of Washington. The federal supervisor shall charge and assess and cause

to be collected for each such appeal a fee of three dollars (\$3), which shall be paid to the commission and the same shall be refunded if the appeal is sustained. [L. '21, p. 542, § 3; L. '19, p. 597, § 16. Cf. L. '11, p. 404, § 16.]

See notes to §§ 6979, 6980.

Cited in 87 Wash. 318, 319.

Who is "interested party" entitled to appeal: *Reardan Union Grain Co. v. Smith*, 87 Wash. 316, 151 Pac. 772.

§ 6995. Inspection and Grading for Export.

All grain and hay received at terminal warehouses shall be inspected and weighed by the inspector and when exported shall, if requested, be reinspected and graded in like manner and a certificate of grade issued, a reasonable fee to be charged for such reinspection, said fee to be fixed by the commission. All other grain and hay received in carload lots, or, when shipped by water in lots containing more than thirty tons of grain or twelve tons of hay at inspection points, not unloaded at a terminal warehouse, shall be weighed, inspected and graded, unless the bill of lading contains a notation "Not for terminal weight and grade." [L. '19, p. 598, § 17. Cf. L. '11, p. 404, § 17.]

§ 6996. Bonds of Warehousemen—Licenses—Penalty.

Each person, firm, corporation or association of persons operating any public warehouse or warehouses subject to the provisions of this act shall, on or before the first day of July of each year, give a surety bond to the state of Washington, in such sum as the commission may require, to be approved by the commission and the attorney general, conditioned upon the faithful performance of the acts and duties enjoined upon them by law, and every such person, firm, or corporation, association of persons shall, on or before July 1st of each year, procure from the commission a license for each such warehouse so owned or operated for the ensuing year before transacting business at such public warehouse or warehouses: Provided, that no such license shall be issued before the bond hereinbefore required shall have been given and approved. Such license shall be posted in a conspicuous place in the office of each warehouse. The fee for such license shall be two dollars (\$2) for each public warehouse, and the commission may revoke any such license for cause, upon notice and hearing. Any person, corporation or association operating any public or terminal warehouse in this state without a license shall forfeit to the state for each day's operation fifty dollars (\$50), the same to be recovered on action brought by the attorney general in the superior court of Thurston County, Washington, and further such operation may be enjoined upon complaint of the commission. [L. '19, p. 598, § 18. Cf. L. '11, p. 405, § 18.]

§ 6997. Schedule of Storage Rates.

Every such warehouseman shall annually, during the first week in July, publish, by keeping posted in a conspicuous place in his warehouse, a schedule of storage rates for the ensuing year, and said rates shall not be increased during such period and no discrimination in rates shall be

made by any such warehouseman. A copy of such schedule of rates shall be filed by the warehouseman with the chief inspector. [L. '19, p. 599, § 19. Cf. L. '11, p. 405, § 19.]

See *infra*, § 7014, regulation of rates and facilities.

§ 6998. Examination of Warehouses.

Every person having an interest in any grain, hay or peas stored in any such warehouse, and every inspector shall have the right to examine at all times, during ordinary business hours, any grain, hay or peas so stored, and all parts of such warehouse; and every warehouseman, his agents and servants, shall furnish proper facilities for such examination. [L. '19, p. 599, § 20. Cf. L. '11, p. 405, § 20.]

§ 6999. Discrimination and Preferences Prohibited.

If any public or terminal warehouseman subject to the provisions of this act, shall directly, or indirectly, by any special charge, rebate, drawback or other device, demand, collect or receive from any person or persons a greater or lesser compensation for any service rendered or to be rendered in the handling or storage of grain, hay or peas than he demands, collects or receives from any other person or persons for doing for him, or for them, a like and contemporaneous service in the handling or storage of grain or hay under substantially similar circumstances and conditions, or if any such public or terminal warehouseman shall make or give any undue or unreasonable preference or advantage to any person, company, firm or corporation in any respect whatsoever, or shall subject any particular person, company, firm or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such warehouseman shall be subject to a penalty, as hereinafter provided. [L. '19, p. 599, § 21. Cf. L. '11, p. 405, § 21.]

See *infra*, § 7014, regulation of rates and facilities.

§ 7000. Duty to Store—Warehouse Receipts—Remodeling Warehouse—Approval.

Every public warehouseman shall receive for storage and shipment, so far as the capacity of his warehouse will permit, all grain, hay and any commodity included in the provisions of this act, in a warehouse for this purpose, in suitable condition for storage, tendered him in the usual course of business, without discrimination of any kind. A warehouse receipt in form prescribed by law, consecutively numbered, shall be issued and delivered to the owner or his representative immediately upon receipt of each load or parcel of grain, hay, or other commodity, as he may demand, giving the true and correct grade and weight thereof. Provided, that upon request of the owner, grain, hay or other commodity shall be put in a special pile without grading, and if grain, hay or other commodity have been wet or damaged it shall be received and piled in a special pile, with a distinguishing mark, which shall be shown on the receipt for the same and given for the number of sacks only, or bales. The failure to issue, when requested, said receipt shall be subject to a penalty, as hereinafter provided.

If any public or terminal warehouseman or association desires to remodel, change or alter or construct a new public or terminal warehouse

or mill, in whole or in part, it shall first prepare plans and specifications setting forth in detail all of the proposed changes, and submit the same to the commission for its approval, and when said commission has approved the plans it shall issue a permit to the interested party asking for same. The commission's interest in the proposed construction is primary in that part affecting the receiving and discharging of grain, hay and other commodities, both as to weighing and inspecting the same, and providing safeguards for the employees of the state. [L. '21, p. 543, § 4; L. '19, p. 600, § 22. Cf. L. '11, p. 406, § 22.]

Refusal to give, penalty. See *supra*, § 2643.

Warehouse receipts compulsory, when. See, *supra*, § 3602.

See *infra*, § 7014, regulation of rates and facilities.

Receipts by public terminal warehouses. See *infra*, §§ 11554, 11556, 11559.

§ 7001. Delivery of Commodities Stored.

Upon the return of the receipt to the proper warehouseman, properly indorsed, and upon payment or tender of all advances and legal charges, grain, hay or peas of the grade and quantity named therein shall be delivered to the holder of such receipt, within forty-eight hours after the facilities for receiving the same have been provided. If such warehouseman shall fail so to deliver it, he shall be liable to the owner, in damages at the rate of one per cent of the reasonable value of the product for each day's delay, unless he shall deliver the property to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. If, upon such demand and tender, the warehouseman shall fail so to deliver such grain, hay or peas, the person entitled thereto may recover the same by action; and such warehouseman or person or agent in charge thereof shall be subject to a penalty, as hereinafter provided. [L. '19, p. 601, § 23. Cf. L. '11, p. 406, § 23.]

§ 7002. Annual and Special Reports of Warehousemen.

On June 30th of each year every warehouseman shall make a report, under oath, to the commission, on blanks or forms prepared by it, showing the total number of sacks and weight of each kind of grain and other commodities and bales and weight of hay, received and shipped from each warehouse licensed under this act, and also the amount of outstanding storage receipts on said date, and a statement of the amount of grain, hay and other commodities on hand to cover the same. The commission may also require special reports from such warehouseman at such times as the commission may deem expedient. The commission may cause every such warehouse and business thereof and the mode of conducting the same to be inspected by one or more of its members or by its authorized agent whenever proper, and the property, books, records, accounts, papers and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. [L. '21, p. 544, § 5; L. '19, p. 601, § 24; L. '11, p. 407, § 24.]

See notes to § 6979.

§ 7003. Loading Facilities—Inspection of Hay at Shipping Point.

Whenever required by the commission, every railroad company shall construct and maintain at each station and siding in this state, suitable

facilities for the purpose of loading bulk grain, hay or other commodities direct from wagons into cars for shipment. The commission may require an increase in such facilities or additional facilities such as will protect products being loaded from damage by rain or sun whenever it deems it necessary for the protection of the farm products and to facilitate loading. Whenever hay is inspected at shipping points, a certificate shall be issued giving the date of inspection, the point shipped from, the number and the initial of the car, the kind, grade and condition of the hay, the number of bales, and signed by the inspector fixing the grades and making the inspection; such certificate to be issued in triplicate. The original certificate shall be given to the shipper and shall be by him attached to and forwarded with and as a part of the bill of lading; the duplicate shall be sent to the main office for its files, and the triplicate to be retained in the files of the inspector. [L. '21, p. 545, § 6; L. '19, p. 602, § 25; L. '11, p. 407, § 25.]

See notes to § 6979.

See *infra*, § 7014, regulation of rates and facilities.

§ 7004. Inspection at Places not Provided With State Inspection.

In case any commodity under the provisions of this act is sold for delivery on Washington grade to be shipped to or from places not provided with state inspection under this act, the buyer, seller or persons making delivery, may have it inspected out by notifying the chief inspector or a chief deputy, whose duty it shall be to have such grain inspected, and after it is inspected, to issue to the buyer, seller or person delivering it, on request, an inspector's certificate showing the grade of such grain. The person or persons calling for such inspection shall pay for such inspection a reasonable fee to be fixed by the commission.

Any commodity under the provisions of this act that is shipped to points within the state where no inspection is maintained, may be inspected on request of either buyer or seller, and a certificate may be issued, showing grade of such commodity. The charge for service provided for under this section shall at least equal the entire cost of such service and shall be paid by the party calling for same. [L. '19, p. 602, § 26. Cf. L. '11, p. 408, § 26.]

§ 7005. Samples of Grain Commodities.

From all grain commodities inspected or weighed, samples may be drawn, which samples shall become the property of the state and subject to disposition by the commission under such rules and regulations as it may prescribe.

It shall be the duty of the chief inspector to transmit samples showing the Washington grades thereof adopted, to the federal government, chambers of commerce, boards of trade, exporters and persons, firms, corporations or associations handling and dealing in Washington grades under such rules and regulations as the commission may prescribe. [L. '19, p. 602, § 27. Cf. L. '11, p. 408, § 27.]

See note to § 6980.

§ 7006. Car Examinations Prior to Inspection.

The chief inspector or any inspector, serving under him, before opening the doors of any car containing grain or hay, upon arrival at any of the places designated herein for inspection, shall first ascertain the condition of such cars, and determine whether any leakage has occurred while said cars were in transit; whether or not the doors were properly secured and sealed at point of shipment, and shall make a record of such facts in all cases, giving seal numbers. After such examinations have been made and recorded, and the inspection of such grain or hay been made, the said officials shall securely close and reseal such doors as have been opened by them, using the special seal of the said state grain inspection department for the purpose. A record of all original seals broken by said officials, and the date when broken, and also a record of all state seals substituted therefor, and the date and number of said seals, shall be made by such officials. The chief inspector, or inspectors shall break the seal, weigh and superintend the unloading of all cars of grain or hay subject to inspection, and any other person or persons breaking the seal or weighing such cars of grain or hay shall be guilty of a misdemeanor. [L. '19, p. 603, § 28. Cf. L. '11, p. 408, § 28.]

See note to § 6980.

§ 7007. Side Tracks—Track Scales—City Inspection of Scales.

Any railroad delivering grain or hay in cars at any of the places provided with state inspection under this act shall provide convenient and suitable side tracks and loading facilities at such places as the commission may designate, on which all cars of grain or hay delivered by them shall, upon arrival, be set and arranged convenient for inspection, and after inspection such railroad company shall promptly distribute all such cars of grain and hay and set them at the proper place or places to be unloaded as designated by the consignor or consignee. Such railroad company shall provide at such place or places as the commission may designate suitable track scales for weighing cars of grain or hay. Such scales shall be under the control of the commission. It shall be the duty of the commission to require the railroad company to correct all scales so provided as often as may be necessary to insure the correct weighing of grain or hay. Whenever scales have been installed by any railroad company as above provided such scales shall be used in weighing all grain or hay received over the line of such railway and it shall be the duty of the railroad company to weigh cars loaded with grain, hay or other commodities included in the provisions of this act, while loaded and to re-weigh the car when the load has been removed therefrom. Failure or neglect to carry out the provisions of this act by any railroad company shall subject it to a fine of not less than twenty-five (\$25) nor more than one hundred dollars (\$100) for each offense: Provided, that if any terminal warehouse in inspection cities are provided with proper scales and weighing facilities, the chief inspector or his deputy may weigh the grain upon the scales so provided. The commission at least once each year [shall] cause to be examined, tested and corrected all scales used in weighing grain or hay in any of the cities designated as inspection points in this act or such places as may be hereinafter designated, and after such scale is tested, if found to be

correct and in good condition, to seal the weights with a seal provided for that purpose and to issue to the owner or proprietor a certificate authorizing the use of such scales for weighing grain or hay for the ensuing year, unless sooner revoked by the commission. If such scales be found to be inaccurate or unfit for use, the commission shall notify the party operating or using them, and the party thus notified shall, at his own expense, thoroughly repair the same before attempting to use them, and until thus repaired to the satisfaction of the commission, the certificate of such party shall be suspended or revoked, in the discretion of the commission. The party receiving such certificate shall pay to the commission a reasonable fee for such inspection and certificate to be fixed by the commission, which sum shall be paid into the state treasury. It shall be the duty of said commission to see the provisions of this section are strictly enforced. [L. '21, p. 546, § 7; L. '19, p. 603, § 29. Cf. L. '11, p. 409, § 29.]

See notes to §§ 6979, 6980.

§ 7008. Exercise of Powers and Duties Conferred.

When the director of agriculture shall be appointed, qualify, assume and exercise the duties of his office, under the provisions of Chapter I of Title LXXV of this code, he shall, through and by means of the division of agriculture, exercise all the powers and perform all the duties by this act vested in, and required to be performed by, the public service commission of Washington. [L. '21, p. 547, § 8.]

See *infra*, § 7014, director of public works to have supervision of rates.

§ 7009. Police Protection.

All railroad companies and warehousemen operating in the cities provided for inspection by this act, shall furnish ample and sufficient police protection to all their several terminal yards and terminal tracks to securely protect all cars containing grain or hay, while the same are in their possession. They shall prohibit and restrain all unauthorized persons, whether under the guise of sweepers, or under any other pretext whatever, from entering or loitering in or about their railroad yards or tracks and from entering any car of grain or hay under their control, or removing hay or grain therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of this section. [L. '19, p. 605, § 30. Cf. L. '11, p. 410, § 30.]

§ 7010. Shipper's Weight and Grade, Where Conclusive—Unlawful Unloading.

When grain, hay or peas are shipped to points where inspection is provided and the bill of lading does not contain the notation "Not for terminal weight and grade" and the grain or hay is unloaded by or on account of the consignee or his assignee without being inspected or weighed by a duly authorized inspector under the provisions of this act, the shipper's weight and grade shall be conclusive and final and shall be the weight and grade upon which settlement shall be made with the seller, and the consignee, or his assignee, by whom such grain, hay or peas are so unlawfully unloaded shall be liable to the seller thereof for liquidated damages in an amount equal to ten per cent of the scale price of such hay,

grain or peas computed on the basis of the shipper's weight and grade. [L. '19, p. 605, § 31. Cf. L. '11, p. 410, § 31.]

§ 7011. Penalty for Violations of Act.

Any railroad company or common carrier or other corporation, and any warehouseman, which shall violate or fail to comply with any provision of this act, or which fails, omits or neglects to obey, observe or comply with any order, rule or any direction, demand or requirement of the commission made under the provisions of this act, shall be subject to a penalty of not to exceed the sum of one thousand dollars (\$1,000) for each and every offense, and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance thereof shall be, and be deemed to be, a separate and distinct offense.

Every officer, agent or employee of any railroad company or common carrier, or other corporation, or any warehouseman, who shall violate or fail to comply with, or who procures, aids or abets any violation by any such railroad company or common carrier, or other corporation or warehouseman, of any provisions of this act, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such railroad company or common carrier, or other corporation, or any warehouseman, in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor.

Every person, either individually or acting as an official or agent of any corporation other than a railroad company, common carrier or warehouseman, who shall violate any provision of this act, or fail to observe or comply with any order made by the commission under this act, so long as the same shall be or remain in force, or shall procure, aid or abet any such corporation in its violation of this act, or in its failure to obey, observe or comply with any such order, shall be guilty of a gross misdemeanor. [L. '19, p. 606, § 32.]

§ 7012. Partial Invalidity.

If any section or part of a section of this act shall be for any cause held to be unconstitutional, such fact shall not affect the remainder of this act. [L. '19, p. 607, § 33. Cf. L. '11, p. 411, § 32.]

"This act" refers to this chapter.

§ 7013. Actions and Proceedings Under Prior Law Continued.

This act, in so far as it embraces the same subject matter, shall be construed as a continuation of Chapter 91 of Laws of 1911, and this act shall not affect pending actions or proceedings, civil or criminal, instituted under the provisions of Chapter 91 of the Laws of 1911, but the same may be prosecuted or defended with the same effect as though this act had not been passed. Any investigation, examination or proceeding, application for reinspection or appeal undertaken, commenced or instituted under the provisions of Chapter 91 of the Laws of 1911, may be conducted and continued to a final determination in the same manner,

under the same terms and conditions and with like effect as though said Chapter 91 had not been repealed.

No cause of action arising under the provisions of Chapter 91 of the Laws of 1911, or dependent thereon, shall abate by reason of the passage of this act, whether a suit or action shall have been instituted thereon at the time of the taking effect of this act or not, but actions may be brought on such causes in the same manner, under the same terms and conditions, and with the same effect as though said chapter had not been repealed.

All findings, orders, rules and grades issued or promulgated by the commission under the provisions of said chapter shall continue in force, have the same effect and shall be enforced in the same manner as though this act had not been passed. [L. '19, p. 607, § 35.]

The act of 1911 is Rem. & Bal. Code, §§ 5980 to 6010, incl., which was repealed by L. '19, p. 607, § 34.

§ 7014. Supervision Over.

The director of public works shall have the power and it shall be his duty, through and by means of the division of public utilities, to exercise general supervision over the facilities, rates and service of public and terminal warehouses, as those terms are defined in this chapter, for the receiving, handling, storing and delivering of grain, hay and peas, and to that end shall make all necessary rules and regulations for carrying out and enforcing the provisions of this act. In carrying out and enforcing the provisions of this act and in exercising the jurisdiction herein conferred, the procedure shall be the same as that provided by this chapter for exercising and carrying out the jurisdiction and powers therein conferred. [L. '21, p. 493, § 1.]

See supra, § 7008, duties of public service commission devolve upon director of agriculture.

§ 7015. Scope of Act.

This act shall not be construed as repealing directly or by implication any of the provisions of this chapter, but is intended to confer additional power and jurisdiction upon the director of public works. [L. '21, p. 494, § 2.]

CHAPTER III.

CONCENTRATED COMMERCIAL FEEDING STUFFS.

§ 7016. Term Defined.

The term "concentrated commercial feeding stuffs" as used in this act shall include linseed meals, cocoanut meats, gluten feeds, sugar feeds, dried brewer's or distiller's grains, malt sprouts, feeds made from ground cereals or byproducts therefrom, including slaughter-house waste products when sold as feeds, mixed feeds, and mixed meals made from seeds or grains, and all materials of similar nature used for domestic animals, condimental feeds, stock feeds, and all patented proprietary or trade stock and poultry feeds for which nutritive value is claimed, but it shall not include hay or whole seeds, or unmixed meals made from entire

grains of wheat, rye, barley, oats, corn, or other cereals, nor wheat flour or other flours. [L. '19, p. 248, § 1. Cf. L. '09, p. 705, § 1.]

Cited in 84 Wash. 247, 248, 251; 109 Wash. 681, 687.

The act of 1909 (Rem. & Bal. Code, § 6011 et seq.) was unconstitutional as class legislation: *State v. Robinson*, 84 Wash. 246, 146 Pac. 628.

The title to this act referring to the "adulteration" of concentrated commercial feeding stuffs sufficiently expresses the subject matter of section 7018, which limits to ten per cent the amount of crude fiber in the weeds enumerated; since "adulteration" in the title applies to the addition of weaker or less nutritious substances and not merely to for-

eign substances: *Fisher Flouring Mills Co. v. Brown*, 106 Wash. 680, 187 Pac. 399.

The state and federal constitutional guarantees of due process and equal protection of the laws do not apply to laws enacted by the state legislature in the exercise of its police powers; hence this act does not violate Const., Art. 1, §§ 3 and 12, or the fourteenth amendment to the federal constitution; notwithstanding that some innocuous feed stuffs are incidentally included within the prohibition of the law: *Fisher Flouring Mills Co. v. Brown*, 109 Wash. 680, 187 Pac. 399.

§ 7017. Dealer's Statement of Brand.

Before any concentrated commercial feeding stuff is sold, offered or exposed for sale in Washington, the manufacturer, importer, dealer, agent, or person who causes it to be sold or offered for sale, by sample or otherwise, within this state, shall file with the commissioner of agriculture a statement that he desires to offer such concentrated commercial feeding stuff for sale in this state, and also a certificate, the execution of which shall be sworn to before a notary public, or other proper official, for registration, stating the name, brand or trademark under which the concentrated commercial feeding stuff will be sold, and the minimum percentage of crude fat and crude protein and maximum per cent of crude fibre (allowing one per centum nitrogen to equal 6.25 per centum of protein) which the manufacturer or person offering the concentrated commercial feeding stuff for sale guarantees it to contain, these constituents to be determined by the methods recommended by the association of official agricultural chemists of the United States. [L. '19, p. 248, § 2. L. '09, p. 706, § 2.]

Cited in 109 Wash. 681.

§ 7018. Packages Labeled—Amount and Analysis.

Any person, company, corporation or agent, that shall sell, offer or expose for sale, any concentrated commercial feeding stuff in this state shall state in the invoice of every bulk shipment, shall affix or cause to be affixed to every package or sample of such concentrated commercial feeding stuff, in a conspicuous place on the outside thereof, a tag or label, which shall be accepted as a guarantee of the manufacturer, importer, dealer, or agent, and which shall have plainly printed thereon, in the English language, the number of net pounds of concentrated commercial feeding stuff in the package or bulk shipment, the name, brand or trademark under which the concentrated commercial feeding stuff is sold, the name and address of the manufacturer, importer, dealer or agent, the guaranteed analysis stating the minimum percentage of crude fat and crude protein and maximum per cent of crude fibre, which shall not exceed ten per cent (10%), determined as described in section 7017, and the ingredients from which the concentrated commercial feeding stuff is compounded. The agency distributing to users of such feed in less than

carload lots shall deliver to the purchaser of each lot regardless of quantity sold a bill showing current analysis of such feeding stuffs. [L. '19, p. 249, § 3; L. '09, p. 706, § 3.]

See note to § 7016.

Cited in 109 Wash. 682.

§ 7019. Violations of Act—Official Analysis as Prima Facie Evidence.

Any person, company, corporation, or agent, that shall offer or expose for sale, or sell, any package or sample or any quantity of any concentrated commercial feeding stuff which has not been registered with the commissioner of agriculture, as required by section 7017, or which does not have affixed to it the tag or label required by section 7018, or which is found by analysis made by or under the direction of the chemist of Washington Agricultural Experiment Station to contain a smaller percentage of crude fat or protein or larger percentage of crude fibre than stated in the guarantee, or who shall affix a tag or label which is false or inaccurate in any respect, or who shall adulterate any concentrated commercial feeding stuff, or who shall adulterate with any substance injurious to the health of domestic animals, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of one hundred dollars (\$100) for the first offense, and in the sum of five hundred dollars (\$500) for each subsequent offense. In all litigation arising from the purchase or sale of any concentrated commercial feeding stuff, in which the composition of the same may be involved, a certified copy of the official analysis, signed by the chemist of the Washington Agricultural Experiment Station, shall be accepted as prima facie evidence of the composition of such concentrated commercial feeding stuff: Provided, that nothing in this act shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers or manipulators who mix concentrated commercial feeding stuffs for sale, or as preventing the unrestricted shipment of these articles in bulk to manufacturers or manipulators concentrated commercial feeding stuffs for sale, or to prevent the State Experiment Station, or any person or persons authorized by the State Experiment Station, from making experiments with concentrated commercial feeding stuffs for the advancement of science in agriculture. [L. '19, p. 250, § 4.]

Cited in 109 Wash. 683, 685.

§ 7020. Depleted Food Values Shown.

It shall be unlawful to sell, offer or expose for sale in this state, any corn, barley, oats or any other grain from which the heart, or any of the food value has been extracted, without such statement being shown on each package or bulk shipment, and on the invoice covering such grain. [L. '19, p. 251, § 5.]

§ 7021. Deleterious Substances Prohibited.

It shall be unlawful to include in any concentrated commercial feeding stuff, any buckwheat hulls, rice hulls, cottonseed hulls, peanut hulls, oat hulls, peanut shells, corn cobs, cocoanut shells, ground or shredded straw, sawdust, cellulose, dirt, damaged or decayed feed, mill, elevator or

other sweepings or dust, marble dust, or any injurious, deleterious, or, for feeding purposes, worthless or damaged ingredient. [L. '19, p. 251, § 6.]

Cited in 109 Wash. 683, 691.

§ 7022. Samples of Feeds Offered for Sale.

The commissioner of agriculture, or any person deputed by him, is hereby empowered to procure from any lot, or parcel or package of concentrated commercial feeding stuff offered for sale or found in Washington, a sample quantity thereof, not to exceed two pounds, the sample to be divided in two approximately equal parts, each to be sealed, and one part to be delivered promptly to the manufacturer: Provided, that such sample shall be drawn during reasonable business hours, or in the presence of the owner of the concentrated commercial feeding stuff, or some person claiming to represent the owner. [L. '19, p. 251, § 7. Cf. L. '09, p. 710, § 8.]

See *infra*, § 10848, duties devolve upon director of agriculture.

See *infra*, § 10893, commissioner of agriculture abolished.

§ 7023. Interference with Procurement of Samples.

Any person who shall prevent, or strive to prevent, the commissioner of agriculture, or any person deputed by him, from inspecting and obtaining samples of concentrated commercial feeding stuffs, as provided for in the preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of one hundred dollars (\$100) for the first offense, and in the sum of five hundred dollars (\$500) for each subsequent offense. [L. '19, p. 252, § 8; L. '09, p. 710, § 9.]

See note to § 7022.

§ 7024. Rules and Regulations.

The commissioner of agriculture is hereby empowered to prescribe and enforce such rules and regulations relating to concentrated commercial feeding stuffs as he may deem necessary to carry into effect the full intent and meaning of this act, and to refuse the registration of any feeding stuff under a name which would be misleading as to the materials of which it is made, or when the percentage of crude fat or crude protein is below or the percentage of crude fibre is above the standards adopted for concentrated commercial feeding stuffs. [L. '19, p. 252, § 9; L. '09, p. 711, § 10.]

See note to § 7022.

§ 7025. Assistance by Public Law Officers.

It shall be the duty of the state attorney general or the prosecuting attorneys of the several counties of this state, to cause proceedings to be commenced against any person or persons whom the commissioner of agriculture shall report to have violated any section of this act, and to prosecute the same in the manner required by law. [L. '19, p. 252, § 10; L. '09, p. 711, § 11.]

"This act" refers to this chapter.

Cited in 109 Wash. 684.

§ 7026. Repealing Clause.

All acts and parts of acts in conflict with the provisions hereof are hereby repealed. [L. '19, p. 252, § 11.]

§ 7027. Partial Invalidity.

In case any section or portion of this act shall be held to be unconstitutional, or invalid, it shall not affect the remainder of this act. [L. '19, p. 253, § 12.]

"This act" refers to this chapter.

CHAPTER IV.**HOP INSPECTION.****§ 7028. [6025.] Hop Inspector—Appointment.**

The governor of the state of Washington shall appoint some suitable person whose duties it shall be to inspect hops and determine and fix the grade or quality thereof as hereinafter provided. [L. '99, p. 161, § 1.]

§ 7029. [6026.] May Call Inspector to Fix Grade—Certificate.

Any person, firm, company or corporation owning hops within said state of Washington, who may contract for the future sale of his, her, or their hops or give a chattel mortgage on any crop of hops yet to be grown, for money advanced by the mortgagee to be used in cultivating and harvesting said crop, or any person, firm, company or corporation contracting to buy any crop of hops yet to be grown, or who takes a chattel mortgage on any such crop may if such owner, buyer, or mortgagee cannot agree on the grade of said hops when in the bale or ready for delivery, call upon said hop inspector to inspect said hops and determine and fix the grade or quality thereof, and issue to each of said parties a certificate specifying the name of the owner, the buyer or mortgagee, the date of inspection and the grade or quality fixed by him. [L. '99, p. 162, § 2.]

§ 7030. [6027.] Certificate as Evidence.

The certificate of said hop inspector stating the grade or quality of any hops shall be prima facie evidence of the same. [L. '99, p. 162, § 3.]

§ 7031. [6028.] Compensation of Inspector.

Said hop inspector shall be paid five dollars per day for each day actually engaged in the performance of his duties, together with mileage and necessary expenses, to be paid equally by said owner, and said buyer or mortgagee. [L. '99, p. 162, § 4.]

Instructions. See "Trial," § 339.

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ARTICLE I. GENERAL PROVISIONS.

§ 7032. [6059-1.] Insurance Defined.

Within the intent of this act the business of apportioning and distributing losses arising from specified causes among all those who apply and are accepted to receive the benefits of such service, is public in character and requires that all those having to do with it shall at all times be actuated by good faith in everything pertaining thereto; shall abstain from deceptive or misleading practices, and shall keep, observe, and practice the principles of law and equity in all matters pertaining to such business. Upon the insurer, the insured, and their representatives shall rest the burden of maintaining proper practices in said business.

Insurance is a contract whereby one party called the "insurer," for a consideration, undertakes to pay money or its equivalent, or to do an act valuable to another party called the "insured," or to his "beneficiary," upon the happening of the hazard or peril insured against, whereby the party insured or his beneficiary suffers loss or injury. [L. '11, p. 161, § 1.]

Cited in 85 Wash. 687; 87 Wash. 423; 93 Wash. 605, 607; 95 Wash. 127; 105 Wash. 671.

What Law Governs: See Remington's Digest, Insurance, § 43; Griesemer v. Mutual Life Ins. Co., 10 Wash. 202, 38 Pac. 1031; Griesemer v. Mutual Life Ins. Co., 10 Wash. 211, 38 Pac. 1034.

Nature of Contract of Insurance: See Remington's Digest, Insurance, § 44; State ex rel. Fishback v. Universal Service Agency, 87 Wash. 413, 151 Pac. 768, Ann. Cas. 1916C, 1017.

PAYMENT OR DISCHARGE, CONTRIBUTION AND SUBROGATION: See Remington's Digest, Insurance, §§ 151—154.

§ 151. **Interest on Amount of Loss:** Wood v. Cascade Fire & M. Ins. Co., 8

Wash. 427, 36 Pac. 267, 40 Am. St. Rep. 917; Glover v. Rochester-Ger. Ins. Co., 11 Wash. 143, 39 Pac. 380.

§ 152. **Release or Discharge from Liability:** Sanford v. Royal Ins. Co., 11 Wash. 653, 40 Pac. 609.

§ 153. **Concurrent Insurance — Apportionment:** Pencil v. Home Ins. Co., 3 Wash. 485, 28 Pac. 1031.

§ 154. **Subrogation of Insurer — Effect of Prejudicing Right:** Downs etc. Assn. v. Pioneer Mut. Ins. Assn., 41 Wash. 372, 83 Pac. 423.

What constitutes insurance. 47 L. R. A. (N. S.) 290.

Fire insurance as a business affected by public interest. 29 L. R. A. (N. S.) 1195; L. R. A. 1915C, 1189.

§ 7033. [6059-2.] Terms Defined.

The terms "Company," "Corporation," or "Insurance Company" or "Insurance Corporation," in this act, unless the context otherwise requires, includes all corporations, associations, partnerships, or individuals engaged as insurers in the business of insurance.

"Domestic" designates those companies incorporated or formed in this state. "Foreign" designates those companies incorporated or formed under the laws of the United States or any other state in the United States, and "Alien" designates those companies incorporated or formed under the laws of any country other than the United States.

"Admitted Company" designates companies duly qualified and licensed to transact business under the provisions of this act. "Non-admitted Com-

panies" designates companies not licensed to transact business in this state under the provisions of this act.

"Commissioner" or "Insurance Commissioner," where used in this act, shall mean the "State Insurance Commissioner."

"Unearned Premiums," and "Net Value of Policies," severally means the liability of an insurance company upon its insurance contracts, other than accrued claims, computed by rules of valuation established by this act.

"Net Assets" means the property and funds of an insurance company available for the payment of its obligations; including uncollected premiums not more than three months past due on policies actually in force, and including in the case of a mutual company, its premiums, premium notes, and contingent liability of its policy-holders, after deducting from such funds all unpaid losses and claims and all other debts and liabilities except capital.

"Profits" of a mutual insurance company means that portion of its cash fund not required for payment of losses and expenses, not set apart for any purpose allowed by law.

"Agent" or "Insurance Agent" is a person, copartnership, corporation, attorney, board or committee duly appointed and authorized by an insurance company, to solicit applications for insurance to be known as the soliciting agent, or to solicit applications and effect insurance in the name of the company, to be known as a recording or policy writing agent, and to discharge such other duties as may be vested in or required of an agent by the company.

"Solicitor" or "Insurance Solicitor" is a person duly appointed, authorized and employed by a duly commissioned agent to solicit, receive, and forward applications for insurance and to collect premiums for the agent.

"Broker" or "Insurance Broker" is any person, copartnership or corporation, who, for compensation, not being an appointed agent for the company in which insurance or reinsurance is effected, acts or aids in any manner in negotiating contracts of insurance or reinsurance or placing risks or effecting insurance or reinsurance for a party other than himself or itself.

"Adjuster" or "Insurance Adjuster" is a person, copartnership or corporation who undertakes to ascertain and report the actual loss or damage to the subject matter of the insurance due to the hazard or peril insured against.

"Surveyor" or "Insurance Surveyor" is a person, committee, board, bureau, copartnership, or corporation resident within the state, who, in person or by deputy, inspects and surveys the various municipalities and fire hazards in this state, and the means and facilities for preventing, confining and extinguishing fires, and for the purpose of estimating fair and equitable rates for insurance; who furnishes to municipalities and owners of property information and advice as to the measures to be adopted for the reduction of fire hazards on property in this state and lessening the cost of insurance thereon; and, as relating to marine insurance, who inspects vessels and reports on their seaworthiness.

"Director" within the intent of this act means trustee.

"Insurable Interest" is every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured. "Insured Interest" in the matter of life and health insurance exists when the beneficiary, because of relationship, either pecuniary or from ties of blood or marriage, has reason to expect some benefit from the continuance of the life of the insured.

"Bottomry" is a contract by which a ship or freight is hypothecated as security for a loan which is to be repaid only in case the ship survives a particular risk, voyage or period.

"Double Insurance" exists where the same party is insured by several insurers separately, in respect to the same subject and interest.

"Over-insurance" exists where a party having an insurable interest in property has insurance thereon against the same hazard or peril in excess of the actual value of his interest therein.

"Reinsurance" means a contract by which an insurer procures a third party to insure it against loss or liability by reason of such original insurance. [L. '11, p. 161, § 2.]

Cited in 84 Wash. 18; 105 Wash. 671; 111 Wash. 520.

In the absence of proof of special authority, an adjuster's investigation after proofs of loss are made, and his demand for duplicate invoices from the insured, do not constitute a waiver of objections or estop the company from defending an action on a fire insurance policy for false swearing in the proofs of loss, in view of this section: *Manheim v. Standard Fire Ins. Co.*, 84 Wash. 16, 145 Pac. 992.

Under this section, an insurance concern that makes application to the agents of the company for a policy of marine insurance is a broker and acts as agent of the owners of the boat, so that its knowledge would not be imputed to the company: *Reynolds v. Pacific Marine Ins. Co.*, 105 Wash. 666, 178 Pac. 811.

One who has no appointment and performs only the acts of a broker would not be an agent, under this section: *Day v. Saint Paul Fire & Marine Ins. Co.*, 111 Wash. 49, 189 Pac. 95.

INSURANCE COMPANIES: See *Remington's Digest*, Insurance, §§ 5—8.

§ 5. **Officers:** *Johns v. Arizona Fire Ins. Co.*, 76 Wash. 349, 136 Pac. 120, 49 L. R. A. (N. S.) 101.

§ 6. **Insolvency and Dissolution — Grounds for Forfeiture of Franchise or Dissolution:** *State ex rel. Jenkins v. Equitable Indemnity Assn.*, 18 Wash. 514, 52 Pac. 234.

§ 7. — **Assets and Receivers:** *Smith v. Hopkins*, 10 Wash. 77, 38 Pac. 854.

§ 8. **Guaranty Obligations of Mutual Companies:** *McConaughy v. Juvenal*, 73 Wash. 166, 131 Pac. 851.

Authority or License to Do Business: See *Remington's Digest*, Insurance, § 1; *State ex rel. North Coast Fire Ins. Co. v. Schively*, 68 Wash. 148, 122 Pac. 1020.

See, also, *Northwestern Title Ins. Co. v. Fishback*, 110 Wash. 350, 188 Pac. 469.

What is insurable interest in property. 7 *Am. Dec.* 42; 20 *Am. Dec.* 510.

Insurable interest of tenant of property for specific term. *Ann. Cas.* 1913E, 741; *Ann. Cas.* 1917C, 951; *Ann. Cas.* 1918E, 835; 42 *L. R. A. (N. S.)* 135.

Husband's insurable interest in property of wife. 104 *Am. St. Rep.* 988; 2 *Ann. Cas.* 32; 19 *Ann. Cas.* 253; *Ann. Cas.* 1914C, 613; 66 *L. R. A.* 658; 45 *L. R. A. (N. S.)* 1132.

Contractor's insurable interest in building under construction. *Ann. Cas.* 1915B, 1099.

Insurable interest of holder of option on property. *L. R. A.* 1918A, 793.

Insurable interest in the life of another and necessity for. 57 *Am. Dec.* 93; 46 *Am. Rep.* 189; 52 *Am. Rep.* 135; 58 *Am. Rep.* 150.

§ 7034. [6059-3.] State Insurance Commissioner.

There shall be an insurance commissioner of this state, who shall be elected at the same time and in the same manner as other state officers are elected. The insurance commissioner in office at the time of the taking

effect of this act shall continue as such insurance commissioner until the expiration of the term for which he was elected and until his successor is duly elected and qualified. [L. '11, p. 164, § 3.]

§ 7035. [6059-4.] Term of Office—Salary.

The term of office of the state insurance commissioner, who shall be elected at the next general election for the state of Washington, shall commence on the Wednesday after the second Monday in January, after his election and he shall hold his office for the term of four years and until his successor is elected and qualified; and thereafter the term of office of said officer shall commence upon the Wednesday after the second Monday of January following his election. The state insurance commissioner shall receive a salary of three thousand dollars per year, which shall be in full for all services performed by him. [L. '15, p. 588, § 1. Cf. L. '11, p. 164, § 4.]

§ 7036. [6059-5.] Bond.

The state insurance commissioner shall have his office at the state capitol; and before entering upon his duties shall execute a bond to the state in the sum of twenty-five thousand dollars, to be approved by the state treasurer and the attorney general, conditioned upon the faithful performance of the duties of his office, and he shall take and subscribe the oath of office as required by law. His bond, upon its approval, together with his oath of office, shall be filed in the office of the secretary of state. [L. '11, p. 164, § 5.]

§ 7037. [6059-6.*] Deputy Commissioner—Actuary—Examiner—Salaries.

The state insurance commissioner may appoint a deputy insurance commissioner who shall take and subscribe the same oath of office as the state insurance commissioner, which oath shall be indorsed upon the certificate of his appointment and filed in the office of the secretary of state. Said appointment may be revoked at the will of the commissioner, who shall be held responsible for all official acts of his said deputy. Such deputy commissioner to have the power to perform any act or duty conferred upon the insurance commissioner. The commissioner may also appoint an actuary or examiner and such other deputies and employ such additional clerks and stenographers as the public business in his office may require, at an expense not exceeding the amount appropriated by the legislature.

Neither the commissioner nor any deputy, nor any employees in his office, shall be directly or indirectly interested in any insurance company, except as an ordinary policy-holder. [L. '17, p. 323, § 1; L. '15, p. 588, § 2. Cf. L. '11, p. 165, § 6.]

§ 7038. [6059-7.*] Certificate of Authority — License — Examination — Witness Fees.

The commissioner shall see that all laws respecting insurance companies are faithfully executed. He shall issue all certificates and licenses under the seal of his office provided for by the terms of this act. Before

granting certificates of authority to any insurance company to issue policies or make contracts of insurance in this state, the commissioner shall be satisfied by such examinations as he may make, or such evidence as he may require, that such company is otherwise duly qualified under the laws of this state to transact business herein. He shall require every domestic insurance company to keep its books, records, accounts and vouchers in such manner that he or his authorized representatives may readily verify its annual statements and ascertain whether the company is solvent and has complied with the provisions of law. All certificates of authority issued to insurance companies in this state shall expire on the thirty-first day of March next succeeding date of issue and may be renewed on approval of the commissioner and payment of the annual fee as provided in section 7049.

At least once each year, and whenever he determines it to be prudent to do so, he shall personally or by his deputy or examiner visit the home office of each domestic insurance company transacting insurance business and thoroughly inspect and examine its affairs to ascertain its true financial condition, its ability to meet and fulfill its obligations; whether it has complied with the provisions of law; and all other facts that he may require relating to its business methods and management, and its dealings with its policy-holders. Whenever he deems it advisable he shall cause a complete audit of the books and accounts of the company to be made by a disinterested expert accountant.

When he determines it to be prudent for the protection of policy-holders in this state, he shall in like manner visit and examine or cause to be visited and examined by some competent person or persons whom he may appoint for that purpose, any insurance company incorporated or organized in any other state, territory, district, or country, applying for admission or already admitted to do business in this state. For the purpose aforesaid, the commissioner, his deputy, or examiner making the examination shall have free access to all the books, records, accounts, vouchers, papers and files of an insurance company which relate to its business, and to books, records, accounts, vouchers, papers, and files kept by any of its agents, and for any of said purposes the commissioner, his deputy, or examiner conducting such investigation and examination shall have power to subpoena and administer the oath to, and examine as witnesses, the trustees, directors, officers, agents, servants and employees of any such company and any other persons relative to its affairs, transactions and conditions. Said subpoena shall have the same force and effect and shall be served in the same manner as if issued from a court of record. Any person who shall fail, neglect, or refuse to obey such subpoena, or, having obeyed such subpoena, shall refuse to be examined as a witness and give evidence concerning any and all matters relating to such investigation when so required, shall be liable to the same penalties as though such subpoena had been issued by, or such person had refused to give evidence in, a court having jurisdiction in equity and common law. Whenever any person shall fail, refuse or neglect to obey such subpoena, or shall refuse to give evidence concerning any and all matters pertaining to such investigation or examination, the commissioner, his deputy, or examiner having charge

of such investigation or examination may forthwith report in writing such disobedience, and file such report and such subpoena with proof of service thereof in a court having said jurisdiction in session in the county where such investigation is being had, and if no court is in session, then with any judge of such court; thereupon such court or judge shall forthwith cause such person so subpoenaed or refusing to give evidence in such investigation to be brought before such court or judge, and such court or judge shall thereupon administer and impose like terms and penalties as though such person had been subpoenaed or had refused to testify or give evidence in any proceedings before such court.

Witness fees and mileage, if claimed, shall be allowed the same as to witnesses testifying in court, which witness fees and mileage with the actual expense, if any, necessarily incurred in securing the attendance of witnesses and their testimony, shall be itemized and charged against and be paid by the company so being examined. Every person shall be obliged to attend as a witness at the place of such investigation or examination when subpoenaed anywhere within this state. [L. '19, p. 369, § 1; L. '11, p. 165, § 7.]

Validity of statute delegating regulation of insurance companies to officer or board: *Ann. Cas.* 1918E, 479.

Validity of statute licensing insurance agents or brokers. *Ann. Cas.* 1914B, 266.

§ 7039. [6059-8.] Revocation of Certificate or License—Court Review.

If the commissioner is of the opinion upon examination or other evidence that any insurance company is in an unsound condition, or that it has failed to comply with the law or with the provisions of its charter or articles of incorporation or association, or that its condition is such as to render its proceedings hazardous to the public or to its policyholders, or that its actual assets exclusive of its capital are less than its liabilities, or if its trustees, directors, officers, or agents refuse to submit to examination or to produce its books, records, accounts, and papers in its or their possession or control relating to its business or affairs, for examination and inspection of the commissioner, his deputy or examiner, when required, or shall refuse to perform any legal obligation relative to such examination, the commissioner shall revoke or suspend all certificates of authority and licenses granted to such insurance company, its officers or agents, and shall cause notice thereof to be given to such company and to each agent of such company in this state, and no new business shall thereafter be done by such company or for such company by its agents, in this state, while such revocation, suspension, or disability continues, nor until its authority to do business is restored by the commissioner.

Unless ground for revocation or suspension relates only to the financial condition or soundness of the company or to the deficiency in its assets, the commissioner shall notify such company not less than ten days before revoking its authority to do business in this state; and he shall specify in such notice the particulars of the alleged violation of law or of its charter or articles of incorporation or association, or grounds for revocation. The superior court, upon petition of such company, brought within twenty days, shall summarily hear and determine the question whether such violation has been committed, or whether it is solvent or

in an unsound condition or has exceeded its powers or has failed to comply with any provisions of the law or of its charter or articles of incorporation or association, or that its condition is such as to render its further proceedings hazardous to the public and to its policy-holders, and the court upon such hearing and determination shall make and enter such order or decree as may be proper in the premises. If the order or decree be adverse to the petitioning company and an appeal therefrom is taken to the supreme court, such appeal shall be advanced upon the trial calendar of the supreme court and be heard at as early a date as it can conveniently be tried. In the case of such appeal, the commissioner may revoke the right of said petitioning company to do business in this state until the final determination of the appeal by the supreme court. [L. '11, p. 167, § 8.]

Cited in 95 Wash. 131.

§ 7040. [6059-9.] Impairment—Notice and Requisition.

Whenever it appears to the commissioner from any showing or statement made to him or from any examination made by him, his deputy, or examiner, that the capital stock of any domestic insurance company is impaired, or that its assets are insufficient to justify its continuance in business, he shall at once determine the amount of such impairment or deficiency and thereupon issue his written notice and requisition to the company to require its stockholders to make good the amount of the impairment or deficiency with cash or investments authorized by this act, or reduction of its capital stock, not below statutory requirements, within ninety days from the service of the notice and requisition. If the amount of any such impairment or deficiency shall not be made good within the time specified in such notice and requisition and proof thereof filed in the office of the commissioner, the company shall be deemed insolvent and shall be proceeded against as an insolvent company by the attorney general in the manner authorized by this act. If the capital stock of any foreign or alien insurance company doing business in this state is found so impaired, the commissioner shall revoke the certificate of authority issued to such company and licenses issued to its agents, and shall give due notice thereof to such company and each of its agents, and thereupon such company and its agents shall discontinue the issuing of any new policies or contracts of insurance within this state. [L. '11, p. 169, § 9.]

§ 7041. [6059-10.] Impairment—Mutual Company—Notice and Requisition—Director's Liability.

Whenever it appears to the commissioner from any statement or showing made to him or from an examination made by him, his deputy, or examiner, that the assets and resources of any mutual insurance company are insufficient to justify its continuance in business, he shall promptly determine the amount of such deficiency and thereupon issue his written notice and requisition to the trustees, directors and officers of such company requiring them to make good the amount of such deficiency within ninety days from the service of such notice and requisition. Such notice and requisition may be served by registered letter having affixed

proper postage and directed to the company at its principal place of business in this state specified in its articles of incorporation or association. Upon the service of such notice and requisition, the trustees, directors and officers of such company shall forthwith cause such deficiency to be made good, and proof to be filed in the office of the commissioner within the time specified in the notice and requisition that the same has been made good.

For any losses accruing upon new risks taken after the expiration of such time, and before such deficiency shall have been made good, the trustees, directors and officers of the company shall jointly and severally be personally liable therefor. If such deficiency shall not be made good within the time specified in said notice and requisition and satisfactory proof thereof filed with the commissioner, he shall revoke the certificate of authority issued to such company and the license issued to each agent of said company and shall give due notice thereof by registered mail to such company and to each of its agents, and such company shall be deemed insolvent and may be proceeded against by the attorney general as an insolvent corporation in the manner authorized by this act. [L. '11, p. 169, § 10.]

§ 7042. [6059-11.] Delinquent Insurance Company—Proceedings—Liquidation.

This section shall apply to all domestic companies, societies and orders to which any article of this act is applicable, and the word "company" as herein used shall also include all such associations, societies and orders.

(1) Whenever any such company is insolvent; or has refused to submit its books, papers, accounts or affairs to the reasonable inspection and examination of the commissioner, his deputy, or examiner; or has neglected or refused to observe an order of the commissioner to make good within the time prescribed by law, any deficiency, whenever the capital of a stock company, or the reserve or assets of a mutual company, shall have become impaired; or it has by contract or reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other company without first having obtained the written approval of the commissioner; or if found, after an examination, to be in such condition that its further transaction of business would be hazardous to its policy-holders, or to its creditors, or to its stockholders, or to the public; or has willfully violated its articles of incorporation or association or any law of the state; or whenever any trustee, director, manager, or officer thereof has refused to be examined under oath touching its affairs, the commissioner may, the attorney general representing him, apply to the superior court or any judge thereof, in the county or judicial district in which the principal office of such company is located, for an order directing such company to show cause why the commissioner should not take possession of its property, records and effects and conduct or close its business, and for such other relief as the nature of the case and the interest of its policy-holders, creditors, stockholders or the public may require.

(2) On such application, or at any time thereafter such court or judge may, in its discretion issue an order restraining such company from the transaction of its business or disposition of its property, records and effects until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct the commissioner forthwith to take possession of the property, records and effects, and conduct the business of such company and retain such possession and conduct the business until, on the application of the commissioner, the attorney general representing him, or of such company, it shall, after a like hearing, appear to the court that the cause for such order directing the commissioner to take possession has been removed and the company can properly resume possession of its property, records, and effects, and the conduct of the business.

(3) If, on a like application and order to show cause, and after a full hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the commissioner, who may deal with the property, records, effects and business of such company in his own name as commissioner, or in the name of the company as the court may direct, and he shall be vested by the operation of law with title to all the property, effects, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the auditor in any county where property is located in the state shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted.

(4) For the purpose of this section, the commissioner shall have power to appoint, under his hand and official seal, one or more special deputy commissioners, as his assistant or assistants, and to employ such counsel, clerk and other assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider proper. The compensation of such special deputy commissioners, counsel, clerks and assistants, and all expenses of taking possession of and conducting the business of liquidating any such company shall be fixed by the commissioner, subject to the approval of the court, and shall, on certificate of the commissioner, be paid out of the funds or assets of such company.

(5) For the purpose of this section, the commissioner shall have power, subject to the approval of the court, to make and prescribe such rules and regulations as to him shall seem proper.

(6) The commissioner shall transmit to the legislature, in his annual report, the names of the companies so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policy-holders, creditors, stockholders and the public with his proceedings under this section; and, to that end, the special deputy commissioner in charge of any such company shall file annually with the commissioner a report of the affairs of such company.

(7) At any time after the court shall order the liquidation of the business of any such company, as provided in paragraph 3 of this section, the commissioner may apply for the dissolution of such company, and the same, after due notice and hearing and such other procedure as to the court shall seem proper, shall be dissolved. [L. '11, p. 170, § 11.]

§ 7043. [6059-12.] Increase or Decrease of Capital.

The commissioner shall in person, or by his deputy, or examiner, examine the proceedings of every domestic insurance company to increase or reduce its capital stock, or to change its articles of incorporation or association, and if found conformable to law, shall issue certificate of authority to such company to transact business upon such increased or reduced capital, or change in its articles of incorporation or association. [L. '11, p. 173, § 12.]

§ 7044. [6059-13.] Foreign or Alien Company—Appointment of Attorney—Service of Process.

The commissioner shall not issue a certificate of authority to transact any business of insurance in this state to any foreign or alien insurance company until it has executed and filed in his office a written appointment of the insurance commissioner to be the true and lawful attorney of such company in and for this state, upon whom all lawful process in any action or proceedings against such company commenced in any county in this state may be served with the same effect as if it were a domestic company having its principal office in such county. The service upon such attorney shall thereafter be deemed service upon the company.

Service of process against any such insurance company may be had by serving duplicate copies upon the commissioner through the mail by a registered letter, or by an officer or person competent to serve a summons. Upon such service being made, the commissioner shall forthwith mail one of such duplicate copies of such process to such company at its home office or general agency, or in the case of an alien company, to the resident manager, if any, in this country.

In all cases of service of process against such insurance company by serving its said attorney, the commissioner shall collect two dollars, which shall be paid by the plaintiff at the time of such service, the same to be recovered by plaintiff as part of the taxable cost if he prevail in the suit.

The commissioner shall keep a record of all such processes which shall show the day and hour of service: Provided, that in such case no proceedings shall be had within forty days after the date of such service upon the commissioner. [L. '11, p. 173, § 13.]

Cited in 99 Wash. 574.

Under this section the ordinary form of summons requiring appearance within twenty days is proper, under the Practice Act, sections 222 and 223, supra, notwithstanding no proceedings shall be had within forty days after date of such service upon the state insurance commissioner: State ex rel. National Surety

Co. v. Superior Court, 99 Wash. 573, 170 Pac. 120.

Service of process against foreign company on insurance commissioner. 23 L. R. A. 499.

Insurance agent as agent within statute requiring service of process on agent of foreign corporation. 19 Ann. Cas. 203; Ann. Cas. 1914D, 988

§ 7045. [6059-13½.] Venue of Action on Insurance Policy.

Any insurance company may be sued upon a policy of insurance in any county within this state where the cause of action arose, by serving the summons and a copy of the complaint upon the company, if a domestic company, or upon the commissioner, as attorney in fact of the company, if an alien or foreign company. Legal service of process upon an insur-

ance company doing business in this state can only be had in the manner set forth in this and the preceding section. [L. '15, p. 589, § 3. Cf. L. '11, p. 174, § 13½.]

Cited in 91 Wash. 384; 113 Wash. 347.

The title, "An act to provide an insurance code . . .," is broad enough to include this section, covering the venue of actions on insurance policies and the manner of service of summons therein; since the act, being a complete code on the subject of insurance, the title need not be an index to the act: *Davis-Kaser Co. v. Colonial Fire Underwriters Ins. Co.*, 91 Wash. 383, 157 Pac. 870.

An action upon a foreign fire insurance policy delivered in, and upon property within, W. county, must be brought in that county, under this section: *Davis-Kaser Co. v. Colonial Fire Underwriters' Ins. Co.*, 91 Wash. 383, 157 Pac. 870.

Under this section, an action may be commenced in the county where the company had its place of business and the policy was applied for and written, although the property insured and destroyed was partly in an adjoining county: *Pratt v. Niagara Fire Ins. Co.*, 113 Wash. 347, 194 Pac. 411.

Actions on Policies: See *Remington's Digest, Insurance*, §§ 155—191, and cases cited. See, also:

§ 156. Venue: *Pratt v. Niagara Fire Ins. Co.*, 113 Wash. 347, 194 Pac. 411.

§ 157. Conditions Precedent: *Goldstein v. National Fire Ins. Co.*, 106 Wash. 346, 180 Pac. 409.

§ 158. Adjustment—Waiver of Conditions: *Goldstein v. National Fire Ins. Co.*, 106 Wash. 346, 180 Pac. 409.

§ 161. Limitations—Knowledge of Death of Insured: *Teed v. Brotherhood of American Yeomen*, 111 Wash. 367, 190 Pac. 1005.

§ 176. Delivery While in Good Health—Burden of Proof: *Logan v. New York Life Ins. Co.*, 107 Wash. 253, 181 Pac. 906; *Buckley v. Massachusetts Bonding & Ins. Co.*, 113 Wash. 13, 192 Pac. 924.

§ 184. Indemnity Insurance—Liability for Loss—Cancellation of Policy—Demand for Proofs of Loss—Estoppel—Evidence—Sufficiency: *Bankers Trust Co. v. American Surety Co.*, 112 Wash. 172, 191 Pac. 845.

§ 185. Accident Insurance—Cause of Death—"External, Violent and Accidental Means"—Evidence—Sufficiency: *Day v. Great Eastern Casualty Co.*, 104 Wash. 575, 177 Pac. 650; *Buckley v. Massachusetts Bonding & Ins. Co.*, 113 Wash. 13, 192 Pac. 924.

— Cause of Death—Injuries Inflicted by Third Person—Evidence—Sufficiency: *Buckley v. Massachusetts Bonding & Ins. Co.*, 113 Wash. 13, 192 Pac. 924.

§ 188. Questions for Jury—Proofs of Loss: *Pierce v. Globe & Rutgers Fire Ins. Co.*, 107 Wash. 501, 182 Pac. 586.

— Accident Insurance—Notice to Insurer—Evidence: *Kubey v. Travelers Protective Assoc.*, 109 Wash. 453, 187 Pac. 335.

§ 189. Instructions—Value of Property Destroyed: *Pierce v. Globe & Rutgers Fire Ins. Co.*, 107 Wash. 501, 182 Pac. 586.

§ 7046. [6059-14.] Annual Statement Blanks.

The commissioner shall annually, in November or December, furnish to each insurance company authorized to transact business in this state two or more blank forms to conform to the class or classes of insurance which they are authorized to write and commonly known as "convention form blanks," and which blank forms have been approved by the national convention of insurance commissioners, on which to make its annual statement.

For the purpose of carrying out the provisions of this section, the commissioner is authorized to purchase blanks from any publishing house which makes a specialty of printing the "convention form of blanks" for the different states, and to pay for the same out of the appropriation made for the incidental expenses of his office. [L. '15, p. 589, § 4. Cf. L. '11, p. 174, § 14.]

§ 7047. [6059-15.] Records of Commissioner—Certified Copy—Evidence.

The commissioner shall preserve in a permanent form a record of his proceedings, including a concise statement of the result of all investigations or examinations of insurance companies.

The commissioner shall furnish, when required for evidence in court, certificate under seal of the department relative to the authority of the company, agent or broker to transact business in this state upon any particular date, and such certificate shall be received by the court in lieu of the testimony of the commissioner, his deputy, or chief clerk. [L. '11, p. 175, § 15.]

§ 7048. [6059-16.] Commissioner's Report—Contents and Printing.

The commissioner shall transmit to the legislature at the opening of its session, or as early thereafter, as is consistent with full and accurate preparation, a report of his official transactions and a report containing in a condensed form statements made to the commissioner by every insurance company authorized to do business in this state pursuant to the provisions of this act, and such statements and reports shall be audited and corrected by him, all arranged in tabular form or in abstracts, which report shall also contain:

(1) A statement of all insurance companies authorized to do business in this state during the year ending the thirty-first day of December next preceding, with their names, location, amounts of capital, dates of incorporation and the commencement of business, and kinds of insurance in which they are engaged respectively.

(2) A statement of the insurance companies whose business has been closed since making his last report and the reasons for closing the same, with the amount of their assets and liabilities so far as the same are known or can be ascertained by him.

(3) The names and compensation of the clerks employed by him and the whole amount, itemized, of the expenses of the department during such period.

(4) Any amendments to this act which in his judgment may be desirable.

In addition to two hundred fifty copies of the insurance report for the use of the legislature, there shall be printed and bound by the state printer the necessary number of copies of such report for the use of the insurance department.

The commissioner shall furnish each of the county clerks of this state, quarterly, a certified list of all insurance companies doing business in this state under and by authority of this act, and such certificates shall be posted in the office of the county clerk for the inspection of the public.

The commissioner shall compile and have printed at the expense of the state, all books, blanks, insurance laws in pamphlet form for distribution, and other matters necessary for the proper administration of the department. [L. '11, p. 175, § 16.]

§ 7049. [6059-17.] Fees and Licenses.

The commissioner shall require in advance the following fees and licenses:

For filing articles of incorporation or charter, or certified copy of articles or charter, by-laws or other record of organization required to be filed in his office.....\$ 25.00

For filing amended articles of incorporation or charter, or certified copy thereof.....	10.00
For issuing certificate of authority.....	10.00
For each renewal certificate of authority.....	10.00
For filing annual statement of condition and report of Washington business.....	20.00
For filing other miscellaneous papers.....	1.00
For copy of papers filed in his office, per folio.....	.20
For certificate under seal.....	1.00
For each agent's license.....	2.00
For each solicitor's license.....	2.00
For each broker's license.....	100.00
For each agent's license for unauthorized companies.....	100.00
and such other fees as may be provided in this act.	

All fees so collected shall be paid to the state treasurer, not later than the first business day following the receipt of such fees, and be placed to the credit of the general fund.

All agents', solicitors', brokers' licenses to be transferable upon approval of the commissioner. Licenses issued to copartnerships or corporations to act as insurance agents or brokers shall permit each member of the copartnership or officer of the corporation to solicit or effect insurance, and the names of such members or officers shall be specified and appear in the license. [L. '11, p. 176, § 17.]

Cited in 105 Wash. 671.

§ 7050. [6059-18.] Application of General Laws.

The general provisions of law relating to the powers, duties and liabilities of corporations shall apply to all incorporated insurance companies, so far as such provisions are pertinent to and not in conflict with other provisions of law relating to such companies. [L. 11, p. 177, § 18.]

§ 7051. [6059-19.] Name of Company to Appear on Policy.

Every insurance company shall conduct its business in this state in its own name, and the policies and contracts of insurance issued by it shall be headed or entitled by such name: Provided, that this limitation shall not apply to any insurance company admitted to this state and issuing an underwriter's policy, prior to January 1, 1911; two or more companies may jointly issue an underwriter's policy upon which must appear the names of the companies guaranteeing the same and such companies shall be jointly and severally liable thereon. [L. '11, p. 177, § 19.]

§ 7052. [6059-20.] Companies — Agent—Broker—Surveyor—Adjuster—Governed.

All domestic insurance companies, now or hereafter formed under the laws of this state, and every insurance agent, solicitor, broker, surveyor, or adjuster, doing business in this state, and all insurance business transacted in whole or in part within or outside of this state, the subject matter of which insurance is located wholly or in part in this state, and any marine insurance made, effected, or placed by any company through any agent or broker in this state, unless otherwise provided, shall be sub-

ject to and governed by this act; and the records of each insurance company, agent, solicitor, broker, surveyor or adjuster doing business in this state shall be subject to the inspection and examination of the commissioner, his deputy, or examiner. [L. '11, p. 177, § 20.]

Cited in 105 Wash. 671.

Relation of Agent to Insurer and to Applicant or Insured: See Remington's Digest, Insurance, § 10; Mesterman v. Home Mut. Ins. Co., 5 Wash. 524, 32 Pac. 458, 34 Am. St. Rep. 877; Hart v. Niagara Fire Ins. Co., 9 Wash. 620, 38 Pac. 213, 27 L. R. A. 86.

See, also, Reynolds v. Pacific Marine Ins. Co., 105 Wash. 666, 178 Pac. 811; Lauridsen v. Bowden, Gazzam & Arnold, 107 Wash. 310, 181 Pac. 885.

— **Statements and Acts of Agent:** Day v. St. Paul Fire & Marine Ins. Co., 111 Wash. 49, 189 Pac. 95.

Contract of Employment: See Remington's Digest, Insurance, § 11; Rightor v. Ward, 87 Wash. 621, 152 Pac. 332.

Scope and Extent of Agency: See Remington's Digest, Insurance, § 12; Hall v. Union Cent. Life Ins. Co., 23 Wash. 610, 63 Pac. 505, 83 Am. St. Rep. 844, 51 L. R. A. 288; Yost v. Empire State Surety Co., 69 Wash. 397, 125 Pac. 167; Violette v. Insurance Co. of Pennsylvania, 92 Wash. 685, 159 Pac. 896, 161 Pac. 343.

Authority and Duties of Agent as to Insurer: See Remington's Digest, Insurance, § 13; Pacific Nat. Bank v. Aetna Indemnity Co., 33 Wash. 428, 74 Pac. 590; National Union Fire Ins. Co. of Pittsburg v. Dickinson, 92 Wash. 230, 159 Pac. 125, Ann. Cas. 1918C, 1042.

Accounting by Agent: See Remington's Digest, Insurance, § 14; Allenberg v. Wainwright, 62 Wash. 234, 113 Pac. 585.

Compensation of Agent: See Remington's Digest, Insurance, § 15; Watson v. Traveler's Ins. Co., 43 Wash. 396, 86 Pac. 659; Butler v. New York Life Ins. Co., 45 Wash. 141, 87 Pac. 1119.

— **Right to Recover Premiums:** See Remington's Digest, Insurance, § 16; Lamb v. Connor, 84 Wash. 121, 146 Pac. 174.

Extent and Exercise of Powers of Agents: See Remington's Digest, Insurance, §§ 17—21; Sengfelder v. Mutual Life Ins. Co., 5 Wash. 121, 31 Pac. 428; Stinson v. Sachs, 8 Wash. 391, 36 Pac. 287; Foster v. Pioneer Mut. Ins. Co., 37 Wash. 288, 79 Pac. 798; Starr v. Mutual Life Ins. Co., 41 Wash. 288, 83 Pac. 116; Ryder-Gouger Co. v. Garretson, 53 Wash. 71, 101 Pac. 498, 132 Am. St. Rep. 1053; Hall v. Union Cent. Life Ins. Co., 23 Wash. 610, 63 Pac. 505, 83 Am. St. Rep. 844, 51 L. R. A. 288.

Agency for Applicant or Insured: See Remington's Digest, Insurance, §§ 22, 23; Beckman v. Edwards, 59 Wash. 411, 110 Pac. 6, Ann. Cas. 1912B, 40; Gilmore v. Continental Casualty Co., 58 Wash. 203, 108 Pac. 447.

Agent procuring policy from company other than one he represents as agent of insurer or insured. 20 **Ann. Cas.** 1232.

When insurance agent is agent of insured. 20 **L. R. A.** 279.

Insurance broker as agent for insured. 38 **L. R. A. (N. S.)** 614.

§ 7053. [6059–21.] Preliminary Requirements—Papers to be Filed.

Every insurance company before engaging in the business of insurance in this state must file in the office of the insurance commissioner a legally authenticated duplicate or copy of its charter, articles of incorporation or association, or record of its organization and by-laws, as follows:

First. If a domestic company, a copy of its articles of incorporation or association, together with any amendments or alterations made therein.

Second. If a foreign or alien company, a copy of its articles of incorporation, charter, and by-laws, including all amendments or alterations made therein, with a certificate duly certified by the officer having custody of such articles or charter, under his seal of office, that such company is duly authorized under the laws of such state or country to do business therein, and a certificate showing the amount of capital stock and assets as required by this act.

Third. If not incorporated under the laws of this or any other state or country, a copy of the record of its organization, and a certificate setting forth the nature and character of the business, the location of the principal office, the name and address of persons composing the company, the

amount of the capital therein employed, and the names and addresses of the officers of the company, and if such company be formed outside of the United States, the certificate must contain the name of the chief executive officer or manager in the United States, together with the trustees or directors appointed by the company to manage its affairs in the United States, and the certificates may be made by such manager: Provided, further, that such company must furnish a legally authenticated copy of the laws of the country of its organization applicable to its business and affairs, which laws shall be filed in the office of the insurance commissioner, and a certified copy thereof, under the seal of the commissioner, may be received in evidence in any cause or proceeding had in the courts of the state. [L. '11, p. 178, § 21.]

Foreign Underwriters or Companies and Their Agents—Application of Local Laws:
See Remington's Digest, Insurance, § 2;
Ward v. Tucker, 7 Wash. 399, 35 Pac. 126,
1086; State ex rel. Aetna Life Ins. Co. v.
Schively, 68 Wash. 503, 123 Pac. 784; State

ex rel. Leach v. Fishback, 79 Wash. 290,
140 Pac. 387.

Effect on insurance of noncompliance
with statutory requirements relating
to foreign companies. 20 L. B. A.
405; 9 Ann. Cas. 338.

§ 7054. [6059-22.] Capital and Assets Required—Deposits.

Every insurance company, except ocean marine insurance, before transacting any business of insurance in this state, must own, have and possess in its own exclusive name and right, paid-up, unimpaired capital, if a stock company; or must own, have and possess, in its own exclusive name and right, net assets unimpaired, of the kind required by this act, if it be a mutual company, fully equal to the minimum amount paid up in cash or assets required by the provisions of this act to entitle any insurance company to be authorized to transact like business. No part of said capital or assets shall consist of the capital stock, investments, property or assets of any other insurance company or organization, nor shall said capital or assets include any sum or thing of value not acquired, produced, earned, and owned exclusively by such company in its own right: Provided:

First. That each alien insurance company admitted to do business in this state, shall not transact any business of insurance in this state, unless it shall have within the United States deposited with insurance departments, or held in trust as hereinafter provided, not less than two hundred thousand dollars invested in like manner as the capital of a similar domestic insurance company is required to be invested;

Second. The capital of such alien insurance company admitted to do business in this state shall, for the purpose of this act, be the aggregate value of such sums or securities as such company shall have on deposit in the department of this state, and of the other states of the United States, for the benefit of policy-holders in the United States, excepting therefrom such sums as are held by other states for the special protection of policy-holders in such states, and of all bonds and mortgages for money loaned on real estate in this state, or in any state of the United States, if such loan shall be made in conformity with the laws of such state providing for the incorporation of insurance companies therein and the investment of their capital; and of all other assets and property in the United States, in which insurance companies may invest under provisions of this act, if such bonds and mortgages, assets and property shall

be held in the United States by trustees who are citizens of the United States, approved by the commissioner, or deposited with a trust company to be approved by him for the general benefit and security of all its policy-holders in the United States; after making the same deductions from such aggregate value for losses, debts, and liabilities, in this and the other states of the United States, and for premiums upon risks therein not yet expired, as is authorized or required by the laws of this state, or the regulation of its insurance department with respect to insurance companies organized under the laws of this state;

Third. In addition to the reports required by law of any such alien insurance company, it shall annually, in the month of February, render to the commissioner a detailed statement of the items making up such capital, and the deductions to be made therefrom, signed and verified by the manager and a majority of the trustees, or, if a trust company, by the proper officers thereof, of the company residing in the United States, and the commissioner shall, thereupon, and from such examinations as he may make of the affairs of the company, determine the amount of such capital as of the first day of January, and issue to such company a certificate of the amount of its capital so determined; and, if it shall at any time appear that the net capital for which the last certificate shall be outstanding has been materially reduced, the commissioner may call in such certificate and issue another, reciting such reduced capital: Provided, the capital is not reduced below the sum of two hundred thousand dollars;

Fourth. When any part of its capital is held by trustees or by a trust company, pursuant to the provisions of this section, such trustees or trust company shall be appointed by the board of managers or directors of such alien insurance company, and a duly certified copy of the vote or resolution creating the trust shall, with a certified copy of such trust deed, be filed in the office of the insurance commissioner; and the commissioner may examine such trustees or the agent or attorney of the company in the same manner as he is authorized by this act to examine the affairs and funds of any domestic insurance company; but the commissioner shall, upon the written request of any such alien insurance company, transfer to trustees duly appointed by it, under the provisions of this section, any excess of securities which it shall have deposited with him above the sum of two hundred thousand dollars;

Fifth. The deposit required of such company shall be reckoned and considered as the sum of two hundred thousand dollars, which shall be in approved securities, and deposited in the manner authorized by law. The commissioner may also allow such additional deposits as said alien company shall make, but any additional amount now on deposit, or which may hereafter be deposited, shall be received and held as a voluntary deposit, in trust for all the policy-holders of said company in the United States, and any securities in excess of said two hundred thousand dollars as aforesaid shall, on the written request of said company, be transferred to the trustees appointed by said company, as by this section provided: Provided, further:

Sixth. That no alien company, except co-operative life and fraternal beneficiary insurance companies, shall transact any business of insurance

in this state, unless, if it transact fire insurance in this state, it has deposited with the proper insurance department or legal custodian of such deposit in this or any other state or states or district of the United States, for the benefit and security of its policy-holders in the United States a sum not less than two hundred thousand dollars, invested as in this act required; or if it transact in this state one or more of the other kinds of insurance business permitted by the provisions of this act to be transacted by any such company, it has deposited with the insurance department or legal custodian for like purposes, such amount as may be required of domestic insurance companies doing the same kind of business. Any alien company authorized to transact the business of fire insurance in this state may be authorized to transact the business of ocean marine insurance: Provided, that it has an additional capital of one hundred thousand dollars, and file with the insurance department annually a separate financial statement of each class of business. [L. '11, p. 179, § 22.]

Cited in 79 Wash. 292.

§ 7054-1. Authorized Investment of Minimum Capital.

The capital stock of every domestic insurance company required to have a capital to the extent of the minimum capital required by law, except as specially authorized or limited by this act, shall be invested and kept invested as follows:

(a) In the legally issued bonds, warrants, and securities of the United States, or the District of Columbia, or of any state of the United States, not estimated above their current market value; or,

(b) In the legally issued bonds, warrants, and securities of any county, incorporated city, or incorporated school district of the state, which has not defaulted in the payment of interest on any of its bonds, warrants or securities within three years, and which shall not be estimated above their par value, or their current market value; or,

(c) In the legally issued notes and bonds secured by mortgages or deeds of trust which shall be first liens on unencumbered real property in this state worth fifty per centum more than the amount loaned thereon, except that assessments and taxes not delinquent, party-wall agreements, reservations of minerals, oils, and timber, easements and rights of way for sewer, telephone, telegraph, electric light and power lines, drains, ditches, railroads, etc.; building restrictions common to the community in which the property is located, liens for service and maintenance of water rights where not delinquent, shall not be regarded as encumbrances. However, if under any of such exceptions there is any sum owing but not due or delinquent, the total amount of such sum shall be deducted from the amount which otherwise might be loaned on the property, and the value of any timber or right reserved shall not be included in the appraised value of the property. Where buildings or other improvements constitute a material part of the value of the mortgaged premises, they shall be kept insured against loss or damage by fire in a reasonable amount for the benefit of the mortgagee; or,

(d) In any security or securities or class of security or securities when approved by the insurance commissioner. [L. '21, p 344, § 1.]

§ 7055. Investments of Foreign or Alien Company.

The capital of every foreign or alien insurance company to the extent of the minimum capital required of a like domestic corporation shall be invested and kept invested in the same class of securities specified for domestic insurance corporations, except that like securities of the home state, or country, of such company may be recognized as legal investments for the amount of the minimum capital required. [L. '21, p. 346, § 2.]

§ 7056. Investment of Residue of Capital and Surplus.

The residue of the capital and the surplus money and funds of every domestic insurance company over and above the amount of the minimum capital required by law shall be invested in or loaned on the pledge of any of the securities approved for investment of minimum capital, in first liens on real property as provided for in subdivision "(c)" of the provisions for investments of minimum capital stock, except only that the real property may be located in any state of the United States; and when authorized and directed by a majority vote of all the directors or trustees of the company, or by a majority of a board or committee authorized by the charter or by-laws of the company, or by a majority of a committee duly appointed and authorized by the directors or trustees of the company for the purpose of making investments may be invested in or loaned upon;

(a) The legally issued bonds or warrants of, or local improvement bonds in any solvent municipal corporation, or in the legally issued bonds or securities of any solvent corporation incorporated under the laws of the United States or of any state thereof;

(b) The legally issued bonds of any solvent irrigation district created as by law provided in this state or in any other state of the United States, whose water rights shall have been legally acquired and finally determined and shall be fully adequate to supply sufficient water to properly irrigate all lands within such district, and whose storage reservoirs, canals, ditches, flumes, feeders, machinery, equipment, and other works and improvements shall have been acquired, owned, and constructed and be unencumbered except as to such bonds issued, and shall be reasonably adequate to fully supply and properly serve such district, and shall have been so far constructed and completed as to be in regular operation and use and adequately irrigating not less than thirty (30) per centum of the lands within such irrigation district. [L. '21, p. 346, § 3.]

For subdivision "c," see § 7054-1.

§ 7057. Investment by Loan on Stock.

The capital or funds of a domestic insurance company shall not, except with the approval of the insurance commissioner, be invested in or loaned upon its own stock or the stock of any other insurance company carrying on the same kind of insurance business except any such company organized under the provisions of section 7129, for the purpose of engaging principally as a fidelity and surety company, may, with the consent of the insurance commissioner, invest such funds in or loan such funds on the stock of any other corporation carrying on the

same kind of business outside of but not within the United States: Provided, however, that the commissioner in determining the condition of any such corporation so loaning or investing such funds shall not allow as an asset the amount of funds so loaned or invested. [L. '21, p. 347, § 4.]

§ 7058. Investments by Title Insurance Company.

Every domestic company organized to make insurance against loss and damage by reason of defective titles to property or encumbrance thereon, shall invest all its capital and funds required for its deposit and reserve in the same kind of security as the capital stock of a domestic insurance company is required by this section to be invested; and the remainder of its capital and funds may be invested in: (a) Plant and equipment; (b) Stock and bonds of abstract companies when approved by the insurance commissioner; (c) in the same kind of securities as the capital and funds of domestic insurance companies are permitted to be invested. [L. '21, p. 348, § 5.]

§ 7059. Investments by Domestic Company Doing Business Outside State.

Every domestic company doing business in other states of the United States or in foreign countries, may invest the funds required to meet its obligations, incurred in such other state or foreign country, and in conformity to the laws thereof, in the same kind of securities of such other state or foreign country that such company is by law allowed to invest in, in this state. [L. '21, p. 348, § 6.]

§ 7060. Loan upon Pledge of Policy.

Any life insurance company may lend a sum not exceeding the legal reserve which it owes, upon any policy upon the pledge to it of said policy and its accumulations as collateral security, but nothing in this section shall be held to authorize one insurance company to obtain by purchase or otherwise, the control of any other insurance company: Provided, that a domestic insurance company may, with the approval of the insurance commissioner dispose of its own or acquire all or part of the business, assets, investments, property, or capital stock of another insurance company for the purpose of amalgamation, merger or consolidation. [L. '21, p. 349, § 7.]

§ 7061. Investment in Real Property for Home Office.

A domestic insurance company may invest in such real property as shall be requisite for its home office, in the transaction of its business and may rent space therein not immediately required for its own use: Provided, that no such investment shall be made that will reduce the amount of the surplus assets, exclusive of such investment, to less than fifty per centum of the minimum capital required by law, of such company: Provided, further, that no such investment shall be made by a domestic mutual insurance company that will reduce the amount of the surplus assets, exclusive of such investment, of such company to less than fifty thousand dollars. [L. '21, p. 349, § 8.]

§ 7062. Limitations upon Investments of Domestic Companies.

Except upon the approval of the insurance commissioner, no domestic insurance company shall make any investments or loan of its capital, surplus, or reserve to any one person, firm or corporation in excess of ten per centum of the amount of its paid-up capital and surplus, and no loan shall be made for a longer period than one year, which, upon proper showing and security, may be extended not to exceed one year, except that loans on its own policies and loans on improved unencumbered real property may be made for any term. [L. '21, p. 349, § 9.]

§ 7063. Nature of Securities Forming Investment.

All investments and loans of the capital and funds of any domestic insurance company, except the amount invested in real estate for its home office, as specially provided for, shall be made and kept invested in and loaned on interest or dividend-bearing securities, whereon default for interest has not been made during three years next prior to the making of such loan, and the regular annual dividends, in the case of investments in stocks, shall have been actually earned and paid out of the net profits of not less than four per centum of the par value of such stock during each of the three years next preceding the time of such investment. [L. '21, p. 350, §10.]

§ 7064. Report on Each Investment or Loan.

With each investment or loan made of the capital or funds of any domestic insurance company shall be made and signed a written report by the officer, director, trustee, or acting chairman of the committee of directors or trustees making or authorizing such investment or loan on the part of such company, stating the amount so invested or loaned, a brief description of the securities or property in which such investment or loan is made, the reasonable cash market value thereof, and in case of a loan, the rate of interest, and amount of insurance carried to protect the mortgagee, and in case of an investment, the rate of interest or annual dividend earned, and paid during the five years next preceding, the name of the attorney who passes upon such transaction and the substance of his report, or if evidenced by title insurance policy, then the name of the insuring company and the substance of the policy; the amount of the expenses and commission, if any, on such investment or loan, by whom paid and to whom paid; and if any officer, director, or trustee of such insurance company has any direct, indirect, or contingent interest in the securities in which such investment, or in which such loan is made, or in the assets of the business, person, copartnership, or corporation in whose behalf such loan or investment is made, the name of the officer, director, or trustee, and the character and extent of such interest; which report shall be entered or bound in an appropriate record book which shall be at all times open to the inspection of the commissioner or his deputy, and any stockholder of such company. [L. '21, p. 350, § 11.]

§ 7065. Investments in Name of Company—Benefits to Members, etc.

All investments, loans and deposits of the funds and securities of every domestic insurance company, and all purchases on behalf of every

domestic insurance company, and all sales made of the property and effects of such company, shall be made in its corporate name, and no officer, director, or trustee thereof, and no agent, attorney, or member of a committee having any authority in the investment or disposition of its funds, shall accept, except for the company, or be the beneficiary of, either directly or indirectly or remotely, any fee, brokerage, commission, gift, or other consideration for or on account of any loan, deposit purchase, sale, payment, or exchange made by or on behalf of such company, or be pecuniarily interested in any such purchase, sale, loan, or investment, either as borrower, principal, coprincipal, agent, attorney, or beneficiary, except that he may procure a loan from such company direct upon approval by two-thirds of the directors and upon deposit of securities provided for in this act. [L. '21, p. 351, § 12.]

§ 7066. Authorization for Investments, Sales and Loans by Directors.

No investment, sale, or loan of any domestic insurance company, except loans on its own policies, shall be made which has not first been authorized by the board of directors, or by a committee thereof charged with the duty of investing or loaning the funds of the company, nor shall any deposit be made in a bank or banking institution, unless such bank has first been approved as a bank of deposit by the board of directors of said committee thereof, and a record of said action made. [L. '21, p. 352, § 13.]

§ 7067. Value of Bonds, etc., Held by Company.

All bonds or other evidence of debt having a fixed term and rate held by any insurance company authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made: Provided, that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase: And provided, further, that the insurance commissioner shall have full discretion in determining the method of calculating values according to the foregoing rule. [L. '21, p. 352, § 14.]

§ 7068. Time for Disposal of Property Acquired in Course of Business.

Every domestic insurance company shall have the right to acquire title to any property under the condition of any mortgage owned by it, or by purchase, or setoff on execution upon judgment for debts due it previously contracted in the course of its business, or by any process in settlement for debts; if such company acquire title to or lien upon any property or securities which it may not otherwise invest in, or loan its funds upon, such company shall dispose of all such personal property within one year, and real property within three years from the time of acquiring same, and the commissioner, upon proper showing and application, may extend such period a reasonable time: Provided, however, that any such company which has acquired real property in any manner

which it is unable to sell advantageously may, with the consent of the insurance commissioner, exchange such property for other real or personal property. Any property acquired as a result of such exchange may be held for the length of time permitted by the insurance code, sold for cash, or in turn exchanged for other property, with the consent of the insurance commissioner. [L. '21, p. 353, § 15.]

§ 7069. [6059-24.] Deposit of Securities.

Every foreign insurance company doing business in this state and required by this act to have a cash capital, shall deposit and keep on deposit with the state treasurer, through the office of the insurance commissioner of this state, the same amount and character of securities which a like domestic company is required to deposit with the depositary for securities of insurance companies of the state by whose laws such insurance company is incorporated.

When any state shall require insurance companies of other states to deposit with some officer of such other state securities in trust for policy-holders of such company as a prerequisite to their transacting business in such state, the treasurer of this state shall receive on deposit from any domestic insurance company the securities required by the laws of such other state.

Every domestic insurance company required by this act to deposit securities to the amount as provided by this act shall deposit such securities with the state treasurer, through the office of the insurance commissioner, and any domestic insurance company may deposit such securities with the state treasurer, through the office of the insurance commissioner, for the protection of all policy-holders of such company.

The funds, securities, and investments so deposited and kept on deposit with the state treasurer, or any trust company designated by him as herein authorized, shall be held as security for the protection of all policy-holders having policies duly issued by such company, or by any of its agents.

During the time such company continues solvent, and complies with the law, it shall be permitted to collect the interest and dividends accruing on such securities, and such funds, securities, and investments, so deposited, may be exchanged from time to time for other authorized securities of equal amount and value, at the election and upon the request of the company depositing the same: Providing, that if any such company now has on deposit, or shall hereafter deposit, with the proper insurance depositary, of similar securities in any other state, or district in the United States, or of the United States, in accordance with the laws thereof, the commissioner, upon proper showing and application, to be made by such company, may allow such company credit on account of the amount and value of the deposit required to be made by it in this state, to the amount and value of the securities so kept by it on deposit in such other state or district or government, and may allow such company to withdraw and transfer, of the securities deposited with the state treasurer, the amount so deposited, and kept on deposit in such other state, or district or government.

The state treasurer may appoint and designate any solvent trust company organized under the laws of this state, and doing business in the city where the principal office of any domestic insurance company is located, the state treasurer's depository, to receive and hold on deposit, any funds, securities, and investments provided by this section to be deposited with the state treasurer. All funds, securities, and investments, deposited as provided by this act, shall be registered by the commissioner in accordance with such rules as he may promulgate. No transfer of securities, so held on deposit, shall be valid unless countersigned by the state treasurer, his deputy, or authorized agent.

The state treasurer shall keep in his office a book in which shall be entered the name of the company from whose account such transfer of securities is made, the name of the transferee, the par value of the securities transferred and the amount for which every mortgage transfer is held. The state treasurer shall have access at all times, during office hours, to the books and records of the commissioner, for the purpose of ascertaining the correctness of the entries upon the same, of any transfer; and the commissioner shall have access, during office hours, to the books or records herein kept by the state treasurer, to ascertain the correctness of the entries upon same. The state treasurer shall state in his report to the legislature, the total amount of such deposits held by him and of such transfers countersigned by him.

Whenever any insurance company making such deposit of its securities with the state treasurer, shall sustain losses in excess of its other resources, the commissioner, upon proper showing and application, may authorize and direct the state treasurer to turn over and deliver so much of the securities of such company, to the commissioner, or such insurance company, or such person as the superior court of this state may appoint for such purpose, as shall be necessary to provide funds sufficient to pay its losses, and such securities shall not be used for any other purpose. The commissioner may allow such insurance company reasonable time, to be determined by the commissioner, upon proper showing and application, to be made by such company, in which to deposit with the state treasurer, securities authorized by law, equal in amount and value to the securities so withdrawn: And, provided, that any company entering into a reinsurance contract, whereby its entire business is to be reinsured as provided by this act, the commissioner may, upon application and proper showing, release the deposit securities held by the state treasurer to the credit of said company upon being satisfied that all outstanding obligations of said company have been paid or assumed by the reinsuring company. [L. '15, p. 590, § 5. Cf. L. '11, p. 188, § 24.]

Cited in 79 Wash. 291, 296; 86 Wash. 226.

This section is constitutional and the last paragraph is not inconsistent with the first and second paragraphs: *State ex rel. Leach v. Fishback*, 79 Wash. 290, 140 Pac. 387; *Standard Fire Ins. Co. v. Fishback*, 86 Wash. 225, 149 Pac. 945.

Right to proceeds of securities deposited with state on dissolution or insolvency of corporation. *Ann. Cas.* 1914D, 439.

Deposit by insurance company as subject to taxation. 36 L. R. A. (N. S.) 226.

§ 7070. [6059-25.] State Responsible.

The state of Washington shall be responsible for the safekeeping and return of all securities deposited with it pursuant to the provisions of this act. [L. '11, p. 191, § 25.]

§ 7071. [6059-26.] Annual Statement.

All insurance companies now doing business in this state, or that may hereafter do business in this state, unless otherwise provided in this act, must make and file with the commissioner annually, on or before the fifteenth day of February in each year, a statement under oath, upon a form to be prescribed and furnished by the commissioner, stating the amount of all premiums collected, or contracted for by the company making such statement, in this state, during the year ending December 31st, next preceding; the amounts actually paid policy-holders on losses; the amounts paid policy-holders as return premiums; the amounts paid policy-holders as dividends; the amount of insurance reinsured in other companies authorized to do business in this state, naming them, and the amount of premiums paid therefor; and the amount of insurance reinsured in companies, naming them, not authorized to do business in this state, and the amount of premiums paid therefor; and the amount of reinsurance accepted from admitted companies and the premiums received for such reinsurance on risks located in this state, with the name of the companies so reinsured.

The commissioner shall file a copy of such verified statement or schedule with the state treasurer, and said company shall pay to the state treasurer, through the insurance commissioner's office, a tax of two and one-quarter per centum on all premiums collected, or contracted for: Provided, that in the case of companies engaged in fire or marine insurance, or any other lines of insurance, except life insurance, the tax shall be collected on such premiums, after deducting from the gross amount thereof the amounts paid to policy-holders as returned premiums and the amounts paid as premiums to admitted companies for reinsurance; and in the case of life insurance the tax shall be collected on the gross amount of premiums, after deducting therefrom the amounts paid as premiums to admitted companies for reinsurance: And provided, further, that if any such company, corporation or association shall have fifty per centum or more of its assets invested in any bonds or warrants of this state, or bonds or warrants of any county, city, or district within this state, or in taxable property within this state, or in first mortgages upon improved real estate within this state, then the tax shall be but one per centum on the amount so collected.

The taxes herein provided for shall be due and payable on the first day of March succeeding the filing of the statement provided for herein.

Any company, failing or refusing to render such statement and information, and to pay taxes herein specified, for more than thirty days after the time specified, shall be liable for a fine of twenty-five dollars for each additional day of delinquency, and such tax may be collected by distraint, and such fine may be recovered by an action, to be instituted by the commissioner, in the name of the state, the attorney general representing him, in any court of competent jurisdiction. The amount of fine

collected shall be paid to the state treasurer and credited to the general fund; and the commissioner may revoke and annul the certificate of authority of such delinquent company, until such taxes and fine, should any be imposed, are fully paid.

The annual statement made to the commissioner, pursuant to this section, or other provisions of law, shall at least include the substance of that required by what is known as the "convention blank form," adopted from year to year, by the national convention of insurance commissioners, and shall also include such other information as may be required by the commissioner. [L. '15, p. 592, § 6. Cf. L. '11, p. 192, § 26.]

Cited in 113 Wash. 84, 85.

United States Liberty Bonds are not bonds of the state within this section, and are not necessarily a part of the required

cash reserve: Lumbermen's Indemnity Exchange v. State, 113 Wash. 82, 193 Pac. 217.

§ 7072. [6059-28.] Vouchers for Expenditures.

No domestic insurance company shall make any disbursement of twenty-five dollars or more unless the sum be evidenced by a voucher, signed by or on behalf of the person, firm, or corporation receiving the money, and accordingly describing the consideration for the payment, if the same be for services and disbursements, setting forth the service rendered and an itemized statement of the disbursements made, and if it be in connection with any matter pending before any legislature or public body, or before any department, or officer of any government, accordingly describing in addition the nature of the matter, and of the interest of such corporation or organization therein, or, if such a voucher cannot be obtained by an affidavit stating the reason for not obtaining such voucher, and setting forth the particulars above mentioned. [L. '11, p. 194, § 28.]

§ 7073. [6059-29.] Business Authorized.

No domestic insurance company shall transact any business other than that specified in its articles of incorporation, and no foreign or alien insurance company, admitted to transact business in this state under the provisions of this act, shall transact any other kind of business than that which it has been authorized to transact. [L. '11, p. 194, § 29.]

§ 7074. [6059-30.] Policy Provisions Voided.

No domestic, foreign, or alien insurance company transacting business in this state, shall hereafter, make, issue, or deliver herein, any policy or contract of insurance, except policies or contracts of ocean marine insurance, containing any condition, stipulation, or agreement, requiring such contract of insurance to be construed according to the laws of any other state or country, or depriving the courts of this state of the jurisdiction of action against such company to a period of less than one year from the time when the cause of action accrues; and any such condition, stipulation, or agreement shall be void, and such policy shall be binding upon the company having issued it. [L. '11, p. 194, § 30.]

Law governing insurance contract.
19 Ann. Cas. 30; Ann. Cas. 1913B,
925; Ann. Cas. 1918D, 1159; Ann.

Cas. 1918E, 602; 52 L. R. A. (N. S.)
275; L. R. A. 1916A, 770.

§ 7075. [6059-31.] Policy—Application—Contract.

Every contract of insurance shall be construed according to the terms and conditions of the policy, except where the contract is made pursuant to a written application therefor, and such written application is intended to be made a part of the insurance contract, and the insurance company making such insurance contract, unless as otherwise provided by this act, shall deliver a copy of such application with the policy to the assured, and thereupon such application shall become a part of the insurance contract, and failing so to do it shall not be made a part of the insurance contract. [L. '11, p. 195, § 31.]

Application for insurance or policy as governing in case of variance. 11 Ann. Cas. 708.

Failure to attach copy of application to policy as affecting right of in-

surer to rely on representations or warranties incorporated in the policy itself. 19 L. B. A. (N. S.) 102.

§ 7076. [6059-32.] Combination and Agreements Prohibited.

It shall be unlawful for any insurance company authorized to transact business in this state, or any manager, or any agent or representative thereof, or solicitor or broker to, either within or outside of this state, directly or indirectly, enter into any contract, understanding, or combination, with any other insurance company, or any manager, or any agent or representative thereof, or solicitor or broker, or to jointly or severally do any act or engage in any practice or practices for the purpose of controlling the rates to be charged for insuring any risk, or class or classes of risks, in this state, or for the purpose of discriminating against or differentiating from any company, manager, agent, solicitor or broker by reason of its or his plan or method of transacting business or its or his affiliation or nonaffiliation with any board or association of insurance companies, managers, agents, representatives, solicitors or brokers, or for any purpose detrimental to free competition in the business or injurious to the insuring public. Whenever the commissioner shall have knowledge of any violation of this section, he shall forthwith order such offending company, manager, agent, representative, solicitor or broker to immediately discontinue such practice or show cause to the satisfaction of the commissioner why such order should not be complied with. Within thirty days from the receipt of such order, and upon a failure to comply with such order, the commissioner shall forthwith revoke the license of such offending company, agent, solicitor or broker, and no renewal of the license so revoked shall be granted within three years from the date of the revocation. [L. '15, p. 278, § 1. Cf. L. '11, p. 195, § 32.]

§ 7077. [6059-33.] Rebates Prohibited.

No insurance company, by itself or any other party, and no licensed insurance agent, solicitor, or broker personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy, or on any policy, or agent's commission thereon, or earnings, profit, dividends, or other benefit founded, arising, accruing or to accrue thereon, or therefrom, or any other valuable consideration or inducement to or for insurance, on any risk in this state now or hereafter to be written, which is not

specified in the policy contract of insurance; nor shall any such company, agent, solicitor, or broker, personally or otherwise, offer, promise, give, sell, or purchase any stocks, bonds, securities, or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever as inducement to insurance or in connection therewith which is not specified in the policy. The license of any insurance company, agent, solicitor, or broker who violates the provisions of this section shall be revoked and no license shall be issued to such company, agent, solicitor, or broker, within one year from the date of the revocation of the license.

No insured person or party shall receive or accept, directly or indirectly, any rebate of premium or part thereof, or agent's, solicitor's, or broker's commission thereon payable on the policy, or on any policy of insurance, or any favor or advantage or share in the dividend or other benefits to accrue thereon, or any valuable consideration or inducement, not specified in the policy contract of insurance; the amount of the insurance whereon the insured has received or accepted, either directly or indirectly, any rebate of the premium or agent's, solicitor's, or broker's commission thereon, shall be reduced in such proportion as the amount or value of such rebate, commission, dividend, or other consideration so received by the insured, bears to the total premium on such policy, and any such insured shall be liable, in addition to having the insurance reduced, to a fine of not more than two hundred dollars. No person shall be excused from testifying, or from producing books, papers, contracts, agreements, or documents at the trial of any person charged with violating any provision of this act, on the ground that such testimony or evidence may tend to incriminate himself, but no person shall be prosecuted for any act concerning which he shall be compelled so to testify or produce evidence, documentary or otherwise, except for perjury committed in so testifying. Rebates affecting life insurance shall be governed by section 7226. [L. '11, p. 195, § 33.]

See notes to § 7226, *infra*.

Cited in 79 Wash. 532; 84 Wash. 127, 130.

License—Rebates and Prohibited Business: See Remington's Digest, Insurance, § 9; Calvin Philips & Co. v. Fishback, 84 Wash. 124, 146 Pac. 181.

Agreement discriminating in favor of insured as against other policyholders. 18 Ann. Cas. 759; Ann.

Cas. 1918D, 504; L. R. A. 1918D, 194.

Applicability of statute against rebates to allowance by agent to insured of part of former's commission. 23 L. R. A. (N. S.) 722.

Effect of rebate on insurance premium upon contract of insurance and its incidents. 35 L. R. A. (N. S.) 485; 49 L. R. A. (N. S.) 147.

§ 7078. [6059-34.] Warranty not to Avoid Policy Unless Deceptive.

No oral or written misrepresentation or warranty made in the negotiation of a contract or policy of insurance, by the assured or in his behalf, shall be deemed material or defeat or avoid the policy or prevent it attaching, unless such misrepresentation or warranty is made with the intent to deceive. If any breach of a warranty or condition in any contract or policy of insurance shall occur prior to a loss under such policy, such breach shall not avoid the policy nor avail the insurer to avoid liability, unless such breach shall exist at the time of such loss under such contract or policy. [L. '15, p. 703, § 1. Cf. L. '11, p. 197, § 34.]

Cited in 82 Wash. 570; 90 Wash. 633, 690; 91 Wash. 547; 95 Wash. 199, 575, 577; 96 Wash. 562, 564; 98 Wash. 363, 364; 102 Wash. 29, 543; 105 Wash. 252; 107 Wash. 260; 110 Wash. 4; 111 Wash. 57; 113 Wash. 162.

AVOIDANCE OF POLICY FOR MISREPRESENTATION, FRAUD OR BREACH OF CONDITION.—Misrepresentation—Falsity: See Remington's Digest, Insurance, § 70; Dunham v. Citizens' Ins. Co., 34 Wash. 205, 75 Pac. 804; Bank of Ellensburg v. Palatine Ins. Co., 82 Wash. 55, 143 Pac. 447.

See, also, Day v. Saint Paul Fire & Marine Ins. Co., 111 Wash. 49, 189 Pac. 95.

Concealment—In General: See Remington's Digest, Insurance, § 71; Sanford v. Royal Ins. Co., 11 Wash. 653, 40 Pac. 609; Dooly v. Hanover Fire Ins. Co., 16 Wash. 155, 47 Pac. 507, 58 Am. St. Rep. 26.

— **Knowledge of Facts by Applicant or His Agent:** See Remington's Digest, Insurance, § 72; Weigle v. Cascade Fire etc. Ins. Co., 12 Wash. 449, 41 Pac. 53; Poultry Producers' Union v. Williams, 58 Wash. 64, 107 Pac. 1040, 137 Am. St. Rep. 1041.

See, also, Day v. Saint Paul Fire & Marine Ins. Co., 111 Wash. 49, 189 Pac. 95.

Breach of Warranty—Warranties in General: See Remington's Digest, Insurance, §§ 73, 74; Poultry Producers' Union v. Williams, 58 Wash. 64, 107 Pac. 1040, 137 Am. St. Rep. 1041; Miller v. Commercial Union Assurance Co., 69 Wash. 529, 125 Pac. 782; Hoeland v. Western Union Life Ins. Co., 58 Wash. 100, 107 Pac. 866.

A marginal insertion on a policy of marine insurance "warranting" that the boat shall be employed in certain waters is an essential part of the contract, breach of which avoids the policy, and not a warranty, within this section: Reynolds v. Pacific Marine Ins. Co., 98 Wash. 362, 167 Pac. 745, L. R. A. 1918B, 427.

Parties Affected by Avoidance of Policy: See Remington's Digest, Insurance, § 75; Dunham v. Citizens' Ins. Co., 34 Wash. 205, 75 Pac. 804.

MATTERS RELATING TO PROPERTY OR INTEREST INSURED: See Remington's Digest, Insurance, §§ 76—82.

§ 76. **Description of Goods:** Herzog v. Palatine Ins. Co., 36 Wash. 611, 79 Pac. 287.

§ 77. **Amount or Value:** Dunham v. Citizens' Ins. Co., 34 Wash. 205, 75 Pac. 804; Horwitz v. United States Fidelity & Guaranty Co., 95 Wash. 455, 164 Pac. 77.

See, also, Fire Insurance—Avoidance of Policy for Fraud—Representations as to Value: Myles v. Northern Assurance Co., 113 Wash. 158, 193 Pac. 703.

— **Fraud—Value of Property Insured—Statutes:** Myles v. Northern Assurance Co., 113 Wash. 158, 193 Pac. 703.

§ 78. **Title or Interest of Insured:** Pioneer etc. Loan Co. v. Providence Wash. Ins. Co., 17 Wash. 175, 49 Pac. 231, 38 L. R. A. 397; Burrows v. McCalley, 17 Wash. 269, 49 Pac. 508; Dooly v. Hanover Fire Ins. Co., 16 Wash. 155, 47 Pac. 507, 58 Am. St. Rep. 26; Woods v. Insurance Co. of Pennsylvania, 82 Wash. 563, 144 Pac. 650; Horwitz v. United States Fidelity & Guar. Co., 95 Wash. 455, 164 Pac. 77.

See, also, Myles v. Northern Assurance Co., 113 Wash. 158, 193 Pac. 703.

§ 79. — **Partnership Property:** Pencil v. Home Ins. Co., 3 Wash. 485, 28 Pac. 1031.

§ 80. — **Buyer of Personal Property:** McWilliams v. Cascade Fire etc. Ins. Co., 7 Wash. 48, 34 Pac. 140; Robbins v. Milwaukee Mechanics' Ins. Co., 102 Wash. 539, 173 Pac. 634.

§ 81. **Encumbrances:** Neher v. Western Assur. Co., 40 Wash. 157, 82 Pac. 186.

§ 82. **Special Circumstances Affecting Risk—Danger from Incendiarism:** Sanford v. Royal Ins. Co., 11 Wash. 653, 40 Pac. 609.

MATTERS RELATING TO PERSON INSURED: See Remington's Digest, Insurance, §§ 83—85.

§ 83. **Health and Physical Condition:** Hoeland v. Western Union Life Ins. Co., 58 Wash. 100, 107 Pac. 866; Turner v. American Casualty Co., 69 Wash. 154, 124 Pac. 486; Brigham v. Mutual Life Ins. Co., 95 Wash. 196, 163 Pac. 380; Askey v. New York Life Ins. Co., 102 Wash. 27, 172 Pac. 887.

See, also, Armstrong v. Modern Woodmen of America, 105 Wash. 356, 178 Pac. 1.

§ 84. **Medical Attendance:** Hoeland v. Western Union Life Ins. Co., 58 Wash. 100, 107 Pac. 866; Quinn v. Mutual Life Ins. Co., 91 Wash. 543, 157 Pac. 82.

§ 85. **Habits:** Aries v. Mutual Life Ins. Co., 54 Wash. 269, 103 Pac. 50.

FORFEITURE OF POLICY FOR BREACH OF PROMISSORY WARRANTY, COVENANT OR CONDITION SUBSEQUENT—Matters Relating to Property or Interest Insured: See Remington's Digest, Insurance, §§ 86—95.

§ 86. **Covenants and Other Provisions of Policy:** Port Blakeley Mill Co. v. Springfield Fire & Marine Ins. Co., 56 Wash. 681, 106 Pac. 194, 28 L. R. A. (N. S.) 593 (overruled in Port Blakeley Mill Co. v. Springfield Fire & Marine Ins. Co., 59 Wash. 501, 110 Pac. 36, 140 Am. St. Rep. 863, 28 L. R. A. (N. S.) 596).

§ 87. — **Fulfillment or Breach:** Port Blakeley Mill Co. v. Springfield Fire & Marine Ins. Co., 56 Wash. 681, 106 Pac. 194, 28 L. R. A. (N. S.) 593 (overruled in Port Blakeley Mill Co. v. Springfield Fire & Marine Ins. Co., 59 Wash. 501, 110 Pac. 36, 140 Am. St. Rep. 863, 28 L. R. A. (N. S.) 596; Hopkins v. American Fidelity Co., 91 Wash. 680, 158 Pac. 535.

§ 88. **Suspension of Business Carried on in Building:** Brehm Lbr. Co. v. Svea Ins. Co., 36 Wash. 520, 79 Pac. 34, 68 L. R. A. 109; Silver v. London Assur. Corp., 61 Wash. 593, 112 Pac. 666.

§ 89. **Change in Occupancy of Building:** Thomson v. United States Fidelity & Guaranty Co., 44 Wash. 388, 87 Pac. 486.

§ 90. **Vacancy:** Bartlett v. British American Assur. Co., 35 Wash. 525, 77 Pac. 812; Silver v. London Assur. Corp., 61 Wash. 593, 112 Pac. 666.

§ 91. **Change of Title or Interest:** Pioneer Sav. & Loan Co. v. Providence Wash. Ins. Co., 17 Wash. 175, 49 Pac. 231, 38 L. R. A. 397; Browne National Bank v. Southern Ins. Co., 22 Wash. 379, 60 Pac. 1123; Boyd v. Thuringia Ins. Co., 25 Wash. 447, 65 Pac. 785, 55 L. R. A. 165; Jump v. North British & Mercantile Ins. Co., 44 Wash. 596, 87 Pac. 928, 12 Ann. Cas. 257; Moller v. Niagara Fire Ins. Co., 54 Wash. 439, 103 Pac. 449, 132 Am. St. Rep. 1115, 24 L. R. A. (N. S.) 897; Fenton v. Cascade Mut. Fire Assn., 60 Wash. 389, 111 Pac. 343; Algase Co. v. Corporation of Royal Exchange Assur., 68 Wash. 173, 133 Pac. 986; Reynolds v. Canton Ins. Office, 98 Wash. 425, 167 Pac. 1115.

Under this section, the placing of a chattel mortgage upon property in violation of the terms of a policy of fire insurance does not avoid the policy, where the mortgage was paid and the breach of the policy did not exist at the time of the loss: Gould v. St. Paul Fire & Marine Ins. Co., 105 Wash. 250, 177 Pac. 787.

Insured's temporary transfer of title will not avoid the policy unless the breach exists at the time of the loss: Myles v. Northern Assurance Co., 113 Wash. 158, 193 Pac. 703.

§ 92. **Removal of Goods:** Johnson v. Franklin Ins. Co., 90 Wash. 631, 156 Pac. 567.

§ 93. **Fidelity of Employees:** Remington v. Fidelity & Deposit Co., 27 Wash. 429, 67 Pac. 989; Prosser Power Co. v. United States Fidelity & Guaranty Co., 73 Wash. 304, 132 Pac. 48.

§ 94. **Precautions Against Loss — Employment of Watchman, etc.:** Hart v. Niagara Fire Ins. Co., 9 Wash. 620, 38 Pac. 213, 27 L. R. A. 86; Port Blakeley

Mill Co. v. Springfield Fire & Marine Ins. Co., 59 Wash. 501, 110 Pac. 36, 140 Am. St. Rep. 863, 28 L. R. A. (N. S.) 596; Shoshone Concentrating Co. v. Hamburg-Bremen Fire Ins. Co., 64 Wash. 638, 117 Pac. 500; Horwitz v. United States Fidelity & Guaranty Co., 95 Wash. 455, 164 Pac. 77.

§ 95. **Additional Insurance:** Rice v. Hartford Ins. Co., 50 Wash. 346, 97 Pac. 238; Tacoma Lumber & Shingle Co. v. Fireman's Fund Ins. Co., 87 Wash. 79, 151 Pac. 91; Ramat v. California Ins. Co., 95 Wash. 571, 164 Pac. 219; Workman v. Royal Exchange Assurance, 96 Wash. 559, 165 Pac. 488.

See, also, Myles v. Northern Assurance Co., 113 Wash. 158, 193 Pac. 703.

NONPAYMENT OF PREMIUMS: See Remington's Digest, Insurance, §§ 96—104.

§ 96. **Default as Ground of Forfeiture in General:** Nixon v. Traveler's Ins. Co., 25 Wash. 254, 65 Pac. 195; Lone v. Mutual Life Ins. Co., 33 Wash. 577, 74 Pac. 689; Gilmore v. Continental Casualty Co., 58 Wash. 203, 108 Pac. 447; Iles v. Mutual Reserve Life Ins. Co., 50 Wash. 49, 96 Pac. 522, 126 Am. St. Rep. 886, 18 L. R. A. (N. S.) 902; Pride v. Continental Casualty Co., 69 Wash. 428, 125 Pac. 787.

See, also, Millar v. Western Union Life Ins. Co., 106 Wash. 490, 180 Pac. 488.

§ 97. **Statutory Provisions Against Forfeiture:** Griesemer v. Mutual Life Ins. Co., 10 Wash. 202, 38 Pac. 1031.

§ 98. **Notice of Time for Payment — Sufficiency in General:** Griesemer v. Mutual Life Ins. Co., 10 Wash. 202, 38 Pac. 1031; Trimble v. New York Life Ins. Co., 20 Wash. 386, 55 Pac. 429; Smith v. Mutual Reserve Life Ins. Co., 44 Wash. 315, 87 Pac. 347.

§ 99. **Extension of Time for Payment — In General:** Proebstel v. State Ins. Co., 14 Wash. 669, 45 Pac. 308; Trimble v. New York Life Ins. Co., 20 Wash. 386, 55 Pac. 429.

§ 100. — **By Agent or Broker:** Nixon v. Traveler's Ins. Co., 25 Wash. 254, 65 Pac. 195.

§§ 101, 102. **Sufficiency of Payment to Prevent Forfeiture:** Proebstel v. State Ins. Co., 14 Wash. 669, 45 Pac. 308; Goddard v. Northwestern Mutual Fire Assn., 85 Wash. 585, 148 Pac. 893; Hall v. Union Central Life Ins. Co., 23 Wash. 610, 63 Pac. 505, 83 Am. St. Rep. 844, 51 L. R. A. 288.

§ 103. **Excuses for Nonpayment:** Smith v. Mutual Reserve Life Ins. Co., 44 Wash. 315, 87 Pac. 347; Boutin v. National Casualty Co., 86 Wash. 372, 150 Pac. 449.

See, also, *Wick v. Western Union Life Ins. Co.*, 104 Wash. 129, 175 Pac. 953.

§ 104. Rights of Insured After Default—Reinstatement: *Conway v. Minnesota Mut. Life Ins. Co.*, 62 Wash. 49, 112 Pac. 1106, 40 L. R. A. (N. S.) 148.

Warranties and representations and their effect on policy of insurance. 16 Am. Dec. 462; 59 Am. Rep. 816; 4 Ann. Cas. 255.

Validity of statute providing that immaterial false warranty shall not

avoid insurance contract. 7 Ann. Cas. 1107.

When may statements be regarded as representations, although expressly denominated in the policy as warranties. 11 L. R. A. (N. S.) 981; 15 Ann. Cas. 621.

Effect of false representations of insured on validity of policy of fidelity or guaranty insurance. 8 Ann. Cas. 608; Ann. Cas. 1915D, 732.

§ 7079. [6059-35.] Additional Information to Commissioner.

Every insurance company admitted to do business in this state shall at such time as the commissioner requires, in addition to all returns now by law required of it, or its agents or managers, make a return to the commissioner, in such form and detail as he may prescribe, of all reinsurance contracted for or effected by it, directly or indirectly, upon property located in this state, such return to be under oath of its president and secretary, if a foreign company, and if an alien company, under oath of the person, officer, or representative who verifies its annual statement.

If any insurance company refuse or neglect to make the returns required by this section, the commissioner may revoke its authority to transact business in this state, or report the facts to the attorney general to be dealt with as otherwise provided by this act. [L. '11, p. 197, § 35.]

§ 7080. [6059-36.] Insurance to be Placed Through Agents.

It shall be unlawful for any insurance company admitted to do business in this state to write, place or cause to be written or placed, any policy of insurance covering risks located in this state, except through or by a duly authorized licensed agent of such company residing and doing business in this state: Provided, that where the insured calls at the principal office of the company and requests a policy, the risk may be covered and the policy procured through the duly authorized agent in the territory wherein the risk is located: And provided, further, that a license may be granted to a nonresident special agent authorizing such agent to work with and assist local agents in this state in writing business, but in all such cases the local agent is to retain his full commissions.

Each nonresident special agent granted a license under this provision shall pay an annual fee of five dollars (\$5), and all licenses issued therefor shall expire on the thirty-first day of March subsequent to the date of issue. [L. '15, p. 594, § 7. Cf. L. '11, p. 197, § 36.]

Cited in 92 Wash. 688; 105 Wash. 671.

Effect of Noncompliance With Law—Validity of Policy: See *Remington's Digest*, Insurance, § 3; *Wood v. Cascade Fire & Marine Ins. Co.*, 8 Wash.

427, 36 Pac. 267, 40 Am. St. Rep. 917; *Violette v. Insurance Co. of Pennsylvania*, 92 Wash. 685, 159 Pac. 896, 161 Pac. 343.

§ 7081. [6059-37.] Adjusters to Secure License.

Each "adjuster" or "insurance adjuster" shall annually, on or before the first day of April in each year, procure a license from the insurance commissioner, permitting him to adjust losses for authorized insurance companies, and to adjust losses of unauthorized insurance companies on

policies written by duly licensed agents for such companies in this state. He shall also secure a license for each separate company for each loss adjusted by him for nonadmitted or unauthorized companies on policies which have not been written by or through a regularly licensed agent for such companies in this state: Provided, that an agent for a duly authorized insurance company may adjust and settle losses for the company for which he is licensed agent without procuring an "adjuster's" license.

It shall be the duty of all adjusters, or agents, upon making and completing the adjustment of any loss in excess of one hundred dollars, to at once notify the insurance commissioner, giving full information and stating the name of the assured, the amount of insurance carried, the name of the company or companies, issuing the policies and the amount carried by each one, the amount of the loss as adjusted, and any other information in his possession relative to such losses which may be requested by the commissioners.

Each "adjuster" or "insurance adjuster" licensed under the provision of this section shall pay an annual fee of ten dollars (\$10), and all licenses issued therefor shall expire on the thirty-first day of March subsequent to the date of issue. [L. '15, p. 602, § 16. Cf. L. '11, p. 197, § 36.]

§ 7082. [6059-38.] Political Contributions Forbidden.

No insurance company, including fraternal beneficiary associations, doing business in this state shall, directly or indirectly, pay, or use, or offer, consent or agree to pay, or use any money, property or other thing of value for or in aid of any political party, committee, or organization; nor for or in aid of any corporation, joint stock or any other association, organized or maintained for political purposes; nor for or in aid of any candidate for any political office, nor for the nomination for such office, nor for any other political purpose whatever, nor for the reimbursement or indemnification of any person or institution for money or property so used.

Any officer, director, stockholder, attorney, or agent of any insurance company which violates any of the provisions of this section, who participates in, aids, abets, advises or consents to any such violation, and any person who solicits or knowingly receives any money, property or thing of value, in violation of this section, shall be guilty of a gross misdemeanor, and punished by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or both, which fine, when collected, shall be paid to the state treasurer and credited to the general fund; and any officer, director, stockholder, attorney, or agent aiding or abetting in any contribution made in violation of this section, shall be liable to the insurance company for the amount so contributed. [L. '11, p. 198, § 38.]

§ 7083. [6059-39.] Dividends to be Paid from Earnings.

It shall be unlawful for the officers, directors, trustees, or managers of any domestic insurance company to declare or pay any dividends, except from the surplus profits arising from its business, which shall be

estimated and ascertained in accordance with the requirements and provisions of this act. [L. '11, p. 198, § 39.]

§ 7084. [6059-40.] Company—Lien on Stock.

Every domestic insurance company shall have a lien on every share of capital stock issued by it and all profits and dividends accruing thereon, for any balance unpaid of the par value and surplus to be paid thereon in like amount as is paid or agreed to be paid on all other shares of capital stock in such company and also for any debt owing to such company for premiums by the holder of such stock. [L. '11, p. 199, § 40.]

§ 7085. [6059-41.] Prohibiting Publicity of Unauthorized Statements.

No insurance company, or agent thereof, doing business in this state, shall anywhere publish, represent, or advertise assets except those actually owned and possessed by it in its own exclusive right, available for the payment of losses and claims, and held for the protection of its policy-holders and creditors. [L. '11, p. 199, § 41.]

§ 7086. [6059-42.] Advertisement to Show Actual Paid-up Capital and Surplus.

Every advertisement or public announcement, and every sign, circular or card issued by any insurance company doing business in this state purporting to show its financial condition, shall correspond with or include its last verified statement made to the commissioner.

For violation of this or the preceding section by a company, it shall forfeit, for the first offense, to the people of the state, the sum of two hundred and fifty dollars, and for every subsequent offense the sum of five hundred dollars, which sums may be recovered by an action prosecuted by the commissioner, the attorney general representing him, and which sums when recovered shall be paid to the state treasurer and credited to the general fund. [L. '11, p. 199, § 42.]

§ 7087. [6059-43.] Place of Business to be Designated.

Every agent of an insurance company doing business in this state shall, in all his advertisements of that company, give the location of the company, the name of the state, and town in which it has its principal office, and the state or government under the laws of which it is organized. [L. '11, p. 199, § 43.]

§ 7088. [6059-44.] Agents to Procure License must Act Only for Admitted Companies.

It shall be unlawful for any company, corporation, or association to transact the business of insurance in this state, except as provided in section 7120, unless the company, corporation, or association, shall have complied with all the provisions of this act, and shall have obtained a certificate of authority from the commissioner.

No person, firm or corporation shall act as agent for any insurance company, in the transaction of any business of insurance within this state, or negotiate for, or place risks for, any such company, or in any

way or manner aid such company in effecting insurance, or otherwise in this state, except as provided in section 7120, unless such company shall in all things have complied with the provisions of this act. Every insurance agent, solicitor or broker shall annually, on or before the first day of April, procure a license from the commissioner who shall make and keep a record thereof.

If any insurance company, corporation, or association, its agents or attorney, shall solicit insurance or shall issue a policy without having complied with the laws of this state, the company, corporation, or association, or its agent, or attorney, so issuing the policy or accepting the application for the same, shall be guilty of a gross misdemeanor and shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars and imprisonment for a term of not exceeding six months, in the discretion of the court. [L. '15, p. 595, § 8. Cf. L. '11, p. 200, § 44.]

Cited in 105 Wash. 672.

Validity of statute for licensing insurance agent or broker. *Ann. Cas.* 1914B, 266.

Effect of insurance agent's failure to procure license. 1 *L. B. A. (N. S.)* 1159.

When insurance agent or broker is agent of insured. 20 *L. B. A.* 279; 38 *L. B. A. (N. S.)* 614; 20 *Ann. Cas.* 1232.

Delegation of authority by insurance agent. *Ann. Cas.* 1915D, 12.

Duty of insurer to give notice of termination of agency. 14 *A. L. B.* 846.

Termination of agency as affecting insurance agent's right to commissions on renewals. 35 *L. B. A. (N. S.)* 153.

§ 7089. [6059-45.] Application for License.

No license shall be issued to any applicant for an agent's, solicitor's, or broker's license until such applicant shall have first made and filed in the commissioner's office an application therefor upon a form to be prescribed and furnished by the commissioner, which must show the applicant's name, business and residence address, and in the case of an agent's or solicitor's license, the name of the company or agent to be represented, whether as solicitor, agent, or general agent; present occupation, occupation for last twelve months, portion of time to be devoted to the work, previous insurance experience, and name of employers during five years next preceding, and such other information as the commissioner may require. The statements and answers made in the application shall be warranted by the applicant and shall have the same force and effect as if such statements and answers had been made by the applicant as a sworn witness testifying in a superior court in this state. Applications for agent's or solicitor's license must be approved by some one company or by the agent to be represented; and in the case of an application for a broker's license, it must also show how long applicant has been engaged in the insurance business and in what branches, under whom applicant received his training, what income, if any, applicant has other than that to be derived from such business, and financial condition of applicant. It shall be the duty of the commissioner to withhold any license applied for, or revoke any license to any agent, solicitor or broker when he is satisfied that the principal use of such license is to effect insurance upon the property or liability of such agent, solicitor or broker, or to circumvent or violate the anti-rebate law. Each agent

or solicitor shall be required to file but one application regardless of the number of companies he represents; provided, that no person shall act as agent for any company which shall not have applied for a license and paid the fee, provided in this act, for such agent, and: provided further, that no solicitor shall hold a license for more than one agent for the same class or classes of insurance at the same time; neither can he be licensed as agent and solicitor for the same class or classes of insurance at the same time.

The insurance commissioner, after notice and hearing, and for cause shown, may revoke the license of any agent, if it is evident that such agent conducts his business in a dishonest manner, or misrepresents the policies or contracts he sells; or misrepresents the policies or contracts of other agents or companies; or is conducting his business in such a manner as to cause injury to the public and those dealing with him. Unless revoked by the commissioner, or unless the company by written notice to the commissioner cancels the agent's authority to act for it, such license and any other license issued to an agent or any renewal thereof shall expire on the thirty-first day of March next after its issue. But any license issued and in force when this act takes effect or thereafter issued, may, in the discretion of the commissioner, be renewed for a succeeding year or years by a renewal certificate without the commissioner's requiring the detailed information required by this act. [L. '15, p. 596, § 9. Cf. L. '11, p. 200, § 45.]

Cited in 95 Wash. 131; 111 Wash. 57.

§ 7090. [6059-45a.] Revocation or Refusal of Insurance Agent's License.

Whenever the commissioner shall determine to revoke any agent's license heretofore issued, or shall refuse to renew any agent's license on the proper application therefor, or shall refuse to issue any agent's license upon an original application therefor, in carrying out the requirements of chapter 49, Session Laws of 1911, he shall notify the holder or applicant for such license of his intention and shall set a time not less than fifteen days from the date of such notice and shall designate the time and place where the holder or applicant for such license may be heard in his own behalf. The commissioner shall preside at such hearing and may subpoena, compel the attendance, examine, and swear witnesses with like effect as if examined and sworn by a clerk of the superior court. If the commissioner shall decide after such hearing that the license under question shall be revoked, or if he shall determine to withhold the renewal of any such license, or if he shall refuse to issue any such license under an original application, he shall enter an order to that effect, setting forth his reasons in writing and shall file a copy thereof in his office and mail a copy to the party holding said license, or to the party applying for the issuance of a license, at the address given in the application. Such order shall not be operative for a period of ten days and if the agent, or applicant for a license, shall feel aggrieved by the decision of the commissioner revoking or withholding the license, he may appeal to the superior court of Thurston county by giving notice of such appeal to the commissioner and filing a bond with the clerk of the superior court of Thurston county in the sum of five hundred dollars to be approved by the judge of said

court conditioned to pay all costs that may be awarded against such applicant in the event of an adverse decision, said bond and notice to be filed within ten days from the date of the commissioner's decision and the filing of such notice and bond shall supersede the order of the commissioner until the final determination of such appeal. Upon the giving of such notice of appeal and the filing of said bond the commissioner shall certify the reasons given by him for the revocation or withholding of such license to the said superior court, whereupon the judge of said court shall proceed to a hearing and determine the law and the facts, and after such hearing may direct the continuance or issuance of a license, if satisfied that the provisions of this code have not been violated or are not in danger of being violated, or said court may, in its discretion, sustain the decision of the commissioner. Such appeals shall have precedence and shall be determined by the said superior court with the least possible delay. An appeal shall lie to the supreme court from the decision of the superior court.

Upon the hearing of an appeal from the order of the commissioner revoking a license, and if a violation of the law is determined, the court may, in its discretion, if it believes an absolute revocation too severe a penalty for the offense of which the holder of the license is found guilty, impose a fine of from ten dollars to five hundred dollars; the payment of the fine by the holder of the license, within ten days from the finding of the court, shall continue said license in full force and effect, otherwise the license shall be automatically canceled. [L. '15, p. 45, § 1.]

Cited in 95 Wash. 131.

§ 7091. [6059-46.] Embezzlement by Agent—Solicitor—Broker.

All funds received by any agent, solicitor or broker, as premium or return premium on or under any policy of insurance, shall be received by such agent, solicitor, or broker in his fiduciary capacity, and any agent, solicitor, or broker who diverts or appropriates such funds to his own use shall be guilty of larceny by embezzlement and shall be punished as provided in the criminal statutes of this state. [L. '11, p. 201, § 46.]

§ 7092. [6059-47.] Reciprocal Obligations.

If, by the laws of any other state, any taxes, fines, penalties, licenses, fees, deposits, or other obligations or prohibitions, in the aggregate, additional to or in excess of those imposed by the laws of this state, upon foreign insurance companies and their agents and solicitors, are imposed on insurance companies of this state and their agents doing business in such state, like obligations and prohibitions shall be imposed upon all insurance companies of such state and their agents doing business in this state, so long as such laws remain in force. [L. '11, p. 201, § 47.]

§ 7093. [6059-48.] "Lloyds."

Association of individuals, citizens of the United States, whether organized within this state or elsewhere within the United States, formed upon the plan known as "Lloyds," whereby each associate underwriter becomes liable for a proportionate part of the whole amount insured by the group, may be authorized to transact insurance, other than life, in

this state, in like manner and upon the same terms and conditions as insurance companies of other of the United States. [L. '11, p. 202, § 48.]

§ 7094. [6059-49.] Licenses—Extension of.

All licenses and certificates of authority, in effect at the time of the passage of this act, shall continue in force until April 1, 1912, unless sooner revoked for cause by the commissioner. [L. '11, p. 202, § 49.]

§ 7095. [6059-50.] Frauds in Organization of Companies.

A person who:

First—Without authority, subscribes the names of another to, or inserts the name of another in any prospectus, circular or other advertisement of any domestic insurance company, existing or intended to be formed, with intention to permit the same to be published, and thereby lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such company; or,

Second—Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed; or,

Third—Signs to any such subscription or agreement the name of any person, knowing, or having good reason to believe, that such person does not intend in good faith to comply with the terms thereof, or enter into any agreement or understanding, that the terms of such subscription or agreement are not to be complied with or enforced, shall be guilty of a misdemeanor. [L. '11, p. 202, § 50.]

§ 7096. [6059-51.] Frauds in Procuring Organization of Companies.

Any officer, agent, or clerk of a company, or of persons proposing to organize a company, or to increase the capital stock of a company, who knowingly exhibits false, forged, or altered books, papers, vouchers, securities, or other instruments of evidence to any public officer or board authorized by law to examine the organization of such company, or to investigate its affairs or to allow the increase of capital, with intent to deceive such officer or board in respect thereto, shall be guilty of a felony. [L. '11, p. 203, § 51.]

§ 7097. [6059-52.] Fraudulent Issue of Stocks and Bonds.

An officer, agent, or other person in the service of any company, formed or existing under the laws of this state, or of the United States, or of any state or territory thereof or of any foreign government or country, who willfully and knowingly with intent to defraud:

First—Sells, pledges, or issues, or causes to be sold, pledged, or issued; or signs or executes, or causes to be signed or executed with intent to sell, pledge, or issue, or causes to be sold, pledged, or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of said company, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company, without being first duly authorized by such company, or contrary to the articles of incorporation, charter or laws under which such company exists, or in excess of the power of such company, or of

the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

Second—Reissues, sells, pledges, or disposes of, or causes to be reissued, sold, pledged, or disposed of any surrendered or canceled certificates or other evidence of a transfer of ownership of any such share or shares, shall be guilty of a felony. [L. '11, p. 203, § 52.]

§ 7098. [6059–53.] Misconduct of Directors of Stock Companies.

A director of a company, who concurs in any vote or act of the directors of such company, or any of them by which it is intended:

First—To make a dividend except from the surplus profits arising from the business of the company, and in the cases and manner allowed by law; or,

Second—To divide, withdraw, or in any manner to pay to the stockholders, or to any of them, any part of the capital stock of the company, or to reduce such capital stock in any manner other than as authorized by law; or,

Third—To discount or receive any note, or other evidence of debt, in payment of an instalment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or,

Fourth—To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or,

Fifth—To apply any portion of the funds of such company, except surplus profits, directly or indirectly, to the purchase of shares of its own stock, shall be guilty of a gross misdemeanor. [L. '11, p. 203, § 53.]

§ 7099. [6059–54.] Misconduct of Officers and Directors of Stock Companies.

An officer or director of a stock company, who:

First—Issues, participates in issuing, or concurs in the vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

Second—Sells, or agrees to sell or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is either the actual owner, or the duly authorized agent for such purpose of the actual owner of such shares, shall be guilty of a gross misdemeanor. [L. '11, p. 204, § 54.]

§ 7100. [6059–55.] Directors, Officers, Agents and Employees of Companies—Misconduct of.

A director, officer, agent, or employee of any company who:

First—Knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in its books and accounts; or,

Second—Makes or concurs in making any false entry, or concurs in omitting to make any material entry, in its books or accounts; or,

Third—Knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or omits or concurs in omitting any statement required by law to be contained therein; or,

Fourth—Having the custody or control of its books, willfully refuses or neglects to make any proper entry in the stock-book of such company, as required by law, or to exhibit or allow the same to be inspected, and extracts to be taken therefrom by any person entitled by law to inspect the same or take extracts therefrom; or,

Fifth—If a notice of an application for an injunction or other legal process affecting or involving the property or business of such company is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers, and managers thereof; or,

Sixth—Refuses or neglects to make any report or statement lawfully required by a public officer, shall be guilty of a misdemeanor. [L. '11, p. 204, § 55.]

§ 7101. [6059–56.] Misconduct at Corporate Elections.

Any person who:

First—Being entitled to vote at a meeting of the stockholders of a stock company, sells his vote, or issues a proxy to vote, to a person for any sum of money or thing of value, except as expressly authorized by law; or,

Second—Acts as an inspector of election at any such meeting and violates an oath taken by him in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector shall be guilty of a misdemeanor. [L. '11, p. 205, § 56.]

§ 7102. [6059–57.] False Statement in Application for Insurance.

Any agent, solicitor, broker, examining physician or other person, who makes a false or fraudulent statement, or representation, in or relative to an application for insurance, or who makes any such statement for the purpose of obtaining a fee, commission, money, or benefit in a company, transacting such business under the provisions of this act, shall be guilty of a misdemeanor, and the license of such offending agent, solicitor or broker, shall be revoked. [L. '15, p. 597, § 10; L. '11, p. 206, § 57.]

§ 7103. [6059–58.] Present False Proofs of Loss.

Any person, who, knowing it to be such:

First—Presents, or causes to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss upon a contract of insurance; or,

Second—Prepares, makes, or subscribes false or fraudulent account, certificate, affidavit, or proof of loss, or other document or writing, with intent that the same be presented or used in support of such a claim, shall be guilty of a gross misdemeanor. [L. '11, p. 206, § 58.]

§ 7104. [6059-59.] Destroying Property Insured.

Any person, who, with intent to defraud or prejudice the insurer thereof, willfully burns, or in any manner injures or destroys property, which is insured at the time against loss or damage by fire or by any other casualty, under such circumstances not making the offense arson, is guilty of a gross misdemeanor. [L. '11, p. 206, § 59.]

Setting fire to building or property with intent to defraud insurance company as a crime. **Ann. Cas.** 1913C, 1164; 32 **L. B. A.** 648.

Liability of insurance company in case of intentional destruction of property by insured. 17 **L. B. A.** (N. S.) 189.

§ 7105. [6059-60.] Persons not Excused from Testifying.

No person shall be excused from attending and testifying or producing any books, papers, or other documents before any court or magistrate, upon any investigation, proceeding, or trial, for the violation of any of the provisions of this act, upon the ground or for the reason that the testimony or evidence, documentary or otherwise required of him, may tend to convict him of crime or subject him to penalty or forfeiture; but no person shall be prosecuted or subject to any penalty or forfeiture for, or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. [L. '11, p. 206, § 60.]

§ 7106. [6059-61.] Presumption of Knowledge of Corporate Condition and Business, and of Assent Thereto by Directors—Definitions.

It is no defense to the prosecution for the violation of the provisions of sections 7095 to 7105, inclusive, that the company is either an alien, a foreign, or a domestic company, if it carries on business or occupies offices therefor in this state.

A director of a company is deemed to have such knowledge of the affairs of the company as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of the provisions of either of said sections 7095 to 7105, inclusive. If present at a meeting of directors at which any act, proceeding, or omission of its directors is a violation of the provisions of said sections or either of them occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the company for six months thereafter without causing or in writing requiring his dissent from such violation to be entered upon such record or minutes. [L. '11, p. 207, § 61.]

§ 7107. [6059-62.] Violations to be Reported.

Every insurance company, agent, solicitor, or broker, and every person or party having knowledge of a violation of this act, is required to promptly report the facts and circumstances pertaining thereto to the commissioner; which report and the name of the informant shall be

held as confidential by the commissioner and shall not be made public. [L. '11, p. 207, § 62.]

§ 7108. [6059-63.] Annual Meetings.

Every domestic company shall hold an annual meeting in the month of January or February, of its stockholders, if a stock company, or members, if a mutual company, for the purpose of receiving the report of its officers and trustees, and to elect trustees. Each share of stock in a stock company, and each policy-holder in a mutual company, shall be entitled to one vote in the election of trustees, and if unable to attend in person, may appoint any stockholder or member his proxy to vote his stock or policy, but no officer of said company shall be allowed to vote the proxy of any stockholder or member thereof: Providing, however, officers of stock companies may so do when the majority of the trustees vote to permit such action. [L. '11, p. 208, § 63.]

Cited in 103 Wash. 255.

State ex rel. Lally v. Cadigan, 103 Wash.

Stockholders' Meetings—Proxy Voting:

254, 174 Pac. 965.

See Remington's Digest, Insurance, § 5-1;

§ 7109. [6059-64.] Insurance Applied to Insured's Own Interest.

When the name of a party intended to be insured is specified in a policy, such insurance can be applied only to his own proper interest. [L. '11, p. 208, § 64.]

§ 7110. [6059-65.] Insurance—To Agent or Trustee.

When insurance is issued to an agent or trustee the fact that his principal or beneficiary is the person really insured is sufficiently indicated by describing him as agent or trustee or by other general words in the policy. [L. '11, p. 208, § 65.]

§ 7111. [6059-66.] Insurance Effected—Joint or Company Interest.

To render an insurance effected by one partner or part owner, applicable to the interest of his copartner or other part owner, it is necessary that the terms of the policy should be such as are applicable to the joint or company interest. [L. '11, p. 208, § 66.]

§ 7112. [6059-67.] Insured Intended—Must Prove.

When the description of the insured in the policy is so general that it may comprehend any person or class of persons, he only, can claim the benefit of the policy, who can show that it was intended to include him. [L. '11, p. 208, § 67.]

§ 7113. [6059-68.] Policies Subject to Inspection of Commissioner.

The commissioner, his deputy, or examiner, shall have the right at any time to inspect any policy, covering any risk in this state, and every policy-holder shall produce and exhibit any policy in his possession or control when required for the inspection of the commissioner, his deputy, or examiner. Any person who violates the provisions of this section shall be fined in the sum not exceeding one hundred dollars. [L. '11, p. 209, § 68.]

§ 7114. [6059-69.] Policy Fee Forbidden.

It shall be unlawful hereafter for any insurance company or for any officer, manager, agent, or other representative of any such company, to include in the sum charged or designated in any policy, as a consideration for insurance, any fee, compensation, charge, or perquisite whatsoever, not specified in the policy. When collected, the same shall be reported as premium. [L. '11, p. 209, § 69.]

§ 7115. [6059-70.] Agent to Report Exact Consideration.

Every agent or other representative of any insurance company issuing a policy on its own behalf in this state, shall report to the company the exact consideration charged and written in the policy, as a premium for the risk assumed. [L. '11, p. 209, § 70.]

§ 7116. [6059-71.] Penalty for Charging Policy Fee.

Any insurance company violating the provisions of section 7114, shall be guilty of a gross misdemeanor. [L. '11, p. 209, § 71.]

§ 7117. [6059-72.] Penalty for Failure to Report.

Any officer, manager, agent, solicitor, or other representative of any insurance company violating the provisions of section 7115, shall be guilty of a misdemeanor. [L. '11, p. 209, § 72.]

§ 7118. [6059-73.] Rating Schedules—Filing—Use.

Every insurance company, excepting a marine insurance company, before it shall receive a license to transact the business of making insurance as an insurer in this state, must file in the office of the insurance commissioner its rating schedules. Every such company and its agents shall observe its rating schedules and shall not deviate therefrom when making insurance until amended or corrected rating schedules shall have been filed in the office of the insurance commissioner.

Any company which shall make fire insurance in this state according to the advisory rates, or stated deviation or deviations therefrom, furnished by a rating bureau as provided in the following section, may receive a license to transact the business of making fire insurance in this state, without filing rating schedules, by filing written notice in the office of the insurance commissioner of its adoption of such advisory rates, stating the deviation or deviations therefrom, if any, at which it will make insurance, which deviation or deviations, if any, shall be uniformly applied to all purchasers of insurance from any such company in this state, in the class or classes to which such deviation or deviations apply. [L. '15, p. 598, § 11. Cf. L. '11, p. 209, § 73.]

§ 7119. [6059-74.] Rating Bureau—Rates.

Any person or persons or co-partnership, resident within this state, or a domestic corporation, may organize or maintain a rating bureau, for the purpose of inspecting and surveying the various municipalities and fire hazards in this state, and the means and facilities for preventing, confining, and extinguishing fires, for the purpose of estimating fair and equitable rates for insurance, and to furnish to municipalities, owners of

property, insurance companies, agents, solicitors, or brokers information and advice as to measures to be adopted for the reduction of fire hazards on property within the state, and lessening the cost of insurance thereon. The business of conducting a rating bureau in this state is public service in character and shall be conducted without profit to any party, except that fair and reasonable compensation shall be paid for all services actually rendered, and necessary to the business. Every rating bureau shall, before publishing or furnishing any rates, file in the office of the insurance commissioner its rating schedules, and shall not deviate therefrom until amended or corrected rating schedules shall have been filed in the office of the insurance commissioner. The services of such rating bureau shall be available, equally and ratably in proportion to the service rendered, to any and all insurance companies, agents, brokers, and property owners.

Each rating bureau shall keep an accurate and complete record of all work performed by it, which record must show all receipts and disbursements, and be open at all times to the inspection and examination of the commissioner, his deputy, or examiner.

No rating bureau operating under the provisions of this act shall, directly or indirectly, examine, stamp, or pass upon any "daily report" of policies issued by any company on property located within this state.

Any person or party who knowingly violates any provision of this or the preceding section shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars. [L. '11, p. 210, § 74.]

§ 7120. [6059-75.] Unauthorized Companies — Agents — Surplus Line — Service.

The commissioner, in consideration of the yearly payment of one hundred dollars, and the furnishing of a bond as hereinafter provided, may issue to any citizen in this state, not exceeding fifty in any one city, a license revocable at any time, permitting the party named in such license to place or effect insurance upon risks located in this state with insurance companies not licensed to do business in this state. No person, firm, or corporation, shall place, procure or effect insurance upon any risk located in this state in any company not licensed to do business in this state, or place, procure, or effect insurance in any marine risk destined for or departing from any port in this state, until such person, firm, or corporation shall have first procured a license from the commissioner as provided in this section, and has furnished a bond to the state of Washington in the penal sum of not less than five hundred dollars nor more than two thousand dollars, the amount thereof to be fixed by the commissioner, with sureties thereon to be approved by the commissioner, conditioned that he or it will conduct such business in accordance with the provisions of this section, and will pay to the state treasurer through the insurance commissioner's office the taxes provided by this section. Every such agent must keep a true and complete record of the business transacted by him, showing: First, the exact amount of such insurance; second, the gross premiums charged therefor; third, the return premium paid thereon; fourth, the rate of premium charged for such insurance upon the different items of the property; fifth, the date of such insurance

and terms thereof; sixth, the name and address of the company making such insurance; seventh, the name and address of the assured, and a brief and general description of the property insured, where located, and if a marine risk, the name of the ship, vessel, boat, or craft, and voyage covered by such insurance; and such other facts and information as the commissioner may direct and require; which record shall at all times be open and subject to the inspection and examination of the commissioner, his deputy, or examiner.

Every policy procured and delivered under the provisions of this section shall have stamped upon it and be initialed by the agent clearing the same in this state, the following: "This policy is registered and delivered at —, Washington, this — day of —, 19—, under the provisions of section seventy-five of chapter —, of the Session Laws of the State of Washington for nineteen hundred eleven."

Every agent who places, procures, effects, or delivers any insurance or insurance policy, as provided in this section, shall annually on or before the fifteenth day of February in each year, make and file with the commissioner a verified statement upon a form to be prescribed and furnished by the commissioner, which shall exhibit the true amount of all such business transacted by such agent during the year ending on the thirty-first day of December next preceding the making of such annual statement, showing the gross amount of each kind of insurance, the gross premiums charged for such insurance, the aggregate amount of returned premiums paid to the insured, the amount of the net premiums, and such other facts and information as the commissioner may prescribe and require.

The commissioner shall file a copy of such verified statement with the state treasurer, and the agent making such statement shall pay to the state treasurer, through the commissioner's office, the same tax that is required of admitted companies, which tax shall be due and payable on the first day of March succeeding the filing of such statement.

Before any insurance, except marine insurance, shall be procured or affected, under or by virtue of said license, there shall be executed by such licensed agent and by the party or his authorized agent desiring insurance, an affidavit which shall be filed with the commissioner within thirty days after the procuring of such insurance. Such affidavit shall set forth that the party desiring insurance is, after diligent effort, unable to procure the insurance required to protect the property owned or controlled by him, from the companies licensed to transact business in this state. Every company making insurance under the provisions of this section, shall be deemed and held to be doing business in this state as an unlicensed company and may be sued upon any cause of action, arising under any policy of insurance so issued and delivered by it, in the superior court of the county where the agent who registered or delivered such policy resides, or transacts business, by the service of summons and complaint made upon such agent for such company. Any such agent, being served with summons and complaint in any such cause, shall forthwith mail such summons and complaint, or a true and complete copy thereof, by registered letter with proper postage affixed, properly addressed to the company sued, and such company shall have forty days from the date of the service of such summons and complaint upon said

agent in which to plead, answer or defend any such cause; upon service of summons and complaint being had upon such agent for such company the court in which such action is begun shall be deemed to have duly acquired jurisdiction in personam of the defendant company so served.

Every such agent who fails or refuses to make and file said annual statement, and to pay the taxes required to be paid thereon, prior to the first day of April after such tax is due, shall be liable for a fine of twenty-five dollars for each day of said delinquency, beginning with the first day of April, and said tax may be collected by distraint, or such tax and such fine may be recovered by an action, to be instituted by the commissioner, in the name of the state, the attorney general representing him, in any court of competent jurisdiction, and the fine, when so collected, shall be paid to the state treasurer, and placed to the credit of the general fund. If any such agent shall fail to make and file said annual statement and pay the said taxes, or shall refuse to allow the commissioner to inspect and examine his records of the business transacted by him, pursuant to this section, or keep such records in manner as required by the commissioner, or shall refuse or neglect to immediately notify the insurance company for whom he has placed, registered, or delivered a policy, of the commencement of any action or proceeding in any court in this state against such company, the license of such agent shall be immediately revoked by the commissioner, and no license shall be issued to such agent within one year from the date of such revocation, nor until all taxes and fines are paid and the commissioner shall be satisfied that full compliance with the provisions of this section will be had. [L. '11, p. 211, § 75.]

§ 7121. [6059-76.] Business to be Placed With Solvent Companies—Penalties.

Every agent, or broker, transacting business under the provisions of the preceding section shall ascertain the financial condition of each company before he procures a policy of insurance from or places any insurance with such company. Any such agent, or broker, who shall knowingly place any insurance except marine with, or procure any insurance from, any insurance company whose unimpaired capital and surplus assets, after providing a reinsurance reserve on the pro rata basis, are less than two hundred thousand dollars, or from any insurance company, other than a stock company, whose cash assets are less than one hundred and fifty thousand dollars, of which amount not less than fifty thousand dollars must be net surplus, after providing for a reinsurance reserve on the pro rata basis, shall be fined in any sum not less than twenty-five dollars, nor more than two hundred and fifty dollars, and his license shall be immediately revoked by the commissioner, and no license shall be issued to such agent within two years from the date of revocation for such cause. [L. '11, p. 214, § 76.]

§ 7122. [6059-77.] Examinations—Expense—How Paid.

The expense of every examination, or other investigation of the affairs of any insurance company, doing business in this state, which the commissioner is by law authorized or required to investigate or examine, shall

be paid by the state out of the general fund. The commissioner, his deputy, or examiner, in making such investigation or examination, shall be allowed only his actual traveling and necessary expenses required by such examination, and shall not charge any fee, nor receive any compensation, for such examination other than the salary allowed by law. In cases where the examination is made by other than an employee of the department he shall be compensated for his services in addition to the expenses as stated herein. The commissioner, his deputy, or examiner, upon making such examination or investigation, shall prepare an itemized statement of the expenses involved in making such examination, and upon the presentation of such vouchers to the state auditor, properly signed by the person making such examination and countersigned by the commissioner, the state auditor is hereby authorized to draw his warrants against the general fund in the same manner in which warrants are drawn for the payment of other bills: Provided, that the provisions of this section shall apply to those companies only that are required to pay a tax on their premium income.

Any company not required to pay taxes on its premium income shall pay the expense of any examination required by law. [L. '11, p. 215, § 77.]

§ 7123. [6059-78.] Policies may be Issued in Other States.

Any domestic insurance company doing business in any other state may frame and issue policies in such other states in accordance with the laws thereof, anything in its articles of incorporation or by-laws to the contrary notwithstanding. [L. '11, p. 216, § 78.]

§ 7124. [6059-79.] Existing Companies—Continue.

Every domestic insurance company previously organized, and licensed to transact insurance business in this state at the time this act goes into effect, is hereby recognized as an existing company, and shall have the right to continue such business under the provisions of this act: Provided, that such company whose capital does not meet the requirements of this act shall have four years from the first day of January, 1912, in which to conform to the requirements of this act relating thereto. [L. '11, p. 216, § 79; L. '13, p. 318, § 1.]

This section of the insurance code does not authorize a fire insurance company formerly doing also a plate glass insurance business, to continue issuing both fire and plate glass insurance in violation of the act: State ex rel. North Coast Fire Ins. Co. v. Schively, 68 Wash. 148, 122 Pac. 1020.

§ 7125. [6059-80.] Policy Requirements—In Effect—When.

Every insurance company admitted and doing business in this state, at the time this act goes into effect, shall have until the first day of January, 1912, in which to comply with the requirements of this act relating to policies or contracts of insurance. [L. '11, p. 216, § 80.]

§ 7126. [6059-81.] Retiring Companies—Approval of Reinsurance.

No insurance company, impaired, insolvent, or retiring from business in this state, shall reinsure its business in this state until its plan to effect such reinsurance shall have been first submitted to the commissioner, and approved by him, and no such reinsurance shall be effected in a com-

pany not admitted to this state. In effecting such reinsurance, the reinsuring company shall become liable to the original insured, for any loss or damage occurring under the policies reinsured, and shall, within a reasonable time, replace such policies with its own, or by indorsement thereon acknowledge liability thereunder; and, in case of cancellation, shall be liable to the original insured for all return premiums. [L. '11, p. 217, § 81.]

§ 7127. [6059-82.] Liability of Stockholders.

Each stockholder of a domestic insurance company shall be individually and personally liable, equally and ratably, and not one for another, for all contracts, debts and engagements of such company accruing while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares. The assets of such company shall be first applied in the payment and discharge of the debts and liabilities of the company and the remainder thereof remaining unpaid shall be paid by the stockholders, equally and ratably, and not one for another. [L. '11, p. 217, § 82.]

§ 7128. [6059-83.] Insurance Classified.

All insurance business in this state is hereby classified as follows:

(1) Fire and marine insurance, upon buildings and other property against loss or damage by fire, lightning, wind storms, cyclones, tornadoes, hail, or earthquakes, water from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, and water-pipes; and against accidental injury to such sprinklers, pumps or other apparatus; and against loss or damage arising from the prevention or suspension of rent or use and occupation of any building, plant or manufacturing establishment due to the hazard or peril insured against; and upon vessels, boats, cargoes, goods, merchandise, freight and other property against loss or damage by the risks of lake, river, canal and inland transportation and navigation, including insurance upon automobiles, whether stationary or being operated under their own power, and reinsurance of any risks taken in this class; but not upon ocean marine risks, and other casualty insurance risks.

(2) Marine insurance, being ocean and inland risks, transportation and automobiles, but not including any other casualty insurance as hereinafter provided.

(3) Life insurance, being [including] endowments and annuities, but not including health, or accident or sickness insurance or any other casualty insurance as hereinafter provided.

(4) Accident insurance, and either sickness or health insurance being insurance against injury, disablement, or death resulting from travel or general accident, and against disablement resulting from sickness; and every insurance appertaining thereto.

(5) Fidelity and surety insurance, being the guaranteeing of persons holding the places of public or private trust; guaranteeing the performance of contracts other than insurance policies; or guaranteeing and executing all bonds, undertakings and contracts of suretyship.

(6) Liability insurance, being all insurance against loss or damage resulting from accident to or injury, fatal or nonfatal, suffered by an employee or other person and for which the insurer is liable.

(7) Plate-glass insurance, being all insurance against breakage of glass, whether local or in transit.

(8) Boiler and machinery insurance, being insurance upon steam boilers and upon pipes, engines and machinery connected therewith and operated thereby, against explosion and accident, and against loss or damage to life, person or property, resulting therefrom.

(9) Burglary insurance, being insurance against loss by burglary, house-breaking or theft.

(10) Sprinkling insurance, being insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers or water-pipes.

(11) Credit insurance, being insurance, or guaranty either by agreement to purchase incollectible [uncollectable] debts, or otherwise to insure against loss or damage from the failure of persons indebted or to become indebted to the insured, or to meet existing or contemplated liabilities.

(12) Title insurance, insuring or guaranteeing owners of property or others interested therein, against loss by encumbrances, or defective titles, or adverse claim to title, either together with or without examination of title or furnishing information relative thereto.

(13) Team and vehicle insurance, being insurance against loss, damage or legal liability for loss, because of damage to property or persons caused by the use of teams or vehicles operated by power not generated in or about the vehicle, whether by accident or collision, and including insurance against theft of the whole or any part of any vehicle. The term vehicle, as herein used, includes elevators and bicycles.

(13½) Motor vehicle insurance, being insurance on motor vehicles operated by power generated within or without such vehicles, except those operating on water or on rails, against loss or damage or loss of use of or to the vehicle, furnishings, tools, appliances and equipment; or legal liability for loss or damage to persons or property resulting through the operation of the vehicle; caused by fire, self-ignition and explosion, theft, collision, or other insurable hazards, including all hazards incident to transporting such vehicle by land or by water.

(14) Miscellaneous insurance, being insurance upon any risk not included within or under either of the foregoing classes, and which is a proper subject of insurance, not prohibited by law or contrary to sound public policy. [L. '11, p. 217, § 83; L. '13, p. 318, § 2.]

Cited in 97 Wash. 565; 567.

A fire insurance company has no right to issue plate glass insurance after the adoption of the insurance code: State ex rel. North Coast Fire Ins. Co. v. Shively, 68 Wash. 148, 122 Pac. 1020.

A domestic title insurance company may write insurance on property out-

side of the state, the policy-holders to look only to general assets, as this section was intended to protect only policies on property within this state: Northwestern Title Ins. Co. v. Fishback, 110 Wash. 350, 188 Pac. 469.

§ 7129. [6059-84.*] Class or Classes of Insurance Permitted.

Any insurance company having the required amount of capital, or assets, when permitted by its articles of incorporation or charter, may be authorized and licensed by the commissioner to make insurance in

this state under one or more of the classes prescribed in the several paragraphs in section 7128, as follows:

(1) No stock company shall make insurance in this state under class one of section 7128 of this act, without having capital stock of at least two hundred thousand dollars (\$200,000), of which not less than one-half must be paid in cash or like securities authorized by this act, and the remainder, in cash or like securities, paid within one year after the company is incorporated, and a surplus of not less than fifty thousand dollars (\$50,000), nor shall such company make insurance in this state, in any other of said classes of insurance specified in said section, except in classes two, seven, ten and thirteen and one-half, five as it relates to the insuring the performance of automobile contracts of sale and or [of] chattel mortgages and fourteen; such company is not to make insurance in class two nor in class thirteen and one-half covering all hazards, without having additional capital of at least one hundred thousand dollars (\$100,000) for each of said classes: Such company is not to make insurance in classes seven, ten, and thirteen and one-half excepting against the hazard of injury to persons, without having additional capital of at least fifty thousand dollars (\$50,000): Such company is not to make insurance in class fourteen without having additional capital of at least two hundred thousand dollars (\$200,000).

(2) No stock insurance company shall make insurance in this state under class two of section 7128 without having a capital stock of at least two hundred thousand dollars (\$200,000) fully paid and a surplus of not less than fifty thousand dollars (\$50,000), nor shall such company make insurance in this state in any other of said classes of insurance excepting in classes one, thirteen and one-half and fourteen: Such company is not to make insurance in class one, nor in class thirteen and one-half covering all hazards, without having additional capital of at least one hundred thousand dollars (\$100,000) for each of said classes: Such company is not to make insurance in class thirteen and one-half excepting against the hazard of injury to persons, without having additional capital of at least fifty thousand dollars (\$50,000): Such company is not to make insurance in class fourteen without having additional capital of at least two hundred thousand dollars (\$200,000).

(3) No stock insurance company shall make insurance in this state under class three of section 7128 without having a capital stock fully paid of at least one hundred thousand dollars (\$100,000) with a surplus of not less than fifty thousand dollars (\$50,000), nor shall such company make insurance in this state in any other of said classes of insurance except in classes four and six; nor to make insurance in class four without having additional capital of at least fifty thousand dollars (\$50,000); nor to make insurance in class six without having additional capital of at least two hundred thousand dollars (\$200,000) nor to make insurance in classes four and six without having additional capital of at least two hundred and fifty thousand dollars (\$250,000).

(4) No company shall issue contracts of guaranty or title insurance in this state, under class twelve of section 7128, until and unless it deposit and maintain on deposit through the office of the insurance commissioner,

with the state treasurer, a guaranty fund in securities authorized by this act as legal investments for the capital or funds of insurance companies, in amounts as follows:

(a) In counties having a population of five hundred thousand or more as evidenced by the last official census of the United States or of the state of Washington, the guaranty fund shall not be less than two hundred thousand dollars (\$200,000); (b) in counties having a population of not less than three hundred thousand nor more than five hundred thousand as evidenced by said census, the guaranty fund shall not be less than one hundred and fifty thousand dollars (\$150,000); (c) In counties having a population of not less than one hundred and fifty thousand nor more than three hundred thousand, as evidenced by said census, the guaranty fund shall not be less than one hundred thousand dollars (\$100,000); (d) In counties having a population of not less than one hundred thousand nor more than one hundred and fifty thousand, as evidenced by said census, the guaranty fund shall not be less than seventy-five thousand dollars (\$75,000); (e) In counties having a population of not less than sixty thousand nor more than one hundred thousand, as evidenced by said census, the guaranty fund shall be not less than fifty thousand dollars (\$50,000); (f) In counties having a population of not less than thirty-five thousand nor more than sixty thousand, as evidenced by said census, the guaranty fund shall not be less than twenty-five thousand dollars; (g) In counties having a population of not less than fifteen thousand nor more than thirty-five thousand, as evidenced by said census, the guaranty fund shall be not less than fifteen thousand dollars (\$15,000); (h) And in counties having a population of less than fifteen thousand, as evidenced by said census, the guaranty fund shall be not less than ten thousand dollars (\$10,000). Any company authorized to issue contracts of guaranty, or title insurance in any county of this state shall be permitted and authorized to issue contracts of guaranty and title insurance in one or more other counties of this state: Provided, its guaranty fund on deposit with the state treasurer is equal to the maximum amount hereinbefore required of a company issuing contracts of guaranty or title insurance in any of such counties: Provided, further, if any company shall have complied or shall thereafter comply with the provisions of this act for the county in which it has its principal place of business no other company authorized to issue contracts of guaranty or title insurance in any other county of this state shall be permitted to issue contracts of guaranty or title insurance therein after the expiration of its certificate of authority then held unless it has deposited or shall thereafter deposit with the state treasurer through the office of the insurance commissioner securities in addition to those then required of such company in the same amount as required for such county: Provided, further, that when any company authorized to issue contracts of guaranty or title insurance in any county of the state shall have and maintain on deposit with the state treasurer a guaranty fund in securities authorized by this act in the total amount of two hundred thousand dollars (\$200,000), such company shall be permitted and authorized to issue contracts of guaranty and title insurance in all of the counties of this state: Provided, further, that nothing herein con-

tained shall prevent any company authorized to issue contracts of guaranty or title insurance in any county of this state from underwriting or reinsuring in whole or in part contracts of guaranty or title insurance by any other company. The provisions of this act shall in no wise be interpreted to apply to persons, copartnerships, or corporations engaged in the business of preparing and issuing abstracts of, but not guaranteeing or insuring, title to property and certifying to the correctness thereof.

(5) No stock insurance company shall make insurance in this state under class five of section 7128 without having a capital stock fully paid of at least two hundred thousand dollars (\$200,000) and a surplus of not less than one hundred thousand dollars (\$100,000), nor shall such company make insurance in this state in any other of said classes of insurance specified in section 7128, excepting classes four, six, seven, eight, nine, ten, eleven, thirteen, thirteen and one-half, and fourteen; and it shall not make insurance in classes six or thirteen and one-half without having additional capital of at least one hundred thousand dollars (\$100,000) for each of said classes; such company may make insurance in classes four, seven, eight, nine, ten, eleven, thirteen, thirteen and one-half (excepting against the perils of fire), when it has additional capital of at least fifty thousand dollars (\$50,000); such company may make insurance in class fourteen when it has additional capital of at least two hundred thousand dollars (\$200,000).

(6) No stock insurance company shall make insurance in this state under class six of section 7128 without having a capital stock of at least two hundred thousand dollars (\$200,000) fully paid and a surplus of not less than one hundred thousand dollars (\$100,000); or shall such company make insurance in this state in any other of said classes of insurance specified in this section except in classes four, five, seven, eight, nine, ten, eleven, thirteen and one-half and fourteen; and it shall not make insurance in classes five or thirteen and one-half without having additional capital of at least one hundred thousand dollars (\$100,000) for each of said classes. Such company may make insurance in one or all of the following classes: Four, seven, eight, nine, ten, eleven, thirteen, thirteen and one-half (excepting against the perils of fire), when it has additional capital of at least fifty thousand dollars (\$50,000); such company may make insurance in class fourteen when it has additional capital of at least two hundred thousand dollars (\$200,000).

(6½) No stock insurance company shall make insurance in this state under class thirteen and one-half of section 7128 without having a capital stock of at least two hundred thousand dollars (\$200,000) fully paid and a surplus of not less than one hundred thousand dollars (\$100,000).

(7) No stock insurance company shall make insurance in this state in either of the following classes specified in section 7128: Four, seven, eight, nine, ten, eleven, and thirteen without having a capital stock of at least one hundred thousand dollars (\$100,000) fully paid and a surplus of not less than twenty-five thousand dollars (\$25,000), nor shall such company make insurance in more than one of said classes unless it shall have additional capital of not less than fifty thousand dollars (\$50,000): Provided, however, that the requirement of surplus as provided in this

section shall only apply to domestic insurance companies organizing and commencing to transact the business of making insurance and that such companies may use such surplus in establishing the company in business without impairment of the company.

(8) The provisions of this section shall not apply to life or fire insurance companies operating on the mutual or assessment or the fraternal plan. [L. '19, p. 96, § 1. Cf. L. '11, p. 219, § 84; L. '13, p. 321, § 3.]

Cited in 110 Wash. 351—353.

§ 7130. [6059—85.] Incorporation of Companies.

The following number of citizens of the United States, two-thirds of which number shall be residents of the state of Washington, may incorporate a company as follows: For a stock company, not less than five; for a mutual company, not less than ten; for an organization on the plan known as "Lloyds," not less than twenty; for an organization of "Inter-Insurers," not less than twenty-five; for one or more of the purposes specified in section 7128 by making and subscribing written articles of incorporation in quadruplicate and acknowledging the same before an officer authorized to take acknowledgment of deeds, and after having the same approved by the commissioner, by filing one of such articles in the office of the secretary of state, another in the office of the insurance commissioner, another in the office of the auditor of the county in which the principal office of the company is to be located, and retaining the fourth in the possession of the company, which articles shall state:

First. The names and addresses of the incorporators.

Second. The name of the company.

Third. (a) The object for which the company is formed; (b) whether it is a stock or mutual company, and if a mutual company, whether it will insure on the cash premium or assessment plan; (c) The class or classes of risks wherein it will make insurance, according to the divisions made in this act.

Fourth. (a) If a stock company, the amount of the capital stock, and the number of shares, which shall be of the par value of one hundred dollars each; (b) if it be a mutual company, the minimum and maximum liability of its members or policy-holders for the payment of losses occurring under its policies, which liability shall be not less than two nor more than six times the amount of the premium usually charged by solvent stock insurance companies for insuring like or similar risks for the same term, and if that premium is not known, then the premium used shall be according to either the "Dean" schedule or the "Universal Mercantile" schedule for fire risks, and such schedule for other class or classes of risks as may be approved by the commissioner.

Fifth. The time of its existence, not to exceed fifty years: Provided, that this limit of existence shall not apply to any life insurance company.

Sixth. The number of trustees or directors, which shall not be less than five nor more than eleven, and their names and addresses, who shall manage the affairs of the company for such length of time, not

less than two nor more than six months, as may be designated in such articles of incorporation.

Seventh. The name of the city or town in which the principal place of business of the company is to be located in this state, and in what country or countries it intends to transact business.

Amendments may be made to the articles of incorporation of a stock company, by a majority vote of its trustees or directors, and the vote or written assent of two-thirds of the capital stock of the company, and, if a mutual company, by the majority vote of its trustees or directors and the vote or written assent of two-thirds of the members or policy-holders of such company. If the written assent of two-thirds of the capital stock of a stock company, or members or policy-holders of a mutual company has not been obtained, then the vote of the said stock, or of said members may be taken, at any regular meeting of the stockholders or members called for that purpose in the manner provided in the by-laws of such company for special meetings of stockholders or members.

The president and secretary of said company shall certify said amendments in quadruplicate under the seal of said company to be correct, and shall file and keep the same as in the case of original articles of incorporation and from the time of filing said amendments such company shall have the same powers, and the stockholders thereof shall be subject to the same liabilities as if said amendment had been embraced in the original articles of incorporation. A policy-holder in a mutual insurance company has the same character of interest and occupies the same relation to the company as the stockholder has and occupies to a stock insurance company.

Nothing in this section shall be construed to cure or amend any defect existing in any articles of incorporation in that such articles did not set forth the matter required to make the same valid at the time of filing, nor to cure or amend any defect in the execution thereof. The time of existence of such company shall not be extended by amendments beyond the time fixed in the original articles of incorporation.

No such company shall take the name of a domestic company theretofore organized, nor that of an alien or foreign company admitted to this state, nor one so nearly resembling that or either as to be misleading. The expenses of incorporation and organization, including the placing of the capital stock of any such company incorporated after January 1, 1911, shall not exceed seven and one-half per centum of the par value of the stock actually sold. [L. '11, p. 223, § 85.]

§ 7131. [6059-86.] Mutual Companies—Qualifications.

No domestic mutual insurance company hereafter formed under the laws of this state shall be authorized to transact business as an insurer until it shall have first qualified itself as follows:

First. If it is formed to transact as insurer, a general fire insurance business on the cash premium plan, it must have bona fide written applications severally signed by applicants for fire insurance for one year, and, on risks usually written for a term, not more than five years, from residents of this state, on property owned by the applicant, situate within

this state, in separate risks of not to exceed two thousand dollars each, amounting in the aggregate to not less than five hundred thousand dollars, and must have, own, and possess in its own name and exclusive right premiums actually received in cash, to an amount of at least eight thousand dollars and six thousand dollars must be on hand above all liabilities except reinsurance reserve, estimated on the pro rata basis, and premium liability due in installments as demanded, severally and unconditionally executed and delivered by a solvent applicant for the insurance he applies for, all in the aggregate amount, unimpaired, of not less than twenty-five thousand dollars: Provided, that when a mutual fire insurance company accumulates from its underwriting and earnings cash assets of not less than two hundred thousand dollars, of which amount not less than one hundred thousand dollars shall be surplus assets which it must maintain in securities deposited as required of domestic stock insurance companies, and while it maintains such surplus assets on deposit it may issue its policies without liability on the part of its policy-holders, other than to pay the amount of the premium stated in the policy, and which premium shall be not less than the premium charged by solvent stock companies for insuring similar risks. The company may classify its risks according to the various hazards covered, and any saving experienced by the company in loss ratio, expense of management, or from any other source, may be returned to the policy-holders in the various classifications, according to the experience of the company in said classes and as determined by the board of directors of the company: Provided, that such savings must be apportioned equitably among the policy-holders in the classifications in which it is actually earned.

Second. If it is formed to transact, as insurer, a fire insurance business under the cash premium plan on one stated specific kind or class of manufacturing, mercantile, or other business or property, it must have bona fide written applications severally signed by applicants for fire insurance for one year on property owned by the applicant and situate within this state in separate risks of not to exceed two thousand dollars each, amounting in the aggregate to not less than three hundred thousand dollars; and must have, own, and possess in its own name and exclusive right, premium received in cash to an amount of at least eight thousand dollars and six thousand dollars must be on hand, above all liabilities, except reinsurance, reserve, and premium liability, settled by premium notes due in installments as demanded, severally and unconditionally executed and delivered by a solvent applicant for the insurance he applies for the aggregate amount of not less than twenty-five thousand dollars: Provided, that when any ten or more persons, partnerships, corporations, or associations engaged in a like class of manufacturing, mercantile or other business shall have organized a company hereunder, it may begin to issue policies under such conditions as may be provided by the board of trustees or managing board thereof, and shall be approved by the commissioners.

Third. If it is formed to transact, as insurer, a general fire insurance business on the assessment plan, it must have bona fide written applications severally signed by applicants for fire insurance for one year, and, on risks usually written for a term, not more than five years, from

residents of this state on property owned by the applicant situate within this state in separate risks of not to exceed twelve hundred and fifty dollars each, and amounting in the aggregate to not less than five hundred thousand dollars; and must have, own, and possess in its own name and exclusive right premiums on the insurance applied for, of which not less than fifty per centum thereof must be paid in cash to the aggregate amount of not less than four thousand dollars, which sum shall be on hand, above liabilities except reinsurance reserve, and the remainder and additional premium liability of the applicant must be paid as provided in the by-laws of the company: Provided, that any domestic fire insurance company doing business on the assessment plan and composed exclusively of members of a specified fraternal society, which conducts its business and secures its membership on the lodge system, having ritualistic form of work and ceremonies in such society shall be exempt from the provisions of this act governing the amount of insurance a company may carry on a single risk, financial qualifications, annual meeting, taxes, fees, and licenses, except that it shall pay for its annual license and filing its annual statement the sum of ten dollars.

Fourth. If it is formed to transact as insurer a fire insurance business on the assessment plan outside of incorporated towns in this state, it must have bona fide written applications severally signed by applicants for fire insurance for one year, and, on risks usually written for a term, not more than five years, from residents of this state on property owned by the applicant situate within this state in separate risks of not to exceed fifteen hundred dollars each, amounting in the aggregate to not less than two hundred thousand dollars; and must have, own, and possess in its own name and exclusive right premiums on the insurance applied for of which not less than fifty per centum thereof must be paid in cash and to be on hand above liabilities except reinsurance reserve, and the remainder and the additional premium liability of the applicant must be paid as provided in the by-laws of the company.

Fifth. If it is formed to transact business as inter-insurers only between the parties forming the company and all parties who shall become members and inter-insurers therein, no such company shall be formed nor transact any business as insurers until not less than twenty-five persons or parties, each of whom must be worth in his or its own right not less than twenty thousand dollars above all liabilities, in property located within this state, such fact to be determined by the commissioner, and in determining the same he may take the verified statement of such parties, and the signed reports of a reputable commercial agency having upward of one hundred thousand subscribers, which person or parties shall first prescribe and adopt the terms and conditions upon which they will be governed and become inter-insurers each with the other, and each shall be individually liable with every other solvent member of such company to ratably pay and discharge all losses and legal claim accruing against such company; Provided, that the terms and conditions prescribed, adopted and entered into by such persons in becoming inter-insurers shall embrace the terms and conditions which experience of similar companies has found to be efficient and adequate to promptly and equitably pay and discharge its obligations of which the commis-

sioner shall be the judge: Provided, further, that the provisions of this paragraph shall only apply to inter-insurers associations hereafter organized or hereafter applying for admission and authority to transact business in this state as inter-insurers.

Sixth. If it is formed to transact business as insurer in this state upon the plan known as "Lloyds," no such company shall be formed with less than twenty persons or copartnerships, citizens of the United States and two-thirds of them residents of this state, each of whom must be worth not less than twenty thousand dollars above all liabilities in real property and securities such as an insurance company is authorized to invest its capital and funds in as provided in this act, such fact to be determined by the commissioner and in determining the same he may take the verified statement of such parties and the signed reports of a reputable commercial agency having upwards of one hundred thousand subscribers, which persons or parties shall first prescribe and adopt the terms and conditions upon which they will be governed and become insurers. If such company be formed to transact business as insurer as specified in class 1 of section 7128 it must have not less than one hundred fifty thousand dollars, in bona fide unimpaired assets in excess of all liabilities, of which assets not less than seventy-five thousand dollars must be in cash and securities such as the funds of an insurance company may be invested in as provided in this act, and the remainder of said assets must consist of cash or such authorized securities, or the legal promissory notes severally made, signed, and delivered by solvent parties payable to the company whenever required for the payment and discharge of losses or legal obligations accruing against such company; and where notes are used to make up the amount of said assets the commissioner shall determine the sufficiency of each note, and he shall have the right to require that the payment of any shall be secured by good and sufficient collateral, and it shall be his duty to require ample security to be furnished for the payment of such note when the makers thereof are not personally known by him to be solvent and good for the payment of the same. Such company shall deposit not less than two-thirds of its assets and keep the same on deposit through the insurance commissioner's office with the state treasurer in the same manner as deposits are required to be made and kept by stock insurance companies as provided in this act.

Seventh. If it is formed to transact insurance against injury, disablement, or death resulting from traveling or general accident or against disablement resulting from sickness, and every insurance appertaining thereto, it must have bona fide written applications severally signed by not less than five hundred applicants for health and accident, or health, or accident insurance for one year in amounts of not less than one thousand dollars each, from residents of this state, and who shall each have paid in one full annual premium in cash upon the insurance subscribed for; and must have, own and possess in its own name and exclusive right premiums actually received in cash, to an amount of at least eight thousand dollars and six thousand dollars must be on hand above all liabilities except re-insurance reserve; provided, that when any such company shall accumulate from its underwriting and earnings cash assets of not less than one hundred thousand dollars of which amount not less than fifty thousand

dollars shall be surplus assets, which it must maintain in securities, of a character designated by the insurance code, deposited with the state treasurer through the office of the insurance commissioner, and while it maintains such surplus assets on deposit, it may issue its policies without liability on the part of its policy-holders other than to pay the amount of the premium stated in the policy and which premium shall be not less than the premium charged by solvent companies for insuring similar risks. The company may classify its risks according to the various hazards covered and any saving experienced by the company in its loss ratio, expense of management, or any other source may be returned to the policy-holders in the various classifications at the end of any policy year for which premiums have been paid, according to the experience of the company in said classes and as determined by its board of directors: Provided, that such saving must be apportioned equitably among the policy-holders in the classifications in which it is actually earned.

Such company may make insurance in any other class specified in said section 7128 when permitted by the commissioner upon furnishing additional assets of the kind herein specified in the amounts required of a stock insurance company to make insurance in like classes as provided by this act.

The plan, terms, and conditions prescribed and adopted by such company must be such as the experience of similar companies has found to be efficient and adequate to promptly and equitably pay and discharge its obligations and successfully conduct its business, of which the commissioner shall be the judge. [L. '15, p. 309, § 1. Cf. L. '11, p. 226, § 86.]

Cited in 97 Wash. 567.

Under this section, mandamus will not lie to compel the insurance commissioner to issue a permit for fidelity and surety insurance, where the record fails to disclose what showing was made as to the

efficiency and adequacy of its plans, etc., the only showing being as to the additional assets: *State ex rel. Mutual Union Ins. Co. v. Fishback*, 97 Wash. 565, 166 Pac. 799.

§ 7132. [6059-87.*] Mutual Insurance Companies—By-laws.

The directors of a mutual insurance company shall adopt such by-laws, not in conflict with the laws of this state, as they may deem proper for the government of its officers and the conduct of its business. Said by-laws shall provide for the liability of its members or policy-holders for the payment of its losses and expenses, which liability, including the amount of the premium, shall not be less than two times the amount of the premium nor more than six times the amount of the premium charged by solvent stock companies for like risks and terms. The by-laws shall limit the expenses to not more than forty per centum of the net premiums charged and collected for insurance, which expense must include all sums paid by the insured for his insurance including any membership, policy, survey, or inspection fee, or other fee or charge, if any: Provided, however, that "expense" in the case of mutual accident and health companies shall not be construed to cover costs of adjusting or defending claims. [L. '19, p. 725, § 1; L. '11, p. 231, § 87.]

Liability of members of mutual insurance company. 32 L. R. A. 481.

Validity and construction of mutual insurance policy issued for a cash premium. Ann. Cas. 1916B, 84.

Effect of provision in mutual insurance contract for forfeiture or suspension of policy on failure to pay dues. 11 Ann. Cas. 340.

§ 7133. [6059-88.] Qualifications—Foreign—Alien—Mutuals.

No alien, or foreign mutual insurance company shall be licensed to make insurance in this state until it shall have accumulated from its underwriting business and earnings surplus assets of not less than one hundred thousand dollars, and shall have a reinsurance reserve computed on a pro rata basis, which surplus assets, if an alien, shall be maintained on deposit in a depository or depositories for insurance company funds in some state or states of the United States. Such company shall not carry insurance on a single risk for an amount in excess of ten per centum of its surplus assets, as shown by the last report to the insurance commissioner, without protecting such excess by reinsurance in a solvent company. [L. '11, p. 231, § 88.]

§ 7134. [6059-89.] Impairment—Reduction of Capital Stock.

When the capital stock of any domestic insurance company shall be impaired, it may reduce its capital stock as provided herein to such an amount as shall be justified by its assets; but no part of its assets shall be distributed to its stockholder, and no reduction shall be made except upon the vote of the stockholders approved by at least two-thirds of the directors and certified under the corporate seal by the secretary, a duly certified copy of which shall be filed in the office of the secretary of state, and in the office of the insurance commissioner, and in the office of the auditor of the county in which the principal office of the company is located, and one retained at the principal office of the company. The directors, after such reduction of capital, may require each stockholder to surrender his stock, and, in lieu thereof, may issue a new certificate for such number of shares as he shall be entitled to: Provided, that the capital of such company when so reduced shall not be less than the minimum capital required of a company to transact like business in this state. [L. '11, p. 232, § 89.]

§ 7135. [6059-90.] Increase of Capital Stock.

Any domestic insurance company may at any time increase the amount of its capital stock, by giving notice once a week for four consecutive weeks, in any newspaper having a general circulation, published in the county where the company is located, of such intention; and by filing with the secretary of state a copy of such advertisement with due proof of publishing the same, together with the declaration under its corporate seal, signed by its president and two-thirds of its board of directors, and by the stockholders representing three-fourths of its capital stock, of their desire to increase the capital, and file like copies and proof in the office of the insurance commissioner, and in the office of the auditor of the county in which the principal office of such company is located, and retain a similar copy and proof in its principal office: Provided, that such increase of capital stock shall be fully subscribed and paid for in lawful money of the United States within six months after the date of filing such papers in the office of the secretary of state, and, when said increase of capital shall have been fully subscribed and paid in full in cash, the president and secretary of such company shall make and verify under oath a certificate under the seal of the company stating that such increase in

stock has been fully subscribed and paid in full in cash, as required by this act, and file such certificate in the office of the secretary of state and in the office of the insurance commissioner, and in the office of the auditor of the county in which the principal office of the company is located, and retain a similar copy in its principal office, and thereupon such increase in capital shall be effectual. [L. '11, p. 232, § 90.]

§ 7136. [6059-91.] Examination—Reserve—Liability.

In ascertaining the condition of a fire insurance company, under the provisions of this act, or in any examination made by the commissioner, his deputy, or examiner, he shall allow as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination, but unpaid premiums on policies written within three months shall be admitted as available resources. In ascertaining its liability, there shall be charged in addition to the capital stock and all outstanding claims, a sum equal to the total unearned premiums on the policies in force, computed on a pro rata basis. [L. '11, p. 233, § 91.]

§ 7137. [6059-92.] Life—Legal Reserve.

The commissioner shall annually make valuation of all outstanding policies, additions thereto, unpaid dividends, and all other obligations of every life insurance company doing business in this state; and all such valuations made by him or his authority shall be according to the standard of valuation adopted by the company: Provided, that in either case the standard of valuation employed shall be stated in his annual report: Provided further, that no such standard of valuation whether on the net level premium, preliminary term, or select and ultimate reserve basis, for policies issued after the passage of this act shall be less than that determined upon such basis according to the American Experience Table of Mortality with three and one-half per centum interest. The commissioner may vary the standard of valuation in particular cases of invalid lives and other extrahazards: Provided, the same is on basis of at least three and one-half per centum, value policies in groups, use approximate average for fractions of a year, and assume as accurate the valuation of the department of insurance of any other state or country, if the insurance officer of such other state or country likewise accredits the valuation made by the commissioner of this state: Provided, that when the preliminary term basis is used it shall not exceed one year.

The legal minimum standard for the valuation of annuities issued after January 1, 1912, shall be "McClintock's Table of Mortality Among Annuitants," or the American Experience Table of Mortality, with interest at three and one-half per centum per annum, but annuities deferred ten or more years and written in connection with life or term insurance shall be valued in the same mortality table from which the consideration or premiums were computed, with interest not higher than three and one-half per centum per annum.

The legal minimum standard for the valuation of annuity policies issued after the first day of January, 1912, shall be the American Experience Table of Mortality with interest and three and one-half per centum per annum: Provided, that any life insurance company may voluntarily

value its industrial policies written on the weekly premium payment plan according to the "Standard Industrial Mortality Table" or the "Sub-Standard Industrial Mortality Table."

Any life insurance company may voluntarily value its policies, or any class thereof, according to the American Experience Table of Mortality; or if industrial, at its option, according to the "Standard Industrial Mortality Table," or "Sub-Standard Industrial Mortality Table," at a lower rate of interest than that above prescribed, but not lower than three per centum per annum, and in such case shall report the standards used by it in making the same, to the commissioner in its annual statement: Provided, that no such standards, if adopted, shall be abandoned without the consent of the commissioner first being obtained in writing. [L. '11, p. 233, § 92.]

§ 7138. [6059-93.] Investments Allowed—Life.

In estimating the condition of any life insurance company, under the provisions of this act, or in any examination made by the commissioner, his deputy, or examiner, he shall allow as assets only such investments, cash, and accounts as are authorized by the laws of this state, at the date of examination, and shall charge as liabilities in addition to the capital stock, all outstanding indebtedness of the company, and the premium reserve on policies, and additions thereto in force computed according to the table of mortality and rate of interest prescribed in this act. The total assets invested and otherwise in every domestic life insurance company shall be held to be accumulations for the exclusive benefit of policy-holders, and no payment to stockholders shall be made therefrom, until all obligations to policy-holders, and creditors have been fully provided for including the reserve required by the preceding section of this act to be determined by the commissioner. [L. '11, p. 235, § 93.]

§ 7139. [6059-94.] Health—Reserve.

The commissioner shall annually make valuations of all outstanding policies of every company insuring against disablement by sickness, on the net premium basis, according to the "British Friendly Society Tables, eighteen hundred and eighty," or the "Manchester Unity Friendly Society Tables," eighteen hundred and ninety-three to eighteen hundred and ninety-seven, with interest at three and one-half per centum per annum. He may, in his discretion, vary the standard in particular cases, and may also require additional reserve because of hazardous occupations, impairment of the lives of the insured or insufficient net premiums. This provision shall not apply to policies insuring for not longer than one year without privileges of renewal. [L. '11, p. 235, § 94.]

§ 7140. [6059-95.] Liability—Reserve.

The indebtedness or outstanding losses under insurance against loss or damages resulting from accident to or injuries suffered by an employee or other person and for which the insured is liable, and under insurance against loss from liability on account of the death of or injury to an employee not caused by the negligence of the employer, shall be determined as follows: Each corporation which writes policies covering any of

said kinds of insurance shall include in the annual statement required by section 7071 a schedule of its experience thereunder, in the United States and foreign countries in the case of corporations organized in the United States, and in the United States only in the case of corporations organized outside of the United States, giving each calendar year's experience separately, and crediting or charging each item to the year in which the policy to which it relates was written, as follows: (1) the earned premiums on all such policies written during the period of ten years immediately preceding the date as of which the statement is made, being the gross premiums on all such policies including excess and additional premiums and premiums in course of collection, less return premiums and premiums on canceled policies, and less the unearned premiums on policies in force as shown in such annual statement; (2) the amount of all payments of whatsoever nature made by reason or on account of injuries covered by such policies written during said period. This amount shall include medical and surgical attendance, payments to claimants, legal expenses, salaries and expenses of investigators, adjusters, and field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home-office expenses, and all other payments made on account of such injuries, whether such payments are allocated to specific claims or are unallocated; (3) the number of suits being defended at the date as of which the statement is made under policies written during said period, except suits in which liability is not dependent upon negligence of the insured, and a charge of seven hundred and fifty dollars for each suit; (4) the number of deaths for which the insured are liable without proof of negligence, covered by policies written during said period, and not paid for at the date as of which the statement is made and a charge of the amount necessary to pay for such deaths; (5) the number of unpaid claims at the date as of which the statement is made on account of nonfatal injuries for which the insured are liable without proof of negligence, covered by policies written during said period, and a charge equal to the present value of the estimated future payments; (6) the loss ratio determined from the foregoing as to each year separately, using as the divisor the earned premiums shown in item (1) and as the dividend the amount of payments shown in item (2) plus the amounts charged in items (3), (4) and (5); (7) the number of suits being defended at the date as of which the statement is made under policies written more than ten years prior to such date, except suits in which liability is not dependent upon negligence of the insured; (8) the number of deaths for which the insured are liable without proof of negligence, covered by policies written more than ten years prior to the date as of which the statement is made, and not paid for at such date; (9) the number of unpaid claims at the date as of which the statement is made on account of nonfatal injuries for which the insured are liable without proof of negligence, covered by policies written more than ten years prior to such date.

All unallocated payments in item (2) made in a given calendar year subsequent to the first four years in which a corporation has been issuing such policies shall be distributed as follows: thirty-five per centum shall be charged to the policies written in that year, forty per centum to

the policies written in the preceding year, ten per centum to the policies written in the second year preceding, ten per centum to the policies written in the third year preceding and five per centum to the policies written in the fourth year preceding; and such payments made in the first four calendar years in which a corporation has been issuing such policies shall be distributed as follows: In the first calendar year one hundred per centum shall be charged to the policies written in that year; in the second calendar year fifty per centum shall be charged to the policies written in that year and fifty per centum to the policies written in the preceding year; in the third calendar year forty per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year and twenty per centum to the policies written in the second year preceding; and in the fourth calendar year thirty-five per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year, fifteen per centum to the policies written in the second year preceding and ten per centum to the policies written in the third year preceding, and a schedule showing such distribution shall be included in such annual statement.

Each such corporation shall be charged with indebtedness for outstanding losses upon such policies determined as follows: (10) for all suits being defended under policies written more than ten years prior to the date as of which the statement is made, except suits in which liability is not dependent upon negligence of the insured, one thousand dollars for each suit; (11) for all suits being defended under policies written more than five years and less than ten years prior to the date as of which the statement is made, except suits in which the liability is not dependent upon negligence of the insured, seven hundred and fifty dollars for each suit; (12) for all deaths for which the insured are liable without proof of negligence covered by policies written more than five years prior to the date as of which the statement is made, the amount necessary to pay for such deaths; (13) for all unpaid claims on account of nonfatal injuries for which the insured are liable without proof of negligence under policies written more than five years prior to the date as of which the statement is made, the present value of the estimated future payments; (14) for the policies written in the five years immediately preceding the date as of which the statement is made an amount determined as follows: multiply the earned premiums of such five years as shown in item (1) by the loss ratio ascertained as in item (6) on all the policies written in the first five years of the said ten-year period, using as the divisor the sum of the earned premiums shown in item (1) for such first five years, and as the dividend the sum of the payments shown in item (2) for such first five years, plus the sum of the charges in items (3), (4) and (5) for such first five years; but the ratio to be used shall in no event be less than fifty per centum at and after December thirty-first, nineteen hundred and eleven, nor less than fifty-one per centum at and after December thirty-first, nineteen hundred and twelve, nor less than fifty-two per centum at and after December thirty-first, nineteen hundred and thirteen, nor less than fifty-three per centum at and after December thirty-first, nineteen hundred and fourteen, nor less than fifty-four per centum at and after December thirty-first, nineteen hundred and fifteen, nor less than fifty-

five per centum at and after December thirty-first, nineteen hundred and sixteen; and from the amount so ascertained in each of the last five years of said ten-year period deduct all payments made under policies written in the corresponding year as shown in item (2), and the remainder in the case of each year shall be deemed the indebtedness for that year: Provided, however, that if the remainder in the case of any year of the first three years of the five years immediately preceding the date as of which the statement is made shall be less than the sum of the three following items for that year at that date,—(a) the number of suits, except suits in which liability is not dependent upon negligence of the insured, being defended under policies written in that year, and a charge of seven hundred and fifty dollars for each suit; (b) the amount necessary to pay for all deaths for which the insured are liable without proof of negligence, covered by policies written in that year; and (c) the present value of estimated unpaid claims on account of nonfatal injuries for which the insured are liable without proof of negligence, covered by policies written in that year—then the sum of said items (a), (b) and (c) shall be the indebtedness for that year.

A corporation which has been issuing such policies for a period of less than ten years shall nevertheless include in its annual statement a schedule as hereinbefore required for the years in which it shall have issued such policies, and shall be charged with an indebtedness determined in the same manner; but in determining the indebtedness for policies written in the five years immediately preceding the date as of which the statement is made, the minimum ratios hereinbefore prescribed shall be used, subject to the same deductions and provisions as in the case of corporations that have been issuing such policies for ten years or more.

In estimating and ascertaining the assets, liabilities, and financial condition of all other insurance companies, not otherwise provided for by the provisions of this act, the commissioner, his deputy, or examiner shall allow as assets only such investments, cash, and accounts as are authorized by the existing laws of this state, or under the existing laws of the state or country under which such company is organized and which investments he may approve or reject, at the date of the investigation, and in estimating the liabilities there shall be added, in addition to the capital stock, all outstanding claims and a sum equal to the unearned premiums on the policies in force, calculated on the gross sum without any deduction on any account, charged to the policy-holder on each respective risk from the date of the issuance of the policy.

If the commissioner finds this rule to be impracticable in estimating and ascertaining the condition of certain kinds of insurance companies, he shall formulate such rules as he shall deem proper and efficient and consistent with law, having due regard to such rules as may be used in other states or approved by the National Convention of Insurance Commissioners or Superintendents: Provided, that in relation to the affairs of any foreign company, he may, in lieu of such examination and investigation, accept a certificate of the insurance commissioner or superintendent of such state or district, as to its condition. [L. '11, 236, § 95.]

§ 7141. [6059-96.] Valuations—Exceptions.

The provisions of this act relating to the valuation of policies shall not apply to the policies issued prior to the date at which this act goes into effect. [L. '11, p. 241, § 96.]

§ 7142. [6059-97.] Liabilities of Directors and Corporators.

The directors, corporators, and organizers of any company organized under this act, and those entitled to a participation of the profits of such company, shall be jointly and severally liable for all debts or liabilities of such company, until it has qualified and been admitted to make insurance in this state. [L. '11, p. 241, § 97.]

§ 7143. [6059-98.] Reinsurance in Nonadmitted Alien Companies Prohibited.

No insurance company authorized to transact business in this state and no manager or agent thereof shall reinsure, transfer, or cede in any manner whatsoever the whole or any part of its liability under a policy covering property within this state, except marine risks, in any alien company not having a duly appointed attorney in fact in the United States to accept service of legal process, or not admitted to transact business in the United States and having a deposit in some state in the United States.

Any company, or manager, or agent who violates the provisions of this section, shall be fined in any sum not exceeding five hundred dollars, and the license of such company, manager or agent shall be revoked during the time such fine remains unpaid. [L. '11, p. 241, § 98.]

§ 7144. [6059-99.] Attorney General—Prosecuting Attorneys—Duties.

In all proceedings instituted in any court, or otherwise, under the provisions of this act, it shall be and hereby is made the duty of the attorney general and of the several prosecuting attorneys throughout the state, to prosecute or defend all such proceedings when requested by the commissioner, his deputy, or examiner so to do. [L. '11, p. 241, § 99.]

§ 7145. [6059-100.] Brokerage — License Required — Agents may Exchange Business.

Any person or party who solicits fire, marine, casualty, liability, or surety business to be placed in an insurance company other than represented by him shall be deemed and considered as transacting a brokerage business and shall be required to procure a broker's license: Provided, that nothing in this act shall be considered as prohibiting duly licensed bona fide recording agents from exchanging with each other any of the lines of business enumerated in this section for which such agent is licensed, and paying or dividing commission on business so exchanged. [L. '15, p. 130, § 1. Cf. L. '11, p. 242, § 100.]

Cited in 105 Wash. 672.

§ 7146. [6059-101.] Inspection Bureau.

After the first day of January, 1913, the commissioner, if he deem it necessary for the detection and correction of errors or discovery of viola-

tions of this act in effecting insurance, if any be committed, may permit an inspecting or stamping bureau to be maintained under the supervision of a deputy commissioner for the purpose of inspecting all daily reports of fire insurance risks located in this state. [L. '11, p. 242, § 101.]

§ 7147. [6059-102.] General Penalties.

Any company or person who knowingly violates any provision of this act for which no penalty is provided, shall be deemed guilty of a misdemeanor and shall be punished as provided by law. [L. '11, p. 242, § 102.]

Cited in 95 Wash. 131.

ARTICLE II. FIRE AND MARINE.

§ 7148. [6059-103.] Over-insurance—Unlawful.

It shall be unlawful for any insurance company or any agent to knowingly issue any fire insurance policy upon property within this state for an amount which with any existing insurance exceeds the fair value of the property or of the interest of the insured therein, or for a longer time than for five years. [L. '11, p. 242, § 103.]

§ 7149. [6059-104.] Over-insurance—Procuring—Unlawful.

It shall be unlawful for any party having an insurable interest in property located in this state to knowingly procure any fire insurance policy upon his interest in such property for an amount in excess of the fair value of his interest in the property, or for an amount which, with any existing insurance thereon, exceeds the fair value of his interest in the property. [L. '11, p. 242, § 104.]

§ 7150. [6059-105.] Over-insurance—Penalties.

Every insurer who makes insurance upon any building or property or interest therein against loss or damage by fire, and every agent who issues a fire insurance policy covering on any building or property or interest therein, and every insured who procures a policy of fire insurance upon any building or property or interest therein owned by him, is presumed to know the insurable value of such building or property or interest therein at the time such insurance is effected. Any insurer who knowingly makes insurance on any building or property or interest therein against loss or damage by fire in excess of the insurable value thereof, shall be fined in a sum not less than fifty dollars nor more than one hundred dollars. Any agent who knowingly effects insurance on a building or property or interest therein in excess of the insurable value thereof, shall be fined in a sum not less than fifteen nor more than twenty-five dollars. Any person or party who knowingly procures insurance against loss or damage by fire on any building or property or interest therein owned by him in excess of its insurable value shall be fined in a sum not less than twenty-five dollars nor more than one hundred dollars. [L. '11, p. 243, § 105.]

Cited in 83 Wash. 574.

In an action upon fire insurance policies on a stock of groceries, agents who

wrote and issued the policies may be called by the plaintiff to testify to the value of the stock at the time the poli-

cies were written and at the time of the fire, under this section, the evident purpose of the statute being to prevent over-insurance: *Rasmusson v. North Coast Fire Ins. Co.*, 83 Wash. 569, 145 Pac. 610, L. R. A. 1915C, 1179.

Effect of overvaluation of insured property. 29 *Am. Dec.* 616; 25 *Am. Rep.* 74.

§ 7151. [6059-105½.] Total Loss—Measure of Damages—Replacing.

Whenever any policy of insurance shall be hereafter written or renewed insuring real property or any building or structure erected thereon or connected therewith, and the property insured shall be wholly destroyed, without criminal fault on the part of the insured, or his assigns, the amount of insurance written in such policy shall be taken conclusively to be the true value of the property when insured, and the true amount of the loss and measure of damages when destroyed. In case there is a partial destruction of the property insured, no greater amount shall be collected than the injury sustained: Provided, that the insurer shall have the option to repair, rebuild or replace the property lost or damaged with other of like kind and quality if he gives notice of his intention so to do within twenty days after the receipt of notice of loss: Provided, such insurer shall, within thirty days from the receipt of notice above, commence such rebuilding or replacing and shall diligently prosecute the same to completion, and shall pay to the insured the reasonable rental value of the premises with the buildings thereon from the date of loss to the date of such completion. [L. '11, p. 243, § 105½.]

Cited in 106 Wash. 313, 351; 107 Wash. 507; 113 Wash. 161.

Where, in fact, there was only a partial loss by fire, the insured, claiming a total loss, cannot refuse to arbitrate under this section; the theory that whether the loss was total was a question of fact for the courts—and if he does so, it is at his peril: *Goldstein v. National Fire Ins. Co.*, 106 Wash. 346, 180 Pac. 409.

Where buildings are totally destroyed by fire, any recovery must be for the amount stated in the policy, under this section: *Pierce v. Globe & Rutgers Fire Ins. Co.*, 107 Wash. 501, 182 Pac. 586.

This section does not preclude the defense of fraud and misrepresentation by the insured as to the value, inducing issuance of a policy in an excessive amount: *Myles v. Northern Assurance Co.*, 113 Wash. 158, 193 Pac. 703.

§ 7152. [6059-106.] Policy Standard Form—What to Contain.

On and after January 1, 1912, no fire insurance company shall issue any fire insurance policy covering on property or interest therein in this state other than on form known as the New York Standard as now or may be hereafter constituted, except as follows:

First. A company may print on or in its policy its name, location and date of its incorporation, plan of operation, whether stock or mutual, and if mutual whether on cash premium or assessment plan; and if it be a stock company, the amount of its paid-up capital stock, the names of its officers and agents, the number and date of the policy and, if it is issued by an agent, the words, "This policy shall not be valid until countersigned by the duly authorized agent of the company at —," and, if a mutual company, must state the contingent mutual liability of its policyholders or members for payment of losses and expenses not provided for by its cash fund until it shall have accumulated surplus assets of not less than one hundred thousand dollars, which it must maintain in securities deposited as required of stock companies, and, while it maintains such

surplus assets on deposit, it may issue its policies with the statement thereon that the liability of the policy-holder is limited to the premium paid as hereinafter provided.

Second. A company may print or use in its policies printed forms of description and specifications of the property insured.

Third. A company insuring against damage by lightning may print in the clause enumerating the perils insured against, the additional words, "also any damage by lightning whether fire ensues or not" and in the clause providing for an apportionment of loss in case of other insurance the words, "whether by fire, lightning or both."

Fourth. A domestic company may print in its policies any provisions which it is authorized or required by law to insert therein, and any foreign or alien company may, with the approval of the commissioner, so print any provision required by its charter or deed of settlement, or by the laws of its own state or country, not contrary to the laws of this state; but the commissioner shall require any provision which, in his opinion, modifies the contract of insurance in such a way as to affect the question of loss to be appended to the policy by an indorsement or rider as hereinafter provided.

Fifth. The blanks in said standard form may be filled in in print or writing.

Sixth. A company may print upon policies issued in compliance with the preceding provisions of this section the words, "Washington Standard Policy."

Seventh. A company may write upon the margin or across the face of the policy, or write or print in type not smaller than nonpareil upon a slip, slips, rider or riders to be attached thereto, provisions adding to or relating to those contained in the Standard Form; and all such slips, riders, indorsements, and provisions must be signed by the officers or agents of the company so using them.

Eighth. If the policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulation shall apply to and form a part of the policy as the same may be written or printed upon, attached, or appended thereto.

Ninth. If the policy be made by a company operating on the plan known as "Lloyds," it shall have the name and address of each underwriter printed on the back of the policy.

Tenth. Every policy shall have legibly inscribed upon its face and filing back suitable words to designate whether the company making such insurance be a stock, or mutual company, or "Lloyds," or Inter-Insurers Association.

The word "noon" occurring in the policy shall be construed to be the noon of standard time of the place where the property covered by the policy is situated. [L. '15, p. 598, § 12. Cf. L. '11, p. 244, § 106.]

See, also, notes to § 7230.

Cited in 95 Wash. 574; 96 Wash. 563; 99 Wash. 640.

CONSTRUCTION—Application of General Rules of Construction: See Remington's Digest, Insurance, § 42; Heilbron's

Estate, In re, 14 Wash. 536, 45 Pac. 153, 35 L. R. A. 602; Pioneer Sav. & L. Co. v. Providence Washington Ins. Co., 17 Wash. 175, 49 Pac. 231, 38 L. R. A. 397; Remington v. Fidelity

Deposit Co., 27 Wash. 429, 67 Pac. 989; Hoeland v. Western Union Life Ins. Co., 58 Wash. 100, 107 Pac. 866; Port Blakeley Mill Co. v. Springfield Fire & Marine Ins. Co., 59 Wash. 501, 110 Pac. 36, 140 Am. St. Rep. 863, 28 L. R. A. (N. S.) 596; Algoe v. Pacific Mutual Life Ins. Co., 91 Wash. 324, 157 Pac. 993, L. R. A. 1917A, 1237; Mountain Timber Co. v. Lumber Ins. Co., 99 Wash. 243, 169 Pac. 591.

• — **Description of Risk:** See Remington's Digest, Insurance, § 49-1; Stuht v. Maryland Motor Car Ins. Co., 90 Wash. 576, 156 Pac. 557.

— **Mortgaged Property:** See Remington's Digest, Insurance, § 50; Washington National Bank v. Smith, 15 Wash. 160, 45 Pac. 736; Pioneer Sav. & Loan Co. v. Providence Wash. Ins. Co., 17 Wash. 175, 49 Pac. 231, 38 L. R. A. 397; Burrows v. McCalley, 17 Wash. 269, 49 Pac. 508; Boyd v. Thuringia Ins. Co., 25 Wash. 447, 65 Pac. 785, 55 L. R. A. 165.

Construing Together Policy and Accompanying Papers: See Remington's Digest, Insurance, § 46; Cole v. Union Central Life Ins. Co., 22 Wash. 26, 60 Pac. 68, 47 L. R. A. 201; Starr v. Mutual Life Ins. Co., 41 Wash. 228, 83 Pac. 116.

Property Covered by Insurance Against Fire or Other Cause of Loss—Fixtures: See Remington's Digest, Insurance, § 47; Pencil v. Home Ins. Co., 3 Wash. 485, 28 Pac. 1031.

— **Description of Property:** See Remington's Digest, Insurance, § 48; Ferguson v. Lumbermen's Ins. Co., 45 Wash. 209, 88 Pac. 128; Montana Stables v. Union Assur. Soc., 53 Wash. 274, 101 Pac. 882; Mountain Timber Co. v. Lumber Ins. Co., 99 Wash. 243, 169 Pac. 591.

— **Description of Location:** See Remington's Digest, Insurance, § 48; Ferguson v. Lumbermen's Ins. Co., 45 Wash. 209, 88 Pac. 128; Violette v. Queen Ins. Co., 96 Wash. 303, 165 Pac. 65; Mountain Timber Co. v. Lumber Ins. Co., 99 Wash. 243, 169 Pac. 591.

ESTOPPEL, WAIVER OR AGREEMENTS AFFECTING RIGHT TO AVOID OR FORFEIT POLICY: See Remington's Digest, Insurance, §§ 105—116.

§ 105. **Application of Doctrines of Estoppel and Waiver:** Hopkins v. Northwestern etc. Ins. Co., 41 Wash. 592, 83 Pac. 1019; Johnson v. Franklin Ins. Co., 90 Wash. 631, 156 Pac. 567.

See, also, Sanstedt v. American Central Life Ins. Co., 109 Wash. 338, 186 Pac. 1069.

§ 106. **Liability of Insurer to Estoppel by Conduct of Agents:** Hart v. Niagara Fire Ins. Co., 9 Wash. 620, 38 Pac. 213, 27 L. R. A. 86.

§ 107. **Powers of Officers or Agents Respecting Waiver—In General:** Hall v. Union Cent. Life Ins. Co., 23 Wash. 610, 63 Pac. 505, 83 Am. St. Rep. 844, 51 L. R. A. 288; Tacoma Lumber & Shingle Co. v. Fireman's Fund Ins. Co., 87 Wash. 79, 151 Pac. 91.

§ 108. — **Effect of Provisions of Policy:** Hart v. Niagara Fire Ins. Co., 9 Wash. 620, 38 Pac. 213, 27 L. R. A. 86; Cole v. Union Central Life Ins. Co., 22 Wash. 26, 60 Pac. 68, 47 L. R. A. 201; Nixon v. Travelers' Ins. Co., 25 Wash. 254, 65 Pac. 195; Foster v. Pioneer Mutual Ins. Co., 37 Wash. 288, 79 Pac. 798; Moller v. Niagara Fire Ins. Co., 54 Wash. 439, 103 Pac. 449, 132 Am. St. Rep. 1115, 24 L. R. A. (N. S.) 807; Staats v. Pioneer Ins. Assn., 55 Wash. 51, 104 Pac. 185; Gregerson v. Phenix Fire Ins. Co., 99 Wash. 639, 170 Pac. 331.

See, also, Reynolds v. Pacific Marine Ins. Co., 105 Wash. 666, 178 Pac. 811.

§ 109. **Knowledge of or Notice to Officers or Agents:** Mesterman v. Home Mut. Ins. Co., 5 Wash. 524, 32 Pac. 458, 34 Am. St. Rep. 877; Hart v. Niagara Fire Ins. Co., 9 Wash. 620, 38 Pac. 213, 27 L. R. A. 86; Cole v. Union Central Life Ins. Co., 22 Wash. 26, 60 Pac. 68, 47 L. R. A. 201; Foster v. Pioneer Mut. Ins. Co., 37 Wash. 288, 79 Pac. 798; Norris v. China Traders' Ins. Co., 52 Wash. 554, 100 Pac. 1025; Gaskill v. Northern Assur. Co., 73 Wash. 668, 132 Pac. 643; Tacoma Lumber & Shingle Co. v. Fireman's Fund Ins. Co., 87 Wash. 79, 151 Pac. 91; Quinn v. Mutual Life Ins. Co., 91 Wash. 543, 158 Pac. 82; Workmen v. Royal Exchange Assurance, 96 Wash. 559, 165 Pac. 488.

See, also, Reynolds v. Pacific Marine Ins. Co., 105 Wash. 666, 178 Pac. 811; Day v. Saint Paul Fire & Marine Ins. Co., 111 Wash. 49, 189 Pac. 95.

§ 110. **Insertion by Agent of False Answers in Application:** Foster v. Pioneer Mut. Ins. Co., 37 Wash. 288, 79 Pac. 798.

§ 111. **Fraudulent or Collusive Acts of Agent:** Hopkins v. Northwestern Nat. Life Ins. Co., 41 Wash. 592, 83 Pac. 1019.

§ 112. **Form and Requisites of Express Waiver—Indorsement on Policy:** Henschel v. Oregon Fire Ins. Co., 4 Wash. 476, 30 Pac. 735, 31 Pac. 332, 765.

§ 113. **Delivery of Policy Without Objection:** Staats v. Pioneer Ins. Assn., 55 Wash. 51, 104 Pac. 185; Reynolds v. Canton Ins. Office, 98 Wash. 425, 167 Pac. 1115.

§ 114. **Demand or Acceptance of Premiums:** Morgan v. Northwestern Nat. Life Ins. Co., 42 Wash. 10, 84 Pac. 412, 7 Ann. Cas. 382.

§ 115. — **Enforcing Collection of Premium Note:** *Proebstel v. State Ins. Co.*, 14 Wash. 669, 45 Pac. 308.

§ 116. **Requiring, Accepting or Retaining Proofs of Loss:** *Elhart v. Pacific Mut. Life Ins. Co.*, 47 Wash. 659, 92 Pac. 419.

See, also, *Bankers Trust Co. v. American Surety Co.*, 112 Wash. 172, 191 Pac. 845.

Notice and Proofs of Loss, in General, Rights and Liabilities and Waiver: See *Remington's Digest, Insurance*, §§ 130—139, and cases cited. See, also:

§ 131. **Notice of Death—Time for Notice:** *Buckley v. Massachusetts Bonding & Ins. Co.*, 113 Wash. 13, 192 Pac. 924.

§ 132. **Statements of Loss—Question for Jury—Place for Examination:** *Pierce v. Globe & Rutgers Fire Ins. Co.*, 107 Wash. 501, 182 Pac. 586.

Adjustment of Loss: See *Remington's*

Digest, Insurance, §§ 140—145, and cases cited. See, also:

§ 143. **Waiver of Conditions:** *Goldstein v. National Fire Ins. Co.*, 106 Wash. 346, 180 Pac. 409.

§ 144. **Refusal to Arbitrate:** *Goldstein v. National Fire Ins. Co.*, 106 Wash. 346, 180 Pac. 409.

§ 145. **Part Payment of Loss—Consideration:** *Markham Shingle Co. v. Royal Ins. Co.*, 106 Wash. 309, 179 Pac. 799.

Right to Proceeds: See *Remington's Digest, Insurance*, §§ 146—150, and cases cited.

Constitutionality of legislation providing for standard policy of fire insurance. 6 *Ann. Cas.* 91; *Ann. Cas.* 1915A, 290.

Rule that doubtful terms in insurance policy are construable favorably to insured as applicable to standard policy. *Ann. Cas.* 1913E, 287.

§ 7153. [6059—107.] **Limitation of Risk.**

No insurance company authorized to transact business in this state, unless otherwise provided by this act, shall insure a single risk, or a single block in the congested district of any city or town, for a larger amount than one-tenth of its paid-up capital in the United States, unless it provides for reinsurance of the excess simultaneously with the original contract; and if any insurance company violates this provision, the commissioner may revoke its authority to transact business in this state. [L. '11, p. 246, § 107.]

§ 7154. [6059—108.] **Policy—Canceled—Return Premium.**

Any fire insurance policy may be canceled at any time by the insurer giving the insured or his representative in charge of the property insured, and the mortgagee, if the insurance is for the benefit of the mortgagee, five days' notice of such cancellation, and if the premium has been actually paid, by paying in cash or mailing by registered letter with proper postage affixed thereto, addressed to the insured at his usual or last known postoffice address, a postoffice or express company money order or bank draft for the return premium computed at pro rata rate for the time the insurance has yet to run, or customary short rate where the insurance is canceled by the insurer, or, where the premium has not been paid, by the insured giving the insurer or its agents or agency, who insured the policy notice of such cancellation and paying the premium for the time the insurance has been in force computed at the customary short rate: Provided, that in case the insurer is a mutual company, such cancellation shall not relieve the insured from his statutory liability in common with every other policy-holder of such company for losses sustained by such company at or prior to the time of the cancellation. [L. '11, p. 246, § 108.]

Cited in 87 Wash. 80.

CANCELLATION OR SURRENDER OF POLICY: See *Remington's Digest, Insurance*, §§ 64—68.

§§ 64, 65. **Right of Insurer to Cancel:** *Sherman v. Mutual Life Ins. Co.*, 53 Wash. 523, 102 Pac. 419; *Violette v. Insurance Co. of Pennsylvania*, 92 Wash.

685, 159 Pac. 896, 161 Pac. 343; Humphrey v. Mutual Life Ins. Co., 86 Wash. 672, 151 Pac. 100.

§ 66. **Notice to Cancel:** Ralston v. Royal Ins. Co., 79 Wash. 557, 140 Pac. 552; Tacoma Lumber & Shingle Co. v. Fireman's Fund Ins. Co., 87 Wash. 79, 151 Pac. 91.

§ 67. **Repayment of Unearned Premium on Cancellation:** Hanford v. Toledo Fire & Marine Ins. Co., 71 Wash. 240, 128 Pac. 235.

§ 68. **Acts Constituting Cancellation:** Ward v. Tucker, 7 Wash. 399, 35 Pac. 126, 1086; Casualty Co. v. Beattie, 75 Wash. 166, 134 Pac. 817, 136 Pac. 1153;

Violette v. Queen Ins. Co., 96 Wash. 303, 165 Pac. 65; Barbour v. Saint Paul Fire & Marine Ins. Co., 101 Wash. 46, 171 Pac. 1030.

Acts sufficient to effect cancellation of fire insurance policy by insurer. 17 Ann. Cas. 795; Ann. Cas. 1915A, 1233.

Necessity of tender or return of unearned premium to effect cancellation of policy by insurer. 12 Ann. Cas. 1067; Ann. Cas. 1913D, 490; Ann. Cas. 1917B, 910; 13 A. L. R. (N. S.) 884; L. R. A. 1916F, 444.

§ 7155. [6059-109.] Premium to be Stated.

Every fire insurance policy must state on its face the amount and the rate of the premium. [L. '11, p. 247, § 109.]

PREMIUMS, DUES AND ASSESSMENTS: See Remington's Digest, Insurance, §§ 52-60.

§ 52. **Persons Liable for Premiums:** Pennsylvania Casualty Co. v. Washington Portland Cement Co., 63 Wash. 689, 116 Pac. 284; Way v. Pacific Lumber & Timber Co., 74 Wash. 332, 133 Pac. 595, 49 L. R. A. (N. S.) 147.

§ 54. **Payment of Premiums—Effect of Failure to Pay:** Cushing v. Williamsburg City Fire Ins. Co., 4 Wash. 538, 30 Pac. 736; Waldron v. Home Mut. Ins. Co., 9 Wash. 534, 38 Pac. 136.

§§ 56, 57. **Actions for Premiums:** Ward v. Tucker, 7 Wash. 399, 35 Pac. 126, 1086.

§ 58. **Refunding or Recovery of Premiums or Assessments Paid:** Hopkins v. Northwestern Nat. Life Ins. Co., 41 Wash. 592, 83 Pac. 1019; Ryder-Gougar Co. v. Garretson, 53 Wash. 71, 101 Pac. 498, 132 Am. St. Rep. 1053.

§ 59. — **Actions—Pleadings:** Sengfelder v. Mutual Life Ins. Co., 5 Wash. 121, 31 Pac. 428; Anderson v. New York Life Ins. Co., 34 Wash. 616, 76 Pac. 109.

§ 60. — **Evidence:** Sengfelder v. Mutual Life Ins. Co., 5 Wash. 121, 31 Pac. 428.

Validity and effect of stipulation in fire policy suspending liability on default in payment of installment premium. 12 Ann. Cas. 628; 8 A. L. R. 395.

§ 7156. [6059-110.] Foreign Inter-insurance.

Associations of individuals, citizens of the United States, incorporated within the United States to transact business as inter-insurers only between the parties forming the association, and all parties forming the association and all parties who shall become members and inter-insurers therein, may be authorized to transact insurance in this state in like manner and upon the same terms and conditions as required of domestic inter-insurance associations. [L. '11, p. 247, § 110.]

§ 7157. [6059-111.] Demoralization of Business—Prohibited.

Any company which precipitates, or aids in precipitating or conducting a rate war and by so doing writes or issues a policy of insurance at a less rate than permitted under their schedule filed with the commissioner, or below the rate deemed by him to be proper and adequate to cover the class of risk insured, shall have its license, and those of its agents, to do business in this state, suspended until such time as the commissioner is satisfied that it is charging a proper rate of premium. [L. '11, p. 247, § 111.]

§ 7158. [6059-112.] Rate War—Offending Company—Agent's Commission.

Any company which has precipitated, or aided in precipitating or conducting a rate war for the purpose of punishing or eliminating competitors or stifling competition, or demoralizing the business, or for any other purpose, and has ordered the cancellation or rewriting of policies at a rate lower than that provided by its rating schedules where such rate war is not in operation, and has paid or attempted to pay to the assured any return premium, on any risk so to be rewritten, on which their agent has received or is entitled to receive his regular commission, such company shall not be allowed to charge back to such agent any portion of his commission on the ground that the same has not been earned. [L. '11, p. 247, § 112.]

§ 7159. [6059-113.] Adjuster to Report Violations.

Every adjuster, who investigates any loss claim in this state, shall ascertain whether there be double or over-insurance upon such risk and the facts and circumstances so far as practical pertaining to the origin or happening of the hazard or peril insured against, and in case he believes fraud has been committed or attempted to be committed, he shall promptly report the premises to the commissioner, and in case of fire insurance, to the fire marshal as well. [L. '11, p. 248, § 113.]

§ 7160. [6059-114.] Insurable Interest in a Ship.

The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss. [L. '11, p. 248, § 114.]

Illegality of policy of marine insurance for lack of insurable interest as affecting right to re-

cover back premiums paid. **L. B. A. 1917A, 477.**

§ 7161. [6059-115.] Interest Reduced by Bottomry.

The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry. [L. '11, p. 248, § 115.]

§ 7162. [6059-116.] Freight Defined.

Freight, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others. [L. '11, p. 248, § 116.]

§ 7163. [6059-117.] Expected Freight.

The owner of a ship has an insurable interest in expected freight which he would have certainly earned but for the intervention of the perils insured against. [L. '11, p. 248, § 117.]

§ 7164. [6059-118.] Interest in Expected Freight.

The interest mentioned in the last section exists, in the case of charter-party, when the ship has broken ground on the chartered voyage,

and if a price is to be paid for the carriage of goods when they are actually on board or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage. [L. '11, p. 248, § 118.]

§ 7165. [6059-119.] Insurable Interest in Profits.

One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits. [L. '11, p. 249, § 119.]

INSURABLE INTEREST: See Remington's Digest, Insurance, §§ 24-27.

§ 24. **What Constitutes Interest—Contractors:** Cushing v. Williamsburg City Fire Ins. Co., 4 Wash. 538, 30 Pac. 736.

§ 25. — **Vendor and Purchaser:** Quinn v. Parke & Lacy Mach. Co., 5 Wash. 276, 31 Pac. 866; Bright v. Hanover Fire Ins. Co., 48 Wash. 60, 92 Pac.

779; Osborne v. Phoenix Ins. Co., 90 Wash. 387, 156 Pac. 5.

§ 27. **Estoppel to Deny Interest:** Burrows v. McCalley, 17 Wash. 269, 49 Pac. 508; Chase & Baker Co. v. Olmsted, 93 Wash. 306, 160 Pac. 952.

Insurable interest of one insured against loss of profits from marine adventures. **L. R. A.** 1917C, 730.

§ 7166. [6059-120.] Insurable Interest of Charterer.

The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss. [L. '11, p. 249, § 120.]

§ 7167. [6059-121.] Information—Communicated.

In marine insurance each party is bound to communicate, in good faith, all facts within his knowledge which are, or which he believes to be, material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty, and all the information which he possesses, material to the risk, except that neither party to a contract of marine insurance is bound to communicate information of the matters following, unless it be in answer to the inquiries of the other:

First. Those which the other knows;

Second. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;

Third. Those of which the other waives communication;

Fourth. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and

Fifth. Those which relate to a risk excepted from the policy, and which are not otherwise material.

He shall also state the exact and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose. [L. '11, p. 249, § 121.]

§ 7168. [6059-122.] Material Information.

In marine insurance, information of the belief or expectation of a third person, in reference to a material fact, is material. [L. '11, p. 249, § 122.]

§ 7169. [6059-123.] Presumption of Knowledge of Loss.

A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss, if the infor-

mation might possibly have reached him in the usual mode of transmission, and at the usual rate of communication. [L. '11, p. 250, § 123.]

§ 7170. [6059-124.] Concealment Affecting Risk Only.

A concealment in a marine insurance, in respect of any of the following matters, does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed.

First. The national character of the insured.

Second. The liability of the thing insured to capture and detention;

Third. The liability to seizure from breach of foreign laws of trade;

Fourth. The want of necessary documents; and,

Fifth. The use of false and simulated papers. [L. '11, p. 250, § 124.]

§ 7171. [6059-125.] Intentional Falsity—Effect.

If a representation, by a person insured under a contract of marine insurance, is intentionally false in any respect, whether material, or immaterial, the insurer may rescind the entire contract. [L. '11, p. 250, § 125.]

§ 7172. [6059-126.] Representation of Expectation.

The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance. [L. '11, p. 250, § 126.]

§ 7173. [6059-127.] Seaworthiness—Warranty.

In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy. [L. '11, p. 250, § 127.]

Implied warranty of seaworthiness with respect to marine insurance. 58 Am. Dec. 671.

§ 7174. [6059-128.] Seaworthiness Defined.

A ship is seaworthy when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy. [L. '11, p. 250, § 128.]

What is seaworthiness within the law of marine insurance. 33 Am. Dec. 33.

What are perils of the sea within marine policy. 41 Am. Dec. 281; Ann. Cas. 1912D, 1038.

Inherent defect in vessel as affecting question whether loss is due to perils of the sea within policy of marine insurance. 9 A. L. R. 1314.

§ 7175. [6059-129.] Seaworthiness—Compliance With—Exceptions.

An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases:

First. When the insurance is made for a specified length of time, the implied warranty is not complied with, unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and,

Second. When the insurance is upon the cargo, which, by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transshipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped, or transshipped, be seaworthy at the commencement of its particular voyage. [L. '11, p. 251, § 129.]

§ 7176. [6059-130.] Seaworthiness—Warranty.

A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as ballast, cables and anchors, cordage and sails, food, water, fuel, and lights, and other necessary or proper stores and implements for the voyage. [L. '11, p. 251, § 130.]

§ 7177. [6059-131.] Seaworthiness—Degrees—Stages—Voyage.

Where different portions of the voyage contemplated by a policy, differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with if, at the commencement of each portion, the ship is seaworthy with reference to that portion. [L. '11, p. 251, § 131.]

§ 7178. [6059-132.] Unseaworthiness During Voyage.

When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability from any loss arising therefrom. [L. '11, p. 251, § 132.]

§ 7179. [6059-133.] Seaworthiness—As to Insurance on Cargo.

A ship which is seaworthy for the purpose of an insurance upon the ship may, nevertheless, by reason of being unfit to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo. [L. '11, p. 252, § 133.]

§ 7180. [6059-134.] Neutral Papers.

Where the nationality or the neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon. [L. '11, p. 252, § 134.]

§ 7181. [6059-135.] Voyage Insured—Determined.

When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course of sailing fixed by mercantile usage between those places. [L. '11, p. 252, § 135.]

Term and Duration of Risk—Voyage or Time Policies of Marine Insurance: See Remington's Digest, Insurance, § 51; *Stone v. Insurance Co. of North America*, 56 Wash. 427, 105 Pac. 856.

A marginal clause in a policy of marine insurance limiting the policy to the waters of southeastern Alaska, delivered after the sailing of the vessel, will pre-

vail, although unknown to the owners, unless there are facts that estop the company from reliance on the provision: *Reynolds v. Pacific Marine Ins. Co.*, 105 Wash. 666, 178 Pac. 811.

Waters covered by description of waters in policy of marine insurance. *L. E. A.* 1915C, 408.

§ 7182. [6059-136.] Sailing—Course—Determined.

If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified which, to a master of ordinary skill and discretion, would seem the most natural, direct and advantageous. [L. '11, p. 252, § 136.]

§ 7183. [6059-137.] Deviation Defined.

Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage. [L. '11, p. 252, § 137.]

What is, and effect of deviation of vessel with respect to policy of marine insurance. 33 *Am. Dec.* 60.

Effect of deviation by necessity upon policy of marine insurance. 58 *Am. Dec.* 673.

§ 7184. [6059-138.] Deviation—Proper.

A deviation is proper:

First. When caused by circumstances over which neither the master nor the owner of the ship has any control;

Second. When necessary to comply with a warranty, or to avoid a peril, whether insured against it or not;

Third. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril; or,

Fourth. When made in good faith, for the purpose of saving human life, or relieving another vessel in distress. [L. '11, p. 252, § 138.]

§ 7185. [6059-139.] Deviation—Improper.

Every deviation not specified in the last section is improper. [L. '11, p. 253, § 139.]

§ 7186. [6059-140.] Proper Deviation Exonerates Insurer.

An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation. [L. '11, p. 253, § 140.]

§ 7187. [6059-141.] Loss—Total or Partial.

A loss may be either total or partial. [L. '11, p. 253, § 141.]

§ 7188. [6059-142.] Actual and Constructive Total Loss.

A total loss may be either actual or constructive. [L. '11, p. 253, § 142.]

§ 7189. [6059-143.] Actual Total Loss Defined.

An actual total loss is caused by:

First. A total destruction of the thing insured;

Second. The loss of the thing by sinking, or by being broken up;

Third. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,

Fourth. Any other event which entirely deprives the owner of the possession, at the port of destination, of the thing insured. [L. '11, p. 253, § 143.]

§ 7190. [6059-144.] Constructive Total Loss.

A constructive total loss is one which gives to a person insured a right to abandon, as hereinafter provided. [L. '11, p. 253, § 144.]

Value of wreck as element in determining constructive total loss within marine policy of insurance. 12 Ann. Cas. 23.

istence of war as constructive total loss within policy of marine insurance. Ann. Cas. 1916D, 884; Ann. Cas. 1918C, 373.

Frustration of voyage because of ex-

§ 7191. [6059-145.] Actual Loss—Presumed.

An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case. [L. '11, p. 253, § 145.]

§ 7192. [6059-146.] Insurance—Cargo—Voyage Broken.

When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to produce, in the same or contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer thereon continues after they are thus reshipped. [L. '11, p. 253, § 146.]

§ 7193. [6059-147.] Reshipment—Cost, etc.

In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freight, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured. [L. '11, p. 254, § 147.]

§ 7194. [6059-148.] Insured—Entitled—Payment—When.

Upon an actual total loss, a person insured is entitled to payment without notice of abandonment. [L. '11, p. 254, § 148.]

§ 7195. [6059-149.] Average Loss.

When it has been agreed that an insurance upon a particular thing, or class of things, shall be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless;

but he is liable for his proportion of all general average loss assessed upon the thing insured. [L. '11, p. 254, § 149.]

§ 7196. [6059-150.] Insurance Against Total Loss.

An insurance confined in terms to an actual total loss, does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the thing insured. [L. '11, p. 254, § 150.]

Does a policy of marine insurance
against total loss only, or contain-
ing an exception against liability

for partial loss, cover a constructive
total loss. **L. R. A. 1916F, 1171.**

§ 7197. [6059-151.] Abandonment Defined.

Abandonment is the act by which, after a constructive total loss, a person insured by contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured. [L. '11, p. 254, § 151.]

§ 7198. [6059-152.] Insured may Abandon.

A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against:

First. If more than half thereof in value is actually lost, or would have to be expended to recover it from the peril;

Second. If it is injured to such an extent as to reduce its value more than one-half;

Third. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

Fourth. If the thing insured, being cargo or freight, the voyage cannot be performed nor another ship procured by the master, within a reasonable time and with reasonable diligence, to forward the cargo, without incurring the like expense or risk. But freight cannot in any case be abandoned, unless the ship is also abandoned. [L. '11, p. 254, § 152.]

§ 7199. [6059-153.] Abandonment—Unqualified.

An abandonment must be neither partial nor conditional. [L. '11, p. 255, § 153.]

§ 7200. [6059-154.] Abandonment—When may be.

Abandonment must be made within a reasonable time after the information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion. [L. '11, p. 255, § 154.]

§ 7201. [6059-155.] Abandonment—When Defeated.

Where the information upon which an abandonment has been made proves incorrect, or the thing insured was so far restored when the

abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual. [L. '11, p. 255, § 155.]

§ 7202. [6059-156.] Abandonment—How Made.

Abandonment is made by giving notice thereof to the insurer, which may be done orally, or in writing. [L. '11, p. 255, p. 156.]

§ 7203. [6059-157.] Notice—Requisition of.

A notice of abandonment must be explicit, and must specify the particular cause of the abandonment, but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or loss. [L. '11, p. 225, § 157.]

§ 7204. [6059-158.] Abandonment—Sustained—Cause Specified.

An abandonment can be sustained only upon the cause specified in the notice thereof. [L. '11, p. 256, § 158.]

§ 7205. [6059-159.] Abandonment—Effect.

An abandonment is equivalent to a transfer, by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity. [L. '11, p. 256, § 159.]

§ 7206. [6059-160.] Abandonment—Formal Waiver.

If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds, or salvage, as if there had been a formal abandonment. [L. '11, p. 256, § 160.]

§ 7207. [6059-161.] Agents' Acts—Risk of Insurer.

Upon an abandonment, acts done in good faith by those who were agents of the insured in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit. [L. '11, p. 256, § 161.]

§ 7208. [6059-162.] Acceptance not Necessary.

An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer, upon his receiving notice of abandonment. [L. '11, p. 256, § 162.]

§ 7209. [6059-163.] Acceptance Conclusive.

The acceptance of an abandonment, whether expressed or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment. [L. '11, p. 256, § 163.]

§ 7210. [6059-164.] Abandonment—Accepted—Irrevocable.

An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded. [L. '11, p. 256, § 164.]

§ 7211. [6059-165.] Abandonment—Freight Affected.

On an accepted abandonment of a ship, freight earned previous to the loss belongs to the insurer thereof; but freight subsequently earned belongs to the insurer of the ship. [L. '11, p. 256, § 165.]

§ 7212. [6059-166.] Refusal to Accept.

If an insurer refuses to accept a valid abandonment, he is liable as upon the actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured. [L. '11, p. 257, § 166.]

§ 7213. [6059-167.] Omission to Abandon.

If a person insured omits to abandon, he may nevertheless recover his actual loss. [L. '11, p. 257, § 167.]

§ 7214. [6059-168.] Valuation—When Conclusive.

A valuation in a policy of marine insurance is conclusive between the parties thereto in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract. [L. '11, p. 257, § 168.]

§ 7215. [6059-169.] Loss—Partial.

A marine insurer is liable upon a partial loss only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured. [L. '11, p. 257, § 169.]

§ 7216. [6059-170.] Profits.

When profits are separately insured in a contract of marine insurance, the insured is entitled to recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole. [L. '11, p. 257, § 170.]

§ 7217. [6059-171.] Valuation—Apportioned.

In case of a valued policy of marine insurance on freight or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part. [L. '11, p. 257, § 171.]

§ 7218. [6059-172.] Valuation—Profits.

When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount. [L. '11, p. 257, § 172.]

§ 7219. [6059-173.] Estimating Loss—Open Policy.

In estimating a loss under an open policy of marine insurance, unless otherwise provided in the policy, the following rules are to be observed:

First. The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured;

Second. The value of the cargo is its actual cost to the insured, when laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation or to the fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival.

Third. The value of freight is the gross freight, exclusive of primage, without reference to the cost of earning it; and,

Fourth. The cost of insurance is in each case to be added to the value thus estimated. [L. '11, p. 258, § 173.]

§ 7220. [6059-174.] Arrival—Damaged.

If the cargo insured against partial loss arrives at the port of destination in a damaged condition, unless otherwise provided in the policy, the loss of the insured is deemed to be the same proportion of the value which the market price at that port, of the thing so damaged, bears to the market price it would have brought if sound. [L. '11, p. 258, § 174.]

§ 7221. [6059-175.] Insurer—Liable—Expenses.

A marine insurer is liable for all the expenses attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby, such expense, in either case, being in addition to a total loss if that afterward occurs. [L. '11, p. 258, § 175.]

§ 7222. [6059-176.] Insurer—Liable—Contribution—General Average.

A marine insurer, unless otherwise provided in the policy, is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him toward a general average loss called for by a peril insured against. [L. '11, p. 259, § 176.]

§ 7223. [6059-177.] Contribution.

Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right. [L. '11, p. 259, § 177.]

§ 7224. [6059-178.] One-third—New—Old.

In the case of partial loss of a ship or its equipment, except where a vessel is under one year of age, a deduction of one-third from

the cost of all new work shall be made; that repairs where there is no betterment, shall not be subject to a deduction and that a credit for old material shall be first deducted from the cost of repairs before allowance of one-third new for old; that the cost of moving a vessel to and from a drydock and the cost of drydocking a vessel shall not be subject to a deduction of one-third; anchors and chains shall be allowed in full, and for metal sheathing a depreciation of two and one-half per centum shall be deducted for each month that it has been made fast to the vessel. [L. '15, p. 129, § 1. Cf. L. '11, p. 259, § 178.]

§ 7225. [6059-179.] Other Laws—Usages Made Applicable by Contract.

A policy of marine insurance may provide that it shall be interpreted and applied according to the laws, usages and practices of any other government, and when so provided the policy shall be interpreted and applied according to the laws, usages and practices of such government. [L. '11, p. 259, § 179.]

ARTICLE III. LIFE, HEALTH AND ACCIDENT.

§ 7226. [6059-180.] Discrimination Prohibited.

No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals, between insurants of the same class and equal expectation of life, in the amount of payments of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes; nor shall any company or agent, subagent, or broker, make any contract of insurance or agreement as to such contract, other than is plainly expressed in the policy issued thereon; nor shall any such company or agent, subagent, or broker, pay or allow, or offer to pay or allow, as inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any other valuable consideration or inducement whatsoever not specified in the policy contract of insurance.

No life insurance company shall issue in this state, nor permit its agents, officers, or employees to issue in this state, agency company stock, or other stock or securities, or any special or advisory board contract, or other contract of any kind promising returns and profits, as an inducement to insurance; and no life insurance company shall be authorized, nor permitted to do business, in this state, which issues or permits its agents, officers, or employees, to issue in this state or in any other state or territory, agency company stock, or other stock or securities, or any special advisory board contract, or other contract of any kind promising returns and profits, as an inducement to insurance; and no corporation or stock company, acting as agent of a life insurance company nor any of its agents, officers, or employees, shall be permitted to agree to sell, offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form

or nature, promising returns and profits, as an inducement to insurance or in connection therewith. [L. '11, p. 260, § 180.]

Cited in 96 Wash. 68, 69; 102 Wash. 182.

Validity of Contract for Rebates: See Remington's Digest, Insurance, § 9; Calvin Phillips & Co. v. Fishback, 84 Wash. 124, 146 Pac. 181.

Where a life insurance solicitor agreed that his commissions for procuring life insurance should be his compensation for procuring for the assured a real estate mortgage loan from the insurance company, he induced the insurance by a rebate of the premium to the extent of his commissions, in violation of this section: Moser v. Pantages, 96 Wash. 65, 164 Pac. 768.

A life insurance solicitor's contract calling for a rebate in violation of this section is void, notwithstanding the statute does not declare such contracts void; in view of the fact that it clearly prohibits such contracts, and of section 7244, infra, providing that any insurance agent willfully violating any of the provisions of the article shall be fined and have his license revoked: Moser v. Pantages, 96 Wash. 65, 164 Pac. 768.

Effect of discrimination among insureds upon the contract of insurance and its incidents. 35 L. R. A. (N. S.) 485; 49 L. R. A. (N. S.) 147; 18 Ann. Cas. 759; Ann. Cas. 1918D, 504.

§ 7227. [6059-181.] Policies—By Whom Signed.

All life insurance policies delivered in this state shall be signed by the secretary or assistant secretary; or, in their absence, by a secretary pro tempore, and by the president or vice-president, or, in their absence, by two directors, of the company issuing same. [L. '11, p. 261, § 181.]

§ 7228. [6259-182.] Medical Examination must be Made.

No life insurance company organized under the laws of, or doing business in, this state, shall enter into any contract of insurance upon lives within this state, except industrial insurance or where premiums are payable monthly or oftener, without having previously made, or caused to be made, a prescribed medical examination of the insured by a legally qualified practicing physician: Provided, that any regularly commissioned physician of the United States army or navy shall be considered as legally qualified to make such examinations. [L. '15, p. 600, § 13. Cf. L. '11, p. 261, § 182.]

§ 7229. [6059-183.] Policy must be Filed.

On and after January first, nineteen hundred twelve, no policy of life or endowment insurance shall be issued or delivered in this state until a copy of the form thereof has been filed at least thirty days with the commissioner, unless before the expiration of said thirty days the commissioner shall have approved the same in writing; nor if the commissioner notifies the company in writing, that, in his opinion, the form of said policy does not comply with the requirements of the laws of this state, specifying the reasons for his opinion: Provided, that upon the petition of the company the opinion of the commissioner shall be subject to review by any court of competent jurisdiction. [L. '11, p. 261, § 183.]

§ 7230. [6059-184.] Terms of Policy.

No life insurance policy, except policies of industrial insurance or where the premiums are payable monthly or oftener, shall be issued or delivered in this state on and after January first, nineteen hundred and twelve, unless it contains in substance the following provisions:

(1) A provision that the insured is entitled to a grace of at least thirty days within which the payment of any premium after the first year may be paid, subject, at the option of the company, to an interest charge not in excess of six per centum per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in force, but in case the policy becomes a claim during the said period of grace before the overdue premium or the deferred premiums of the policy year, if any are paid, the amount of such premiums, with interest on any overdue premium, may be deducted from any amount payable under the policy in settlement.

(2) A provision that [the] policy, so far as it relates to life or endowment insurance, shall be incontestable after two years from its date of issue except for nonpayment of premiums, and except for violation of the conditions of the policy relating to military or naval service in time of war.

(3) A provision that the policy and the application therefor shall constitute the entire contract between the parties and that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties.

(4) A provision that if the age of the insured has been misstated the amount payable under the policy shall be such as the premium would have purchased at the correct age.

(5) A provision that the policy shall participate in the surplus of the company annually or quinquennially.

(6) A provision specifying the option to which the policy-holder is entitled in the event of default in a premium payment after three full annual premiums shall have been paid.

(7) A provision that after the policy has been in force for three full years, the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding six per centum per annum, a sum equal to, or at the option of the owner of the policy less than, ninety per centum of the reserve at the end of the current policy year on the policy and on any dividend additions thereto, less a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year and may collect interest in advance on the loan to the end of the current policy year; which provision may further provide that such loan may be deferred for not exceeding six months after the application therefor is made.

(8) A table showing in figures the loan value, if any, and the options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy, or for its life if maturity is less than twenty years, beginning with the year in which such values and options first become available.

(9) In case the proceeds of a policy are payable in installments or as an annuity, a table showing the amounts of the installments or annuity payments.

(10) A provision that the holder of a policy shall be entitled to have the policy reinstated at any time within three years from the date of default, unless the cash value has been duly paid, or the extension period expired, upon the production of evidence of insurability satisfactory to the company and the payment of all overdue premiums and any other indebtedness to the company upon said policy with interest at a rate not exceeding six per centum per annum payable annually.

Any of the foregoing provisions or portions thereof not applicable to single premium or nonparticipating or term policies shall to that extent not be incorporated therein. [L. '11, p. 261, § 184.]

Cited in 102 Wash. 182; 104 Wash. 136; 107 Wash. 260; 110 Wash. 4.

Construction of Policy: See notes to § 7152.

Avoidance of Policy by Failure to Pay Full Premiums in Advance: Gibson v. New York Life Ins. Co., 102 Wash. 180, 172 Pac. 920.

See, also, notes to § 7078.

A policy providing it shall not take effect unless delivered to the insured in his lifetime in good health is not governed by this section, relating to the effect of oral or written misrepresentations or warranties or statements made in the negotiations or by the insured; since the condition is not a warranty or statement within these statutes: Logan v. New York Life Ins. Co., 107 Wash. 253, 181 Pac. 906.

When the policy has been delivered and the first premium paid, the burden of proof is upon the insurance company to show that the policy was delivered while the insured was not in good health, and for that reason did not become effective: Logan v. New York Life Ins. Co., 107 Wash. 253, 181 Pac. 906.

— **Extension of Term:** See Remington's Digest, Insurance, § 55; Algoe v. Pacific Mutual Life Ins. Co., 91 Wash. 324, 157 Pac. 993, L. R. A. 1917A, 1237.

ASSIGNMENT OF POLICY: See Remington's Digest, Insurance, §§ 61—63.

§ 61. **Right of Insured to Assign Life Policies:** Heilbron's Estate, In re, 14 Wash. 536, 45 Pac. 153, 35 L. R. A. 602; Cade v. Head Camp, W. O. W., 27 Wash. 218, 67 Pac. 603.

§ 62. **Necessity of Consent of Insurer:** Cascade Fire & Marine Ins. Co. v. Journal Pub. Co., 1 Wash. 452, 25 Pac. 331.

§ 63. **Validity:** Humphrey v. Mutual Life Ins. Co., 86 Wash. 672, 151 Pac. 100.

Recovery of Paid-up Value on Surrender: See Remington's Digest, Insurance, § 69; Hopkins v. Northwestern etc. Ins. Co., 41 Wash. 592, 83 Pac. 1019.

THE CONTRACT IN GENERAL—NA-

TURE, REQUISITES AND VALIDITY: See Remington's Digest, Insurance, §§ 28—41.

§ 28. **What Law Governs:** Neufelder v. German-American Ins. Co., 6 Wash. 336, 33 Pac. 870, 36 Am. St. Rep. 166, 22 L. R. A. 287; Kline Brothers & Co. v. North Coast Fire Ins. Co., 80 Wash. 609, 142 Pac. 7.

§ 29. **Nature of Contract:** State ex rel. Fishback v. Globe Casket & Undertaking Co., 82 Wash. 124, 143 Pac. 878, L. R. A. 1915B, 976.

§ 30. **Executory or Oral Agreements to Insure:** Harriman v. New York Life Ins. Co., 43 Wash. 398, 86 Pac. 656; Chenier v. Insurance Co. of North America, 72 Wash. 27, 120 Pac. 905, Ann. Cas. 1914D, 649, 48 L. R. A. (N. S.) 319.

See, also, Lauridsen v. Bowden, Gazam & Arnold, 107 Wash. 310, 181 Pac. 885.

§ 31. **Application or Offer and Acceptance—Effect of Death of Insured:** Starr v. Mutual Life Ins. Co., 41 Wash. 228, 83 Pac. 116.

See, also, Failure to Deliver: Long v. New York Life Ins. Co., 106 Wash. 458, 180 Pac. 479.

— **Delivery While in Good Health—Burden of Proof—Warranties:** Logan v. New York Life Ins. Co., 107 Wash. 253, 181 Pac. 906.

— **Life Policy—Validity:** Logan v. New York Life Ins. Co., 107 Wash. 253, 181 Pac. 906; Guarascio v. Prudential Ins. Co., 110 Wash. 1, 187 Pac. 405.

§ 32. **Validity of Oral Contracts:** Waldron v. Home Mutual Ins. Co., 16 Wash. 193, 47 Pac. 425; Ogle Lake Shingle Mill Co. v. National Lumber Insurance Co., 68 Wash. 185, 122 Pac. 990.

§ 33. **Binding Slips and Receipts:** Starr v. Mutual Life Ins. Co., 41 Wash. 228, 83 Pac. 1166; Thompson v. Germania Fire Ins. Co., 45 Wash. 482, 88 Pac. 941.

§ 34. **Delivery and Acceptance of Policy:** Finley v. Western Empire Ins. Co., 69 Wash. 673, 125 Pac. 1012; Prosser Power Co. v. United States Fidelity & Guaranty Co., 73 Wash. 304, 132 Pac. 48.

§ 35. **Legality of Object:** Taxicab Motor Co. v. Pacific Coast Casualty Co., 73 Wash. 631, 132 Pac. 393.

§ 36. **Mutuality and Mistake:** Buck v. Equitable Life Assur. Soc., 96 Wash. 683, 165 Pac. 878.

§ 37. **Partial Invalidity:** Herzog v. Palatine Ins. Co., 36 Wash. 611, 79 Pac. 287.

§ 38. **Estoppel or Waiver as to Defects or Objections:** Finley v. Western Empire Ins. Co., 69 Wash. 673, 125 Pac. 1012; Prosser Power Co. v. United States Fidelity & Guaranty Co., 73 Wash. 304, 132 Pac. 48.

§ 39. **Ratification of Defective or Invalid Contract:** Staats v. Pioneer Ins. Assn., 55 Wash. 51, 104 Pac. 185.

§ 40. **Reformation—Mistake as to Property Insured:** Cushing v. Williamsburg Fire Ins. Co., 4 Wash. 538, 30 Pac. 736; Gaskill v. Northern Assur. Co., 73 Wash. 668, 132 Pac. 643.

§ 41. **Modification:** Norris v. China Trader's Ins. Co., 52 Wash. 554, 100 Pac. 1025; Robbins v. Milwaukee Mechanics' Ins. Co., 102 Wash. 539, 173 Pac. 634.

LIFE INSURANCE — Death Beyond Prescribed Limits of Travel: See Remington's Digest, Insurance, § 125; Starr v. Aetna Life Ins. Co., 41 Wash. 199, 83 Pac. 113, 4 L. R. A. (N. S.) 636.

Suicide—Effect of Insanity: See Remington's Digest, Insurance, § 126; Knapp v. Order of Pendo, 36 Wash. 601, 79 Pac. 209.

Change of Beneficiary: See Remington's Digest, Insurance, § 149; Heilbron's Estate, In re, 14 Wash. 536, 45 Pac. 153, 35 L. R. A. 602.

Death of Insured: See Remington's Digest, Insurance, § 185; Martin v. Union Mutual Life Ins. Co., 13 Wash. 275, 43 Pac. 53; Lewis v. Continental Casualty Co., 61 Wash. 154, 112 Pac. 91; Potter v. Aetna Life Ins. Co., 71 Wash. 374, 128 Pac. 647; Klein v. Knights & Ladies of Security, 87 Wash. 179, 151 Pac. 241, L. R. A. 1916B, 816.

Grace for payment of premium after maturity of premium note. L. R. A. 1917C, 921.

Effect of incontestable clause in policy of life insurance on provision against suicide. 1 Ann. Cas. 310; Ann. Cas. 1917D, 1186, 1190; 6 A. L. R. 450; 13 A. L. R. 674; L. R. A. 1918D, 870.

Constitutionality of statute precluding defense of suicide in action on policy of life or accident insurance. 13 A. L. R. 787.

Right to contest policy of life insurance on ground of fraud, where it contains incontestable clause not excepting fraud. Ann. Cas. 1914C, 652; Ann. Cas. 1916C, 707; Ann. Cas. 1917E, 1116; L. R. A. 1917E, 338.

Effect of binding slip or receipt as contract of insurance. Ann. Cas. 1915B, 657.

When policy of life insurance is "issued." Ann. Cas. 1914B, 906.

§ 7230-1. [6158.] Beneficiary's Rights — Exemption from Debts — Premiums Paid in—Fraud on Creditors—Widow's Right.

If a policy of insurance is effected by any person on his own life, or on another life in favor of a person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, shall unless contrary to the terms of the policy, be entitled to its proceeds against the creditors and representatives of the person effecting the same; and the person to whom a policy of life insurance is made payable may maintain an action thereon in his own name: Provided, that, subject to the statute of limitation, the amount of any premium for said insurance paid in fraud of creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy, but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless, before such payment, the company shall have written notice by or in behalf of a creditor, with specification of the amount claimed, claiming to recover for certain premiums paid in fraud of creditors. Every policy of life insurance made payable to or for the benefit of a married woman, or after its issue assigned, transferred or in any way made payable to a married woman, or to any person in trust for her or for her

benefit, whether procured by herself, her husband or by any other person, and whether the assignment or transfer is made by her husband or by any other person, shall, unless contrary to the terms of the policy, inure to her separate use and benefit, and to that of her children, subject to the provisions of this section relative to premiums paid in fraud of creditors. [L. '09, p. 556, § 36.]

Proceeds of life insurance exempt from any debt, see *supra*, § 569.

This section was not impliedly repealed 7292 of this code: *Elsom v. Gadd*, 93 by the Insurance Code of 1911, §§ 7032— Wash. 603, 161 Pac. 483, 162 Pac. 867.

§ 7231. [6059-185.] Policy Binding on Company.

In any claim arising under a policy which has been issued in this state by any life insurance company, without previous medical examination, or without the knowledge and consent of the insured, or, if said insured is under eighteen years of age, without the consent of the parent, guardian or other person having legal custody of the said minor, the statements made in the application as to age, physical condition, and family history of the insured, shall be held to be valid and binding upon the company, but the company shall not be debarred from proving as a defense to such claim that said statements were willfully false, fraudulent, or misleading. Every policy, except industrial or those calling for premiums monthly or oftener, shall have attached thereto a correct copy of the application, including all answers made by the applicant, and unless so attached the same shall not be considered a part of the policy or received in evidence. [L. '11, p. 263, § 185.]

What is good health within the meaning of the law of life insurance. 10 *Am. St. Rep.* 242.

What constitutes consultation with, or attendance by, physician within meaning of application for insurance. 17 *Ann. Cas.* 1203; *Ann. Cas.* 1913B, 752.

Effect of honest mistake in answer as to health of insured warranted true. 15 *L. R. A. (N. S.)* 1277; 8 *Ann. Cas.* 1156.

Meaning of term "severe" or "serious" illness in application for life insurance policy. 20 *Ann. Cas.* 291; *Ann. Cas.* 1918A, 682.

§ 7232. [6059-186.] Assessment Life Insurance.

No life insurance company or association, other than fraternal beneficiary associations, which issues contracts, the performance of which is contingent upon the payment of assessments or calls made upon its members, shall do business within this state, except such companies or associations as are now licensed to do business within this state, and which shall value their assessment policies, or certificates of membership as yearly renewable term contracts according to the standard of valuation of life insurance policies prescribed by the laws of this state.

Every such company or association must have assets of at least two hundred thousand dollars invested in securities such as are approved by this act, and must have paid in full all legal death claims for the last twelve months.

Every such company or association shall, on or before February fifteenth of each year, file with the commissioner a statement, upon a form to be prescribed and furnished by him, showing the true condition of the company or association as of December thirty-first next preceding,

and shall pay a premium tax as otherwise provided in this act. [L. '11, p. 264, § 186.]

§ 7233. [6059-187.*] Health and Accident Insurance—Standard Provision for Policies.

(a) On and after the first day of January, 1922, no policy of insurance against loss or damage from the sickness, or the bodily injury or death of the insured by accident shall be issued or delivered to any person in this state until a copy of the form thereof and of the classification of risks, if more than one class of risks is written and the premium rates pertaining thereto have been filed with the insurance commissioner; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed unless the said commissioner shall sooner give his written approval thereto. If the said commissioner shall notify, in writing, the company, corporation, association, society or other insurer which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the said commissioner in this regard shall be subject to review by any court of competent jurisdiction: Provided, however, that nothing in this act shall be so construed as to give jurisdiction to any court not already having jurisdiction. [L. '21, p. 102, § 1, subd. (a).]

Construction of statute requiring standard policy for health and accident insurance. **Ann. Cas.** 1916D, 670.

§ 7234. Conditions Precedent.

(b) No such policy shall be so issued or delivered (1) unless the entire money and other considerations therefor are expressed in the policy; nor (2) unless the time at which the insurance thereunder takes effect and terminates is stated in a portion of the policy preceding its execution by the insurer; nor (3) if the policy purports to insure more than one person; nor (4) unless every printed portion thereof and of any indorsements or attached papers shall be plainly printed in type of which the face shall be not smaller than ten-point; nor (5) unless a brief description thereof be printed on its first page and on its filing back in type of which the face shall be not smaller than fourteen point; nor (6) unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply: Provided, however, that any portion of such policy which purports, by reason of the circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances, shall be printed in bold face type and with greater prominence than any other portion of the text of the policy. [L. '21, p. 103, § 1, subd. (b).]

§ 7235. Standard Provisions.

(c) Every such policy so issued shall contain certain standard provisions, which shall be in the words and in the order hereinafter set forth and be preceded in every policy by the caption, "Standard Provisions." In each such standard provision wherever the word "insurer"

is used, there shall be substituted therefor "company" or "corporation" or "association" or "society" or such other word as will properly designate the insurer. Said standard provisions shall be:

(1) A standard provision relative to the contract which may be in either of the following two forms: Form (A) to be used in policies which do not provide for reduction of indemnity on account of change of occupation, and form (B) to be used in policies which do so provide. If form (B) is used and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted therein immediately after the words "in the event that the insured is injured":

(A) 1. This policy includes the indorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the insured or by reason of his doing any act or thing pertaining to any other occupation.

(B) 1. This policy includes the indorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the insurer's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the insurer as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the insurer for such more hazardous occupation.

If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the insurer in accordance with such law, but if such filing is not required by such law then they shall mean the insurer's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the insurer is liable.

(2) A standard provision relative to changes in the contract, which shall be in the following form:

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the insurer and such approval be indorsed hereon.

(3) A standard provision relative to reinstatement of policy after lapse which may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; form (B) to be used only in policies which insure only against loss from sickness; and form (C) to be used in policies which insure against loss from both accident and sickness.

(A) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

(B) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy but only to cover such sickness as may begin more than ten days after the date of such acceptance.

(C) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

(4) A standard provision relative to time of notice of claim which may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; form (B) to be used in policies which insure only against loss from sickness; and form (C) to be used in policies which insure against loss from both accident and sickness. If form (A) or form (C) is used the insurer may at its option add thereto the following sentence: "In event of accidental death immediate notice thereof must be given to the insurer."

(A) 4. Written notice of injury on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury.

(B) 4. Written notice of sickness on which claim may be based must be given to the insurer within ten days after the commencement of the disability from such sickness.

(C) 4. Written notice of injury or of sickness on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness.

(5) A standard provision relative to sufficiency of notice of claim which shall be in the following form and in which the insurer shall insert in the blank space such office and its location as it may desire to designate for such purpose of notice:

5. Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the insurer at . . . or to any authorized agent of the insurer, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(6) A standard provision relative to furnishing forms for the convenience of the insured in submitting proof of loss as follows:

6. The insurer upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the

time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

(7) A standard provision relative to filing proof of loss which shall be in such one of the following forms as may be appropriate to the indemnities provided:

(A) 7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the date of the loss for which claim is made.

(B) 7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the termination of the period of disability for which the company is liable.

(C) 7. Affirmative proof of loss must be furnished to the insurer at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

(8) A standard provision relative to examination of the person of the insured and relative to autopsy which shall be in the following form:

8. The insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

(9) A standard provision relative to the time within which payments other than those for loss of time on account of disability shall be made, which provision may be in either of the following two forms and which may be omitted from any policy providing only indemnity for loss of time on account of disability. The insurer shall insert in the blank space either the word "immediately" or appropriate language to designate such period of time, not more than sixty days, as it may desire; form (A) to be used in policies which do not provide indemnity for loss of time on account of disability and form (B) to be used in policies which do so provide.

(A) 9. All indemnities provided in this policy will be paid . . . after receipt of due proof.

(B) 9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid — after receipt of due proof.

(10) A standard provision relative to periodical payments of indemnity for loss of time on account of disability, which provision shall be in the following form, and which may be omitted from any policy not providing for such indemnity. The insurer shall insert in the first blank space of the form appropriate language to designate the proportion of accrued indemnity it may desire to pay, which proportion may be all or any part not less than one-half, and in the second blank space shall insert any period of time not exceeding sixty days:

10. Upon request of the insured and subject to due proof of loss — accrued indemnity for loss of time on account of disability will be paid at the expiration of — during the continuance of the period for which the insurer is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

(11) A standard provision relative to indemnity payments which may be in either of the two following forms: Form (A) to be used in policies which designate a beneficiary and form (B) to be used in policies which do not designate any beneficiary other than the insured:

(A) 11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

(B) 11. All the indemnities of this policy are payable to the insured.

(12) A standard provision providing for cancellation of the policy at the instance of the insured which shall be in the following form:

12. If the insured shall at any time change his occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon written request of the insured and surrender of the policy, will cancel the same and will return to the insured the unearned premium.

(13) A standard provision relative to the rights of the beneficiary under the policy which shall be in the following form and which may be omitted from any policy not designating a beneficiary:

13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

(14) A standard provision limiting the time within which suit may be brought upon the policy as follows:

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

(15) A standard provision relative to time limitations of the policy as follows:

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law. [L. '21, p. 103, § 1, subd. (c).]

§ 7236. Restricted Provisions.

(d) No such policy shall be so issued or delivered which contains any provision (1) relative to cancellation at the instance of the insurer, or (2) limiting the amount of indemnity to a sum less than the amount stated in the policy and for which the premium has been paid; or, (3) providing for the deduction of any premium from the amount paid in settlement of claim; or, (4) relative to other insurance by the same insurer; or, (5) relative to the age limits of the policy; unless such provisions which are hereby designated as optional standard provisions, shall be in the words and in the order in which they are hereinafter set forth, but the insurer may at its option omit from the policy any such optional standard provision. Such optional standard provisions if inserted in the policy shall immediately succeed the standard provisions named in subd. (c) of this section.

(1) An optional standard provision relative to cancellation of the policy at the instance of the insurer as follows:

16. The insurer may cancel this policy at any time by written notice delivered to the insured or mailed to his last address, as shown by the records of the insurer, together with cash or the insurer's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

(2) An optional standard provision relative to reduction of the amount of indemnity to a sum less than that stated in the policy as follows:

17. If the insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the insurer, then in that case the insurer shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

(3) An optional standard provision relative to deduction of premium upon settlement of claim as follows:

18. Upon payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(4) An optional standard provision relative to other insurance by the same insurer which shall be in such one of the following forms as may be appropriate to the indemnities provided, and in the blank spaces of which the insurer shall insert such upward limits of indemnity as are specified by the insurer's classification of risks, filed as required by this section.

(A) 19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity in excess of \$——, the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

(B) 19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of \$—— weekly, the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

(C) 19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of \$——, or the aggregate indemnity for loss of time on account of disability in excess of \$—— weekly, the excess insurance of either kind shall be void and all premiums paid for such excess shall be returned to the insured.

(5) An optional standard provision relative to the age limits of the policy shall be in the following form and in the blank spaces of which the insurer shall insert such number of years as it may elect:

20. The insurance under this policy shall not cover any person under the age of —— years nor over the age of —— years. Any pre-

mium paid to the insurer for any period not covered by this policy will be returned upon request. [L. '21, p. 110, § 1, subd. (d).]

§ 7237. Provisions Contrary to Those Authorized.

(e) No such policy shall be so issued or delivered if it contains any provision contradictory in whole or part, of any of the provisions hereinbefore in this act designated as "Standard provisions" or as "Optional standard provisions"; nor shall any indorsement or attached papers vary, alter, extend, be used as a substitute for, or in any way conflict with any of the said "Standard provisions" or the said "Optional standard provisions"; nor shall such policy be so issued or delivered if it contains any provision purporting to make any portion of the charter, constitution or by-laws of the insurer a part of the policy unless such portion of the charter, constitution or by-laws shall be set forth in full in the policy, but this prohibition shall not be deemed to apply to any statement of rates or classification of risks filed with the insurance commissioner in accordance with the provisions with this section. [L. '21, p. 113, § 1, subd. (e).]

§ 7238. False Statements in Application.

(f) The falsity of any statement in the application for any policy covered by this section shall not bar the right to recovery thereunder unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer. [L. '21, p. 113, § 1, subd. (f).]

§ 7239. Defenses of Insurer not Waived.

(g) The acknowledgment by any insurer of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy. [L. '21, p. 113, § 1, subd. (g).]

§ 7240. Unauthorized Alterations of Application.

(h) No alteration of any written application for insurance by erasure, insertion or otherwise, shall be made by any person other than the applicant without his written consent, and the making of any such alteration without the consent of the applicant shall be a misdemeanor. If such alteration shall be made by any officer of the insurer, or by any employee of the insurer with the insurer's knowledge or consent, then such act shall be deemed to have been performed by the insurer thereafter issuing the policy upon such altered application. [L. '21, p. 114, § 1, subd. (h).]

§ 7241. Policy in Violation of Law Valid.

(i) A policy issued in violation of this section shall be held valid but shall be construed as provided in this section and when any provision in such policy is in conflict with any provision of this section the rights,

duties and obligations of the insurer, the policy-holder and the beneficiary shall be governed by the provisions of this section. [L. '21, p. 114, § 1, subd. (i).]

§ 7242. Application of Act.

(j) (1) Nothing in this section, however, shall apply to or affect any policy of liability or workmen's compensation insurance or any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any corporation, copartnership, association or individual employer, police or fire department, underwriter's corps, salvage bureau, or like associations or organizations, where the officers, members or employees or classes or departments thereof are insured for their individual benefit against specified accidental bodily injuries or sickness while exposed to the hazards of the occupation or otherwise in consideration of a premium intended to cover the risks of all the persons insured under such policy.

(2) Nothing in this act shall apply to or in any way affect contracts of life or endowment insurance or contracts supplemental thereto, where such contracts or supplemental contracts contain no provisions relating to accident or health insurance except accidental death benefits and except such as operate to safeguard such insurance against lapse, or to give a special surrender value or an annuity providing for payments during the lifetime of the insured, with or without reduction of the sum insured in the event that the insured shall be totally and permanently disabled from any cause: Provided, that no such supplemental contract shall be issued or delivered to any person in this state unless and until a copy of the form thereof has been submitted to and approved by the insurance commissioner, under such reasonable rules and regulations as he shall make concerning the provisions of such contracts and their submission to and approval by him.

(3) The provisions of this act contained in clause (5) of subdivision (b) and clauses (2), (3), (8) and (12) of subdivision (c) may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employees. [L. '21, p. 114, § 1, subd. (j).]

§ 7243. [6059-190.] Immediate Disposal of Notes Prohibited.

It shall be unlawful for any company or agent thereof to hypothecate, sell, or dispose of a promissory note, received in payment for any part of a premium on a policy of insurance applied for under the provisions of this article, prior to the delivery of the policy to the applicant. [L. '11, p. 268, § 190.]

§ 7244. [6059-191.] Penalties.

Any insurance company knowingly and willfully violating any of the provisions of this article shall be fined in any sum not exceeding one thousand dollars.

Any insurance agent knowingly and willfully violating any of the provisions of this article shall be fined in any sum not exceeding five

hundred dollars and shall have his license revoked. [L. '11, p. 268, § 191.]

Cited in 95 Wash. 131, 574; 96 Wash. 69. tion: Ramat v. California Ins. Co., 95 Wash. 571, 164 Pac. 219; Workman v.

There may be an oral waiver of the standard form notwithstanding this section: Royal Exchange Assurance, 96 Wash. 559, 165 Pac. 488.

§ 7245. [6059-192.] Fraternal Exempt.

Nothing in this article shall be construed as applying to fraternal beneficiary associations, societies, or orders with representative form of government, operating on a lodge system, or the beneficiary certificate or policy issued by them. [L. '11, p. 268, § 192.]

ARTICLE IV. BONDING, CASUALTY, LIABILITY AND SURETY INSURANCE.

§ 7246. [6059-193.] Surety Companies may Execute Bond, etc.

Whenever any bond, recognizance, obligation, stipulation, or undertaking is by law, state, municipal, or otherwise, or by the rules, or regulations of any board, court, judge, body, or organization, or officer, state, municipal, or otherwise, required or permitted to be made, given, tendered, or filed, for the security or protection of any person or persons, corporation, municipality, state, or any department thereof, or any other organization whatever, conditioned for the doing or not doing of anything in such bond, recognizance, obligation, stipulation, or undertaking, specified, any and all heads of departments, public officers, state, county, town, school district, or other municipality, and any and all boards, courts, judges, and municipalities, now or hereafter required or permitted to accept or approve of the sufficiency of any such bond, recognizance, obligation, stipulation, or undertaking, may, in the discretion of such head or department, court, judge, public officer, board, or municipality, accept such bond, recognizance, obligation, stipulation, or undertaking, and approve the same whenever the same is executed, or the conditions thereof are guaranteed, solely by a company admitted and authorized to transact such business in this state in accordance with the requirements of this act, but no such security shall be accepted on any bond for an amount in excess of ten per cent of the paid-up cash capital, and surplus.

Whenever any such bond, recognizance, obligation, stipulation, or undertaking is so required to be made, given, tendered, or filed with one surety, or with two or more sureties, the execution of the same, or the guaranteeing of the performance of the conditions thereof, shall be sufficient when executed or guaranteed solely by such company, so authorized, and shall be in all respects a full and complete compliance with every requirement of every law, ordinance, rule or regulation, that such bond, undertaking, recognizance, obligation or stipulation shall be executed or guaranteed by one surety, or by two or more sureties, or that such sureties shall be residents, householders, or freeholders, or both, and a full and complete compliance with every other requirement of every law, ordinance, rule, or regulation, relating to the same, and no justification by such company shall be necessary or required, and any and all

heads of departments, court, judges, public officers, boards, and municipalities, whose duties it may be, or shall hereafter be, to accept or approve the sufficiency of any such bond, recognizance, obligation, stipulation, or undertaking, may accept and approve the same, when executed or guaranteed solely by such company. [L. '11, p. 268, § 193.]

Cited in 94 Wash. 62.

Default or Other Misconduct of Officer or Employee: See Remington's Digest, Insurance, § 121; Clarke v. Fidelity & Deposit Co., 73 Wash. 62, 131 Pac. 468; American Savings Bank & Trust Co. v. National Surety Co., 91 Wash. 307, 157 Pac. 877, L. R. A. 1916F, 435.

Liability Incurred for Personal Injury or Loss of Life: See Remington's Digest, Insurance, § 122; Puget Sound Imp. Co. v. Frankfort Marine, Acc. & Plate Glass Ins. Co., 52 Wash. 124, 100 Pac. 190; Kibler v. Maryland Casualty Co., 54 Wash. 159, 132 Pac. 878; Ford v. Aetna Life Ins. Co., 70 Wash. 29, 126 Pac. 69; May Creek Logging Co. v. Pacific Coast Casualty Co., 82 Wash. 301, 144 Pac. 67, L. R. A. 1915C, 155; Young v. Wilson, 99 Wash. 159, 168 Pac. 1137.

Expenditures: See Remington's Digest, Insurance, § 123; Puget Sound Imp. Co. v. Frankfort Marine, Acc. & Plate Glass Ins. Co., 52 Wash. 124, 100 Pac. 190; Shafer v. United States Casualty Co., 90 Wash. 687, 156 Pac. 861.

Damages Incurred or Paid: See Rem-

ington's Digest, Insurance, § 124; Taxicab Motor Co. v. Pacific Coast Casualty Co., 73 Wash. 631, 132 Pac. 393; Davies v. Maryland Casualty Co., 89 Wash. 571, 154 Pac. 1116, 155 Pac. 1035, L. R. A. 1916D, 395; Sutherland v. Fidelity & Casualty Co., 103 Wash. 583, 175 Pac. 187.

ACCIDENT INSURANCE: See Remington's Digest, Insurance, §§ 127—129.

§ 127. **Limitation of Liability by Provisions of Policy—Classification of Risk:** Bothell v. National Casualty Co., 59 Wash. 209, 109 Pac. 590; Green v. National Casualty Co., 87 Wash. 237, 171 Pac. 509.

§ 128. **External, Violent and Accidental Means of Injury:** Horsfall v. Pacific Mutual Life Ins. Co., 32 Wash. 132, 72 Pac. 1028, 98 Am. St. Rep. 846, 63 L. R. A. 425.

See, also, Day v. Great Eastern Casualty Co., 104 Wash. 575, 177 Pac. 650.

§ 129. **External and Visible Signs of Injury:** Horsfall v. Pacific Mutual Life Ins. Co., 32 Wash. 132, 72 Pac. 1028, 98 Am. St. Rep. 846, 63 L. R. A. 425.

§ 7247. [6059-194.] Premium—May be Taxed as Costs.

Any receiver, assignee, trustee, guardian, executor, administrator, committee, or other fiduciary, required by law to give bonds as such, may include as a part of his lawful expenses, such reasonable sum paid to such a corporation for such suretyship not exceeding one per cent per annum on the amount of said bond, as the head of the department, court, judge or officer by whom, or the court or body by which he was appointed, allows, and in all actions and proceedings, the party entitled to recover costs may include therein such reasonable sum as may have been paid such company for executing or guaranteeing any such bond or undertaking therein as may be allowed by the court or judge before whom the action or proceeding is pending: Provided, that the premium or charge for bonds given by surety companies for appointive or elective officers of the state, counties, precincts, cities and all towns and for such deputies and such officers as are required to give bond shall be paid by the state, county, city or town respectively: Provided further, that no such premium or charge shall exceed one-half of one per cent per annum on the amount of such bond, provided that all such payments heretofore made are hereby validated. [L. '15, p. 245, § 1. Cf. L. '11, p. 270, § 194; L. '13, p. 138, § 1.]

Amount of Premiums: See Remington's Digest, Insurance, § 53; Empire State Surety Co. v. Moran Brothers Co., 71 Wash. 171, 127 Pac. 1104.

A premium paid on a replevin bond

furnished by plaintiff is recoverable as "costs and disbursements" in the action under this section: Stilwell Brothers v. Union Machinery & Supply Co., 94 Wash. 61, 161 Pac. 1048.

§ 7248. [6059-195.] Release from Liability.

Any company executing any bond, recognizance, obligation, stipulation, or undertaking, and any such surety may be released from its liability on the same terms and conditions as are or may be by law prescribed for the release of individuals upon any such bond, recognizance, obligation, stipulation, or undertaking; it being the true intent and meaning of this act to enable companies created for the purpose to execute and become surety on bonds, recognizances, obligations, stipulations, or undertakings, required, or permitted by law, state, or municipal, or otherwise, or by the rules or regulations of any court, judge, officer, board, city charter, village, town, organization, or otherwise to be released from liability thereon in like manner and upon like terms and conditions as sureties are or may be. [L. '11, p. 270, § 195.]

§ 7249. [6059-196.] Failure to Discharge Contract—Forfeiture.

If any such company shall neglect, fail, or refuse to pay any final judgment or decree, rendered against it, upon any such recognizance, bond, stipulation, or undertaking made or guaranteed by it, in this state, for the period of thirty days after any such judgment or decree shall have been finally determined in case of an appeal, or within thirty days after the time for taking an appeal has expired when no appeal is taken from such judgment or decree, or in case an appeal be taken and the same be dismissed before final determination on appeal, then within thirty days from such dismissal, it shall forfeit all right to do business in this state and the commissioner shall thereupon revoke its license and the license of its agent. [L. '11, p. 270, § 196.]

Cited in 95 Wash. 125, 126, 128, 129, 131.

The giving of a stay bond, under section 522, supra, substituting a statutory and binding obligation to pay the judgment in any event at the end of ninety

days, is in legal effect a payment pro tempore, within the meaning of this section: American Surety Co. v. Fishback, 95 Wash. 124, 163 Pac. 488.

ARTICLE V. TITLE INSURANCE.**§ 7250. [6059-197.] Formation of Company—Purposes—Requirements.**

Every domestic or foreign company organized for the purpose of insuring or guaranteeing the owners or encumbrancers of property within this state against loss by reason of an incorrect statement in the guaranteed certificate of title or policy of title insurance, or other guaranty of title, issued thereon, or by reason of any unexcepted lien or encumbrance upon, or defect in the title thereto, shall from and after the taking effect of this act and before issuing any guaranteed certificate of title, or policy of title insurance, or other guaranty of title deposit with the state treasurer, as a guaranty fund, securities to the amount specified in this act and of the character hereinafter set forth: Provided, that every such company must, before it may issue any policy of title insurance or guaranteed certificates of title, and for so long a time as it may continue to issue any policies of title insurance or guaranteed certificates of title, own and maintain a complete set of tract indexes of the county in which its principal office within this state is located. [L. '11, p. 271, § 197.]

Cited in 110 Wash. 353.

A domestic title insurance company may write title insurance on property outside of the state, the policy-holders to look only to its general assets, this section being intended for the protection

of policies on property in this state: Northwestern Title Ins. Co. v. Fishback, 110 Wash. 350, 188 Pac. 469.

Law of title insurance. Ann. Cas. 1914D, 637.

§ 7251. [6059-198.] Classes of Securities.

Such guaranty fund shall be composed of sureties specified as authorized investments in this act: Provided, that any domestic company, owning, at the time this act takes effect, stocks of any national or state bank doing business in this state, which according to its latest report to the comptroller of currency or the state bank examiner, has its capital fully paid, and has in addition thereto a surplus fund amounting to not less than twenty per cent of its capital, may deposit such stocks at par value thereof with the state treasurer, in lieu of the securities authorized by this act, until the same under the provisions of this act, can be exchanged or converted into securities authorized by this act: Provided, however, that not to exceed forty per cent of the total capital stock of any such bank shall be deposited with the state treasurer as part or whole of any such guaranty fund. All such securities shall be registered in the name of or indorsed or assigned to said state treasurer officially, as the occasion and the due and orderly course of business may require. The securities so deposited shall be held by the state treasurer as a special guaranty fund, securing the faithful performance on the part of any such company of all its undertakings and liabilities upon its guaranteed certificates of title, policies of title insurance, or other guaranties of title to property and to the extent of any outstanding liabilities thereon, shall not be subject to any other outstanding liabilities of the company. [L. '11, p. 271, § 198.]

§ 7252. [6059-199.] Conditions of Deposit.

That such deposit shall be by the state treasurer held subject to the following conditions:

(1) The state treasurer shall deliver to the company depositing such guaranty fund a receipt in full for all securities so deposited with him. The company may from time to time withdraw securities or any part thereof on depositing with said state treasurer cash or other authorized securities, so as at all times to maintain the value of said guaranty fund deposit at not less than the amount required by this act.

(2) All interest or dividends accruing on said securities deposited with the state treasurer under authority of this act shall belong to and at all times be available to the company making such deposit and the said state treasurer shall permit said company so long as it shall continue solvent to collect the interest or dividends on said securities so deposited. The state treasurer shall be the agent of both parties to receive, receipt for and pay over said interest or dividends when the same are paid to him by reason of the custody of said deposit, and he is hereby authorized to make such indorsements on said securities as the occasion and the due and orderly course of business may require. The rights of said company to demand of and receive from the state treasurer said interest or

dividends, shall be subject, however, to the provisions of the following paragraph.

(3) If pursuant to liability on a guaranteed certificate of title, or policy of title insurance or other guaranty of title to property, a judgment shall be entered in a court of general jurisdiction in this state against a company which has made a deposit of securities with the state treasurer subject to the provisions of this act and such judgment shall have become final either by failure to appeal, dismissal of appeal, or by affirmance on appeal, or otherwise, and such judgment shall not be paid and satisfied in full within thirty days after the finality of said judgment has become fixed, then in every such case said judgment may be enforced against said securities so deposited with the state treasurer upon petition of the judgment creditor in the same cause wherein judgment was obtained, setting forth the facts aforesaid, whereupon it shall be the duty of the court wherein said judgment is entered to direct the issuance of a special execution directed to the sheriff of the county in which the capital of the state is situated, which execution shall be as near as may be in the usual form and shall require on the part of said sheriff, the sale of said securities or so much thereof as may be necessary to the satisfaction of said judgment. When application is made for the issuance of said special execution herein provided for, and the court allows the same, the order in which said special execution is authorized, shall direct that service of a copy of the said judgment and the said petition shall be made within five days thereafter upon the state treasurer. All proceedings relating to the enforcement of said writ of execution against said securities shall conform as near as may be to the practice in ordinary cases except as herein otherwise specially provided. Proceedings under said execution shall be a sufficient authority where notices aforesaid have been served on said state treasurer for the delivery by said state treasurer to the sheriff of the securities to be sold upon said execution.

(4) Except as herein provided, the state treasurer shall hold intact the securities deposited with him and shall retain the same until such time as all liabilities under any guaranteed certificate of title, or policy of title insurance, or other guaranty of title, issued by the company having deposited such securities, shall have legally terminated, or until such time as all liabilities of said company under such guaranteed certificates of title or policies of title insurance or other guaranties of title, shall have been assumed by some other title insurance company of equal financial standing and responsibility, authorized to transact business in this state, upon which conditions alone and on application of said company verified by the oath of its president and of its secretary, and upon satisfactory examination of its books, and of its officers under oath that such conditions have been met, the state treasurer is authorized and it shall be his duty to forthwith return the securities to the said company. On return of the securities, the certificates of authority issued to said company by the state insurance commissioner shall be revoked and notice thereof given in the same manner as provided for in the next succeeding paragraph:

(5) Provided, however, that if the aforesaid guaranty fund is at any time impaired by reason of the payment of any judgment against the company depositing such funds or by reason of the nonpayment of the annual fee as herein provided, or at all, and remains so impaired for a period of thirty days after notice to the company, the commissioner is hereby authorized and it shall be his duty to immediately revoke the certificate of authority granted said company, and to publish a notice of such revocation in a daily paper of general circulation, published in the city wherein said company has its principal office at least once in each week for six successive weeks, the expense of such publication to be chargeable against the said guaranty fund of said company. [L. '11, p. 272, § 199.]

Cited in 110 Wash. 354.

§ 7253. [6059-200.] Annual Fee.

That the company so depositing such securities shall on or before the second Monday in January of each year that such securities or any part thereof remain on deposit with the state treasurer as provided by this act, pay to the state treasurer for the use of the state an annual fee equal in amount to one-tenth of one per centum of the value of the securities so deposited by it, and should the same not be paid within thirty days thereafter, the state treasurer is hereby authorized to sell sufficient of said securities to pay the same. [L. '11, p. 275, § 200.]

§ 7254. [6059-201.] Penalty for Noncompliance.

It shall be unlawful for any company to engage in said business of insuring or guaranteeing the owners or encumbrancers of property against loss as hereinbefore specified, unless such company shall have complied with all of the provisions of this act; and if any company, its agent or attorney shall issue any guaranteed certificate of title, or policy of title insurance, or other guaranty of title to property, or guarantee or insure any owner or encumbrancer of property against loss as hereinbefore specified, without having complied with the laws of this state with regard thereto, such company, or its agent, or attorney, issuing such guaranteed certificate of title, or policy of title insurance, or other guaranty of title, or undertaking such guarantee or insurance shall be guilty of a misdemeanor and be subject to a fine of not less than one hundred dollars nor more than five hundred dollars for each such offense, in the discretion of the court. [L. '11, p. 275, § 201.]

Cited in 95 Wash. 131.

§ 7255. [6059-202.] Annual Financial Statements.

Every company engaged in part or wholly in said business of insuring or guaranteeing the owners or encumbrancers of real property against loss as hereinbefore specified, shall on or before the first day of February in each and every year make and file with the commissioner a statement verified by oaths of the president and secretary of such company, showing the financial condition of the company on the thirty-first day of December next preceding, and shall show:

(1) The total authorized capital of the company and the amount thereof fully paid.

(2) The property and assets of the company, including securities on deposit with the state treasurer as guarantee fund.

(3) The liability of the company.

(4) The total income of the company during the calendar year preceding date of statement. Such statement of total income to show, (a) income from title insurance premiums; (b) income from investments and securities; (c) income from all other sources.

(5) The amount and character of risks written; the amount and character of risks expired; amount of losses incurred and paid; and claims for losses presented and pending settlement, all during aforesaid period.

If the provisions of this section are not complied with on or before the fifteenth day of February in each year, the commissioner shall revoke the certificate of authority issued to the company. [L. '15, p. 601, § 14. Cf. L. '11, p. 275, § 202.]

§ 7256. [6059-203.] Expiration of Certificate of Authority—Renewal—Suspension.

Every certificate of authority granted in pursuance of the provisions of this act to a company engaged wholly or in part in said business of insuring or guaranteeing the owners or encumbrancers of property against loss as hereinbefore specified, shall expire on the first day of April after the date of issue. The certificate of authority may be renewed from year to year upon application to the commissioner and upon evidence of compliance by the company with the provisions of this act. If the commissioner is not satisfied that the securities composing the guaranty fund of any such company remain secure, he may suspend the authority of such company to do a title insurance business until any impairment or depreciation of such guaranty fund is made good. [L. '11, p. 276, § 203.]

§ 7257. [6059-204.] Taxation.

Every such company engaged wholly or in part in said business of insuring or guaranteeing the owners or encumbrancers of property against loss as hereinbefore specified, shall be taxed on the basis of the physical property owned by it in the county where such property is located, in accordance with the general laws relating to taxation in this state, and not otherwise. [L. '11, p. 277, § 204.]

§ 7258. [6059-205.] Owner and Encumbrancer Defined.

The terms "owner" and "encumbrancer" as used throughout this article shall be construed to include anyone having an insurable interest in property. [L. '11, p. 277, § 205.]

ARTICLE VI. FRATERNAL.

§ 7259. [6059-206.] Fraternal Benefit Societies Defined.

Any corporation, society, order, or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge

system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with section 7263, hereof, is hereby declared to be a fraternal benefit society. [L. '11, p. 277, § 206.]

Regulation and Supervision of Business: See Remington's Digest, Insurance, § 192; *State v. Fraternal Knights & Ladies*, 35 Wash. 338, 77 Pac. 500.

The Contract in General: See Remington's Digest, Insurance, §§ 193—196; *Thomas v. Knights of Maccabees of the World*, 85 Wash. 665, 149 Pac. 7, Ann. Cas. 1917B, 804, L. R. A. 1916A, 750; *Campbell v. Order of Washington*, 53 Wash. 398, 102 Pac. 410; *Thomas v. Grand Lodge A. O. U. W.*, 12 Wash. 500, 41 Pac. 882; *Rancipher v. Women of Woodcraft*, 50 Wash. 68, 96 Pac. 829; *Klein v. Knights & Ladies of Security*, 79 Wash. 173, 140 Pac. 72.

See, also, *Miller v. Supreme Tent etc. Maccabees*, 108 Wash. 689, 185 Pac. 593; *Supreme Assembly etc. Artisans v. Johnson*, 109 Wash. 247, 186 Pac. 1065.

Dues and Assessments: See Remington's Digest, Insurance, §§ 198, 199; *Thomas v. Knights of Maccabees of the World*, 85 Wash. 665, 149 Pac. 7, Ann. Cas. 1917B, 804, L. R. A. 1916A, 750.

Misrepresentation or Fraud: See Remington's Digest, Insurance, § 197; *Thomas v. Grand Lodge A. O. U. W.*, 12 Wash. 500, 41 Pac. 882; *Elliott v. Knights of The Modern Maccabees*, 46 Wash. 320, 89 Pac. 929, 13 L. R. A. (N. S.) 856; *Schon v. Modern Woodmen of America*, 51 Wash. 482, 99 Pac. 25.

FORFEITURE OR SUSPENSION: See Remington's Digest, Insurance, §§ 200—206.

§ 200. **Violations of Terms or Conditions of Contract:** *Butler v. Supreme Court of Foresters*, 60 Wash. 171, 110 Wash. 1007.

§ 201. **Nonpayment of Dues or Assessments:** *Logsdon v. Supreme Lodge of Fraternal Union*, 34 Wash. 666, 76 Pac. 292.

§ 202. — **Sufficiency of Payment or Tender to Prevent Forfeiture:** *Logsdon v. Supreme Lodge of Fraternal Union*, 34 Wash. 666, 76 Pac. 292.

§ 203. **Estoppel or Waiver Affecting Right of Forfeiture:** *Elliott v. Knights of The Modern Maccabees*, 46 Wash. 320, 89 Pac. 929, 13 L. R. A. (N. S.) 856; *Burdick v. Modern Woodmen of America*, 47 Wash. 572, 92 Pac. 439; *Schuster v. Knights & Ladies of Security*, 60 Wash. 42, 110 Pac. 680, 140 Am. St. Rep. 905; *Kennedy v. Supreme Tent of Knights of Maccabees*, 100 Wash. 36, 170 Pac. 371; *Frank v. Switchmen's Union of North America*, 87 Wash. 634, 152 Pac. 512.

See, also, *Teed v. Brotherhood of American Yeomen*, 111 Wash. 367, 190 Pac. 1005.

§ 204. **Notice and Proceedings to Give Effect to Forfeiture or Expulsion:** *Dubich v. Grand Lodge, A. O. U. W.*, 33 Wash. 651, 74 Pac. 832; *Kelly v. Grand Circle etc. Woodcraft*, 40 Wash. 691, 82 Pac. 1007; *Kennedy v. Supreme Tent of Knights of Maccabees*, 100 Wash. 36, 170 Pac. 371.

§ 205. **Reinstatement—Waiver of Objections:** *Schuster v. Knights & Ladies of Security*, 60 Wash. 42, 110 Pac. 680, 140 Am. St. Rep. 905.

See, also, *Berry v. National Council Knights & Ladies of Security*, 107 Wash. 531, 182 Pac. 562.

§ 206. **Remedies for Relief Against Forfeiture:** *Kelly v. Grand Circle etc. Woodcraft*, 40 Wash. 691, 82 Pac. 1007; *Thomas v. Knights of Maccabees of the World*, 85 Wash. 665, 149 Pac. 7, Ann. Cas. 1917B, 804, L. R. A. 1916A, 750.

BENEFICIARIES AND BENEFITS: See Remington's Digest, Insurance, §§ 207—209.

§ 207. **Persons Who may be Beneficiaries—Provisions of Statutes, Charters or By-laws:** *Erickson v. Modern Woodmen*, 43 Wash. 242, 86 Wash. 584; *Elliott v. Knights of The Modern Maccabees*, 46 Wash. 320, 89 Pac. 929, 13 L. R. A. (N. S.) 856. See, also:

§ 207. **Designation—By-laws — Effect:** *Supreme Assembly etc. Artisans v. Johnson*, 109 Wash. 247, 186 Pac. 1065.

— **Payment of Dues — Powers of Agent—Estoppel:** *Teed v. Brotherhood of American Yeomen*, 111 Wash. 367, 190 Pac. 1005.

— **Fraternal Insurance — Statutes — Retroactive Effect:** *Teed v. Brotherhood of American Yeomen*, 111 Wash. 367, 190 Pac. 1005.

Provisions of Laws of Order Issuing—Compliance—Prohibited Class—Change in Laws — Notice of Beneficiary After Amendment: *Vilda v. Head Camp* Pac. Jur. W. O. W., 113 Wash. 423, 194 Pac. 395.

§ 208. **Change of Beneficiary—Right to Change in General:** *Thomas v. Grand Lodge A. O. U. W.*, 12 Wash. 500, 41 Pac. 882; *Cade v. Head Camp W. O. W.*, 27 Wash. 218, 67 Pac. 603.

§ 209. — **Rights of Beneficiary Previously Designated:** *Thomas v. Grand Lodge A. O. U. W.*, 12 Wash. 500, 41 Pac. 882; *Cade v. Head Camp, W. O. W.*,

27 Wash. 218, 67 Pac. 603; Bernheim v. Martin, 45 Wash. 120, 88 Pac. 106.

Actions for Benefits: See Remington's Digest, Insurance, §§ 211—216, and cases cited.

Effect of changes of by-laws of beneficial association as against pre-

existing members. 83 Am. St. Rep. 706; 1 Ann. Cas. 717; 7 Ann. Cas. 780; 8 Ann. Cas. 163; 10 Ann. Cas. 625; Ann. Cas. 1913C, 675; Ann. Cas. 1914D, 63; Ann. Cas. 1917B, 814; Ann. Cas. 1918D, 1140; Ann. Cas. 1918E, 414.

§ 7260. [6059-207.] Lodge System Defined.

Any society having a supreme governing or a legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated, and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such societies to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system. [L. '11, p. 277, § 207.]

§ 7261. [6059-208.] Representative Form of Government Defined.

Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws: Provided, that the elective members shall constitute a majority in the number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws: Provided, further, that the meetings of the supreme or governing body, and the election of officers, representatives, or delegates shall be held as often as once in four years. The members, officers, representatives, or delegates of a fraternal benefit society shall not vote by proxy. [L. '11, p. 278, § 209.]

§ 7262. [6059-209.] Exemptions.

Except as herein provided, such societies shall be governed by the provisions of this article and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereinafter enacted shall apply to them unless they be expressly designated therein. [L. '11, p. 278, § 209.]

§ 7263. [6059-210.*] Benefits.

(1) Every society transacting business under this article shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age: Provided, that the period of life at which the payment of benefits for disability on account of old age shall commence, shall not be under seventy years, and may provide for monuments or tombstones to the memory of the deceased members and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of

seventy, all or such portion of the face value of his certificates as the laws of the society may provide: Provided, that nothing in this article contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring within the terms for which the benefit certificates may be issued. Such society shall, upon written application of the members, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contributions, against the certificate with interest payable or compounded annually at a rate not lower than four per cent per annum: Provided, that this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contribution and to contracts affected by such readjustment.

(2) Any society which shall show by the annual valuation hereinafter provided for, that it is accumulating and maintaining the reserve necessary to enable it to do so, under a table of mortality not lower than the American Experience Table and four per cent interest, may grant to its members, extended and paid-up protection or such withdrawal equities as its constitution and laws may provide: Provided, that such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

(3) Power and authority is hereby given to a society to divide its membership into separate classes, each class having a separate form of contract of similar or general plan and character in its purpose, and that the assets or mortuary collections made from the members of each class respectively shall be carried and maintained separate for such class, and that the required reserve accumulations of such class, if the contract therefor provides for such fund, shall be set apart and held specifically and separately for the use and benefit of such particular class, and shall not thereafter be mingled with the assets or mortuary collections of any other class of the society. [L. '19, p. 657, § 1. L. '11, p. 278, § 210.]

Cited in 85 Wash. 684.

§ 7264. [6059-211.] Beneficiaries.

The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree ascending or descending, father-in-law, mother-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member: Provided, that if after the issuance of the original certificate the member shall become dependent upon a home maintained by the society for the dependent members or upon a subordinate lodge or society of the order of which he is a member, or upon an incorporated charitable institution, he shall have the privilege with the consent of the society, of making such home, lodge, society or institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules, or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member: Provided,

that any society may, by its laws, limit the scope of beneficiaries within the above classes. [L. '11, p. 279, § 211.]

Cited in 111 Wash. 370.

This section does not operate retrospectively so as to avoid a certificate that, prior to 1911, named as a beneficiary a wife who was thereafter divorced, especially in view of § 7274, *infra*: *Teed v. Brotherhood of American Yeomen*, 111 Wash. 367, 190 Pac. 1005.

Acts sufficient to effectuate change of beneficiary. *Ann. Cas.* 1914D, 1126.

Right to designate new beneficiary by will. *Ann. Cas.* 1913B, 1286.

Right to proceeds of benefit certificate where part of beneficiaries named are ineligible to take. *Ann. Cas.* 1912A, 214; or where there is a failure of beneficiaries competent to take. 2 *Ann. Cas.* 663; *Ann. Cas.* 1916B, 184.

Child in benefit insurance policy as including illegitimate child. *Ann. Cas.* 1918B, 256, 261.

§ 7265. [6059-212.] Qualifications for Membership.

Any society may admit to beneficiary membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified practicing physician and whose examination has been supervised and approved in accordance with the laws of the society: Provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members. [L. '11, p. 280, § 212.]

What constitutes membership in beneficial association. *Ann. Cas.* 1917B, 380.

§ 7266. [6059-213.] Certificate.

Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter, or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof, and any changes, additions, or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, constitution, or laws duly made or enacted subsequent to the issuance of the benefit certificates, shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for membership. [L. '11, p. 280, § 213.]

Binding effect on member of beneficial association of by-laws inconsistent with his contract of membership. 20 *Ann. Cas.* 929; 47 *L. R. A.* 681.

Effect of adoption of by-laws by fraternal insurance order on benefit certificates already issued. 1 *L. R. A. (N. S.)* 1065.

§ 7267. [6059-214.] Funds.

(1) Any society may create, maintain, invest, disburse, and apply an emergency, surplus, or other similar fund in accordance with its law.

Unless otherwise provided in the contract, such funds shall be held, invested, and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in section 7263 of this article. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of said funds: Provided, that no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state, which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August twenty-third, eighteen hundred and ninety-nine, or any higher standard with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum.

(2) Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities. [L. '11, p. 281, § 214.]

Cited in 85 Wash. 685, 687.

§ 7268. [6059-215.] Investments.

Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies: Provided, that any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated, shall be held to meet the requirements of this article for the investment of funds. [L. '11, p. 282, § 215.]

§ 7269. [6059-216.] Distribution of Funds.

Every provision of the laws of the society for payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes, or the net accretions of either or any of said funds, shall be used for expenses. [L. '11, p. 282, § 216.]

§ 7270. [6059-217.] Organization.

Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this article, may make and sign, giving their ad-

addresses, and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

First. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion.

Second. The purpose for which it is formed, which shall not include more liberal powers than are granted in this article: Provided, that any lawful social, intellectual, educational, charitable, benevolent, moral, or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.

Third. The names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate. Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the commissioner, conditioned upon the return of the advanced payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the commissioner, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this article, and all provisions of law have been complied with, the commissioner shall so certify and retain and record, or file, the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the commissioner, said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant, a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate, nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society, nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated, nor until there has been submitted to the commissioner, under oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved,

date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August twenty-third, eighteen hundred and ninety-nine, or any higher standard at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent per annum, nor until it shall be shown to the commissioner by the sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars, all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and, if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The commissioner may make such examination and require such further information as he deems advisable, and upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The commissioner shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the commissioner, upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided, and the articles of incorporation and all proceedings thereunder shall become null and void in one year from date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void.

Every society shall have the power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to or amend such constitution and by-laws and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. [L. '11, p. 282, § 217.]

§ 7271. [6059-218.] Powers Retained—Reincorporation—Amendments.

Any society now engaged in transacting business in this state may exercise, after the passage of this act, all of the rights conferred thereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this act, if incorporated; or if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided herein or in its constitution and laws and all such amendments shall be filed as original articles of incorporation are required to be filed, and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, constitution or laws. [L. '11, p. 285, § 218.]

§ 7272. [6059-219.] Mergers and Transfers.

No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer which shall be filed as original articles of incorporation are required to be filed, together with a sworn statement of the financial condition of each of said societies, by its president and secretary, or corresponding officers, and a certificate of such officers duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislature or governing body of each of said societies.

Upon the submission of said contract, financial statements and certificates, the commissioner shall examine the same, and, if he shall find such financial statements to be correct and the said contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of said societies, he shall approve said merger or transfer, issue his certificate to that effect and thereupon the said contract or merger or transfer shall be of full force and effect.

In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by the state insurance commissioner. [L. '11, p. 286, § 219.]

§ 7273. [6059-220.] Annual License.

Societies which are now authorized to transact business in this state may continue such business until the first day of April next succeeding the passage of this act, and the authority of such societies may thereafter be renewed annually, but in all cases to determine on the first day of the succeeding April: Provided, that the license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner ten dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this article. [L. '11, p. 287, § 220.]

§ 7274. [6059-221.] Admission of Foreign Society.

No foreign society now transacting business, organized prior to the passage of this act, which is not now authorized to transact business in this state, shall transact any business herein without a license from the commissioner. Any such society shall be entitled to a license to transact business within this state upon filing with the commissioner a duly certified copy of its charter or articles of association; a copy of its constitution and laws, certified by its secretary or corresponding officer, a power of attorney to the commissioner as hereinafter provided; a statement of its business under oath of its president and secretary, or corresponding officers, in the form required by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the commissioner of this state; a certificate from the proper official in its home state, province, or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical, or other payments by persons holding similar contracts, and upon furnishing the commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province, or country where it is organized, he shall issue a license to such society to do business in this state until the first day of the succeeding April: Provided, that such license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this state shall have the qualifications required of domestic societies organized under this article and have its assets invested as required by the laws of the state, territory, district, country, or province where it is organized. For each such license or renewal the society shall pay the commissioner ten dollars. When the commissioner refuses to license any society, or revoke its authority to do business in this state, he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of the commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the state: Provided, that nothing contained in this or the preceding section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein. [L. '11, p. 287, § 221.]

See note to § 7264, supra.

Cited in 95 Wash. 131; 111 Wash. 371.

§ 7275. [6059-222.] Power of Attorney and Service of Process.

Every society, whether domestic or foreign, now transacting business in this state shall, within thirty days after this act takes effect, and every such society hereafter applying for admission, shall before being licensed, appoint in writing the insurance commissioner and his successors in office to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it shall be served, and in such writing

shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said commissioner, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon the commissioner, in his absence upon the person in charge of his office, and shall be deemed sufficient service upon such society: Provided, that no such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than forty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said commissioner, he shall forthwith forward by registered mail, one of the duplicate copies prepared and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein. [L. '11, p. 288, § 222.]

Cited in 83 Wash. 294.

The courts are compelled to revise acts of beneficial societies where pecuniary and property rights have been illegally abridged or invaded: *State ex rel. Cicoria v. Corgiat*, 50 Wash. 95, 96 Pac. 689.

The courts of this state have no jurisdiction to interfere with the internal affairs of a foreign beneficial association, by enjoining the officers of the society,

at its headquarters in the state where it exists as a corporation, from taking action in the threatened cancellation of the certificate of a member of the society in this state, notwithstanding the society has an authorized agent in this state upon whom service of process can be made, under this section: *Tolbert v. Modern Woodmen of America*, 83 Wash. 287, 145 Pac. 183.

§ 7276. [6059-223.] Place of Meeting—Location of Office.

Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province, or territory wherein such society has subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state. But its principal office shall be located in this state. [L. '11, p. 289, § 223.]

§ 7277. [6059-224.] No Personal Liability.

Officers and members of the supreme, grand, or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society, but the same shall be payable only out of the funds of such society and in the manner provided by its laws. [L. '11, p. 289, § 224.]

§ 7278. [6059-225.] Waiver of the Provisions of the Laws.

The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. [L. '11, p. 290, § 225.]

§ 7279. [6059-226.] Benefits not Attachable.

No money or other benefit, charity or relief or aid to be paid, provided, or rendered by any such society shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process, or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment. [L. '11, p. 290, § 226.]

§ 7280. [6059-227.] Constitution and Laws—Amendment.

Every society transacting business under this act, shall file with the commissioner a duly certified copy of all amendments of or additions to its constitution and laws, within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed, or added to, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof. [L. '11, p. 290, § 227.]

§ 7281. [6059-228.] Annual Reports.

Every society transacting business in this state, shall annually, on or before the fifteenth day of February, file with the commissioner, in such form as he may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for one year ending on that date and also shall furnish such other information as the commissioner may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement he may deem necessary to be made relating to such society.

In addition to the annual report herein required, each society shall annually report to the commissioner, a valuation of its certificates in force on the thirty-first day of December, last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses: Provided, that the first report of valuation shall be made as of December thirty-first, nineteen hundred and twelve. Such report of valuation shall show, as contingent liabilities, the present mid-year value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and, as contingent assets, the present mid-year value of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner within ninety days after the

submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August twenty-third, eighteen hundred and ninety-nine, or, at the option of the society, any higher table, or at its option, it may use a table based upon the society's own experience of at least twenty years and covering not less than one hundred thousand lives with interest assumption not more than four per cent per annum. Each valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society: Provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experience and in such case a separation of the funds shall not be required.

The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities.

Beginning with the year nineteen hundred and fourteen, a report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June first of each year, or, in lieu thereof, such report or valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per cent per annum. [L. '11, p. 290, § 228.]

Cited in 85 Wash. 688.

§ 7282. [6059-229.] Provisions to Insure Future Security.

If the valuation of the certificates, as hereinbefore provided, on December thirty-first, nineteen hundred and seventeen, shall show that the present value of future net contributions, together with the admitted assets, is less than ninety per cent of the present value of the promised benefits and accrued liabilities, such society shall be required thereafter to reduce such deficiency not less than five per centum of the total deficiency on said December thirty-first, nineteen hundred and seventeen, at each succeeding triennial valuation. If at any succeeding triennial valuation such society does not show such percentage of

improvement, the commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has not made the percentage of improvement required herein, the commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provision of section 7283, or, in the case of a foreign society, he may cancel its license to transact business in this state.

Any such society, shown by any triennial valuation subsequent to December thirty-first, nineteen hundred and seventeen, not to have made the improvement herein specified shall, within one year thereafter, complete such deficient improvement, or thereafter, as to all new members admitted, be subject, so far as stated rates of contribution are concerned, to the provisions of section 7270, applicable in the organization of new societies: Provided, that the contributions and funds of such new members shall be kept separate and apart from the other funds of the society until the required improvement shall be shown by valuation. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed in a separate class and their certificate valued as an independent society in respect to contributions and funds. [L. '11, p. 292, § 229.]

Cited in 85 Wash. 679, 688.

§ 7283. [6059-230.] Examination of Domestic Societies.

The commissioner, or his deputy or examiner shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examinations, and he or his deputy, or examiner, shall have free access to all the books, papers, and documents that relate to the business of the society and may summon and qualify as witness under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions, and condition of the society.

The expense of such examination shall be paid by the society examined, upon statement furnished by the commissioner, and the examination shall be made at least once in three years.

Whenever after examination the commissioner is satisfied that any domestic society has failed to comply with any provisions of this act, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently, or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred, or shall determine to discontinue business, the commissioner may present the facts relating thereto to the attorney general, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business, and the commissioner shall be appointed receiver of such society, as is provided in case insolvency of insurance companies, and shall proceed at once to take possession of the books, papers, moneys

and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto.

No such proceedings shall be commenced by the attorney general against any such society until, after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced. [L. '11, p. 293, § 230.]

Cited in 85 Wash. 688.

§ 7284. [6059-231.] Application for Receiver, etc.

No application for injunction against or proceedings for the dissolution of or appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in this state unless the same is made by the attorney general. [L. '11, p. 295, § 231.]

§ 7285. [6059-232.] Examination of Foreign Societies.

The commissioner, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The said commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers, and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents, and employees and other persons in relation to the affairs, transactions and condition of the society. He may, in his discretion, accept in lieu of such examinations, the examination of the insurance department of the state, territory, district, province, or country where such society is organized. The actual expenses of examiners making any such examination, shall be paid by the society upon statement furnished by the commissioner.

If any such society or its officers refuses to submit to such examination or to comply with the provisions of the section relative thereto, the authority of such society to write new business in this state shall be suspended or license refused until satisfactory evidence is furnished the commissioner, relating to the condition and affairs of the society, and during such suspension the society shall not write new business in this state. [L. '11, p. 295, § 232.]

§ 7286. [6059-233.] No Adverse Publications.

Pending, during or after an examination or investigation of any such society, either domestic or foreign, the commissioner shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any such society, until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement, report, or finding and to make such showing in connection therewith as it may desire. [L. '11, p. 295, § 233.]

§ 7287. [6059-234.] Revocation of License.

When the commissioner on investigation is satisfied that any foreign society transacting business under this act has exceeded its powers, or has

failed to comply with any provisions of this act, or is conducting business fraudulently, or is not carrying out its contracts in good faith he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If on the date named in said notice such objections have not been removed to the satisfaction of the said commissioner or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the society to continue business in this state. All decisions and findings of the commissioner made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction as provided in section 7274. [L. '11, p. 296, § 234.]

§ 7288. [6059-235.] Exemption of Certain Societies.

Nothing contained in this act shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows, or Knights of Pythias, exclusive of the insurance department of the Supreme Lodge of Knights of Pythias, and the Junior Order of United American Mechanics, exclusive of the beneficiary degree or insurance branch of the National Council Junior Order United American Mechanics, or societies which limit their membership to any one hazardous occupation, nor to similar societies which do not issue insurance certificates, nor to any association of local lodges of a society now doing business in this state which provides death benefits not exceeding three hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this state, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year: Provided, always, that any such domestic order or society which has more than five hundred members, and provides for death or disability benefits, and any such domestic lodge, order, or society which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this article. The commissioner may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this article.

No society, which is exempt by the provisions of this section from the requirement of this article shall give or allow or promise to give or allow, to any person any compensation for procuring new members.

Any fraternal benefit society, heretofore organized and incorporated and operating within the definition set forth in sections 7259, 7260 and 7261, providing for benefits in case of death or disability resulting

solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this act, and shall have all the privileges and shall be subject to all the provisions and regulations of this article, except that the provisions of this article requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society. [L. '11 p. 296, § 235.]

§ 7289. War-time and Veterans' Organizations.

Any corporation, society, order, or voluntary association operating within the definition set forth in sections 7259, 7260 and 7261, organized during the war in which the United States entered on April 6, 1917, with the purposes of assisting the government of the United States in maintaining and increasing the production of commodities essential for the prosecution of that war, and of developing loyalty to the United States, or whose membership is limited to veterans of that war, may be licensed under the provisions of this act and shall have all the privileges and shall be subject to all the provisions and regulations of this article, except that the provisions of this article requiring death benefits of at least one thousand (\$1,000) dollars, medical examinations, valuations of benefit certificates, shall not apply to such society, but such society may provide benefits in case of death or disability resulting solely from accidents in an amount not exceeding one thousand (\$1,000) dollars and may also provide for death or funeral benefits, or both, not exceeding one hundred (\$100) dollars each, and for sick or disability benefits not exceeding five hundred (\$500) dollars to any one person, in any one year. Any corporation, society, order, or voluntary association organized under the provisions of this section shall file with the insurance department a copy of all its rates and policy forms, which rates and policy forms must be approved by the said insurance department before becoming effective; and all such rates and forms shall be observed by said society until amended rates or forms shall have been filed with and approved by the said insurance department. [L. '21, p. 182, § 1.]

"This article," see §§ 7259—7292.

§ 7290. [6059—236.] Taxation.

Every fraternal benefit society organized or licensed under this act is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax, other than taxes on real estate and office equipment. [L. '11, p. 298, § 236.]

§ 7291. [6059—237.] Penalties.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided, to do business as herein

defined in this state, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any society, or any officer, agent, or employee thereof neglecting or refusing to comply with, or violating any of the provisions of this article, the penalty for which neglect, refusal, or violation is not specified in this section shall be fined not exceeding two hundred dollars upon conviction thereof. [L. '11, p. 298, § 237.]

Cited in 95 Wash. 131.

§ 7292. [6059-238.] Existing Insurance Laws Repealed.

This act may be referred to and shall be known as "The Insurance Code" and shall supersede all prior acts on the subject of the organization and government of insurance companies and insurance business, and all such prior acts are hereby repealed. [L. '11, p. 298, § 238.]

Cited in 93 Wash. 606, 610; 95 Wash. 127, 128.

This section was not intended to repeal the earlier act, section 569, supra, exempting the proceeds or avails of all life and accident insurance from lia-

bility for any debt; the subject matter of exemptions being a distinct subject matter in and of itself not necessarily included within an act relating to insurance: *Elsom v. Gadd*, 93 Wash. 603, 161 Pac. 483, 162 Pac. 867.

§ 7293. Juvenile Death Benefits Authorized.

Any fraternal benefit society operating on the lodge system and authorized to transact the business of fraternal insurance in this state may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of two and eighteen years at next birthday, for whose support and maintenance a member of such society is responsible. Any such society may at its option organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. The total benefits payable, as above provided, shall in no case exceed the following amounts at ages at next birthday at time of death, respectively, as follows: Two, \$34; three, \$40; four, \$48; five, \$58; six, \$140; seven, \$168; eight, \$200; nine, \$240; ten, \$300; eleven, \$380; twelve, \$460; thirteen to fifteen, \$520, and sixteen to eighteen years, where not otherwise authorized by law, \$600. [L. '19, p. 451, § 1.]

§ 7294. Conditions Attaching to Issuance of Certificates.

No benefit certificate as to any child shall take effect until after physical examination or inspection by a licensed physician, in accordance with the laws of the society, nor shall any such benefit certificate be issued unless the society shall simultaneously put in force at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate falls below five hundred. The death benefit contributions to be made upon such certificate shall be based upon the "Standard

Industrial Mortality Table" or the "English Life Table Number Six," and a rate of interest not greater than four per cent per annum, or upon higher standard: Provided, that contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws; and, Provided further, that extra contributions shall be made if the reserves hereafter provided for become impaired. [L. '19, p. 452, § 2.]

§ 7295. Juvenile Reserve Fund—Exchange for Adult Certificate—Beneficiary.

Any society entering into such insurance agreements shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section 7294, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized: Provided, that a society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the society, provided that such surrender will not reduce the number of lives insured in the branch below five hundred, and upon the issuance of such new certificate, any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contribution shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. [L. '19, p. 452, § 3.]

§ 7296. Separate Financial Statements for Two Classes.

An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the insurance commissioner by any society availing itself of the provisions hereof. The separation of assets, funds and liabilities required hereby shall not be terminated, rescinded or modified, nor shall the funds be divested for any use other than as specified in section 7295 as long as any certificate issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger or other change in the condition of the status of the society. [L. '19, p. 453, § 4.]

§ 7297. Payments to Society's General Fund.

Any society shall have the right to provide in its laws and the certificates issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled

with the general fund of the society as its constitution and by-laws may provide. [L. '19, p. 453, § 5.]

§ 7298. Continuance of Juvenile Certificate.

In the event of the termination of membership in the society by the person responsible for the support of any child on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child: Provided, the contributions are continued or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions. [L. '19, p. 454, § 6.]

TITLE XLVI.

INTEREST.

7299. Interest rate—Loan defined. 7303. Issuing officer to regulate rate.
 7300. Twelve per cent, maximum legal rate. 7304. Effect of illegal rate, when suit
 7301. Legal rate on state warrants. brought.
 7302. Municipal warrants—Rate. 7305. Not to affect antecedent obligations.

§ 7299. [6250.] Interest Rate—Loan Defined.

Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of six per centum per annum where no different rate is agreed to in writing between the parties. The discounting of commercial paper, where the borrower makes himself liable as maker, guarantor or indorser, shall be considered as a loan for the purposes of this chapter. [L. '99, p. 128, § 1. Cf. L. '95, p. 349, § 1.]

Compare on this subject former acts: L. '54, p. 433; L. '63, p. 380; Cd. '81, §§ 2368, 2369; 1 H. C., §§ 2795, 2796; L. '93, p. 29; L. '95, p. 349.

See supra, § 457, interest on judgments.

Cited in 19 Wash. 122; 62 Wash. 442; 75 Wash. 321; 106 Wash. 695; 107 Wash. 12; 111 Wash. 308.

RIGHTS AND LIABILITIES: See Remington's Digest, Interest, §§ 1—12.

§ 1. Contracts for Interest—Compound Interest: Reed v. Miller, 1 Wash. 426, 25 Pac. 334; Cullen v. Whitham, 33 Wash. 366, 74 Pac. 581; Warnock v. Itawis, 38 Wash. 144, 80 Pac. 297.

§ 2. Implied Contracts: Arnott v. Spokane, 6 Wash. 442, 33 Pac. 1063; Kildea v. Washington Liquor Co., 22 Wash. 385, 60 Pac. 1118; National Surety Co. v. American Sav. Bank & Tr. Co., 101 Wash. 213, 172 Pac. 264.

§ 3. Compensation for Use of Money: Seattle Trust Co. v. Pitner, 18 Wash. 401, 51 Pac. 1048; Mississippi Valley Trust Co. v. Hofius, 20 Wash. 272, 55 Pac. 54.

Where the amounts and dates of maturity of installments on a sale of treasury stock were fixed and certain, they draw interest at the rate of six per cent per annum upon maturity, under this section: Benner v. Billings, 107 Wash. 1, 181 Pac. 19.

§ 4. Coupons and Installments of Interest: Cloud v. Rivord, 6 Wash. 555, 34 Pac. 136; Mississippi Valley Trust Co. v. Hofius, 20 Wash. 272, 55 Pac. 54.

§§ 5, 6. Accounts: Baxter v. Waite, 2 W. T. 228, 6 Pac. 429; Modern Irr. & Land Co. v. Neely, 81 Wash. 38, 142 Pac. 458; Dornberg v. Black Carbon Coal Co., 93 Wash. 682, 161 Pac. 845; Stickler

v. Giles, 9 Wash. 147, 37 Pac. 293; Wright v. Tacoma, 87 Wash. 334, 151 Pac. 837; Mallory v. Olympia, 88 Wash. 215, 152 Pac. 996.

§§ 7, 8. Demands not Liquidated: Glover v. Rochester-Ger. Ins. Co., 11 Wash. 143, 39 Pac. 380; Parks v. Elmore, 59 Wash. 584, 110 Pac. 381; Sweeney v. Lewis Construction Co., 74 Wash. 303, 133 Pac. 441; Casualty Co. v. Beattie, 75 Wash. 166, 134 Pac. 817, 136 Pac. 1153; Powelson v. Seattle, 87 Wash. 617, 152 Pac. 329; Wright v. Tacoma, 87 Wash. 334, 151 Pac. 837; Seattle Trust Co. v. Pitner, 18 Wash. 401, 51 Pac. 1048.

See, also, McConnell v. Gordon Construction Co., 105 Wash. 659, 178 Pac. 823.

Interest on an unliquidated claim for damages runs only from the date of judgment: Locomotive Exchange v. Rucker Brothers, 106 Wash. 278, 179 Pac. 859.

The discounting of a note, which was originally free from the taint of usury, is not usurious where no recovery was sought against the assignee and he did not render himself liable thereon, within this section: Thomson v. Koch, 62 Wash. 438, 113 Pac. 1110.

§§ 9, 10. Judgments: State ex rel. Donofrio v. Humes, 34 Wash. 347, 75 Pac. 348; Smith v. Smith, 63 Wash. 288, 115 Pac. 166; Ritchie v. Carpenter, 2 Wash. 512, 28 Pac. 380, 26 Am. St. Rep. 877; Olson v. Veazie, 9 Wash. 481, 37 Pac. 677, 43 Am. St. Rep. 855.

§§ 11, 12. Time When Interest Accrues: Fairhaven Land Co. v. Jordan,

6 Wash. 551, 34 Pac. 142; Cloud v. Rivord, 6 Wash. 555, 34 Pac. 136.

RATE: See Remington's Digest, Interest, §§ 13—19.

§§ 13, 14. **What Law Governs:** Bank v. Doherty, 42 Wash. 317, 84 Pac. 872, 114 Am. St. Rep. 123, 4 L. R. A. (N. S.) 1191; Reed v. Miller, 1 Wash. 426, 25 Pac. 334; Yakima Nat. Bank v. Knipe, 6 Wash. 348, 33 Pac. 834; State ex rel. American Saving Union v. Whittlesey, 17 Wash. 447, 50 Pac. 119.

§ 15. **Changes in Statutory Rate:** Union Savings Bank etc. Co. v. Gelbach, 8 Wash. 497, 36 Pac. 467, 24 L. R. A. 359; Stickler v. Giles, 9 Wash. 147, 37 Pac. 293; State ex rel. Theis v. Bowen, 11 Wash. 432, 39 Pac. 648; Burns v. Woolery, 15 Wash. 134, 45 Pac. 894; State ex rel. Capital Nat. Bank v. Young, 22 Wash. 547, 61 Pac. 725; Palmer v. Laberee, 23 Wash. 409, 63 Pac. 216.

§ 15-1. **Liabilities Subject to Statutory Rate:** Davis v. Lee, 52 Wash. 330, 100 Pac. 752, 132 Am. St. Rep. 973; Sandberg v. Scougale, 75 Wash. 313, 134 Pac. 1051.

Only six per cent can be recovered on an oral agreement to pay interest on items of an account, under this section: Connecticut Investment Co. v. Yokom, 106 Wash. 693, 180 Pac. 926.

§ 16. **Stipulations as to Rate—In General:** Stickler v. Giles, 9 Wash. 147, 37 Pac. 293; Johnson v. Pullman State Bank, 40 Wash. 64, 82 Pac. 122; Equitable Sav. & Loan Assn. v. Barnes, 69 Wash. 1, 124 Pac. 118; Puget Sound State Bank v. Gallucci, 82 Wash. 445, 144 Pac. 698, Ann. Cas. 1916A, 767.

§ 17. — **Statement as to Rate in Contract:** Hazard v. Maxon, 1 W. T. 584; Sloane v. Lucas, 37 Wash. 348, 79 Pac. 949.

§ 18. **After Maturity of Debt:** Krutz v. Robbins, 12 Wash. 7, 40 Pac. 415, 50 Am. St. Rep. 871, 28 L. R. A. 676; Haywood v. Miller, 14 Wash. 660, 45 Pac. 307; Wortman v. Vorhies, 14 Wash. 152, 44 Pac. 129; Seattle Trust Co. v. Pitner, 18 Wash. 401, 51 Pac. 1048; Palmer v. Laberee, 23 Wash. 409, 63 Pac. 216; Sloane v. Lucas, 37 Wash. 348, 79 Pac. 949.

§ 19. **On Judgments:** Roeder v. Brown, 1 W. T. 112; Titus v. Larsen, 18 Wash. 145, 51 Pac. 351; Palmer v. Laberee, 23 Wash. 409, 63 Pac. 216.

Time from Which Interest Runs in General: See Remington's Digest, Interest, §§ 20—22; Wood v. Cascade Fire etc. Ins. Co., 8 Wash. 427, 36 Pac. 267, 40 Am. St. Rep. 917; Lewis v. Seattle, 28

Wash. 639, 69 Pac. 393; Young v. Tacoma, 31 Wash. 153, 71 Pac. 742; Huetter v. Redhead, 31 Wash. 320, 71 Pac. 1016; Empire State Surety Co. v. Moran Brothers Co., 71 Wash. 171, 127 Pac. 1104; McHugh v. Tacoma, 76 Wash. 127, 135 Pac. 1011; Rhodes v. Tacoma, 97 Wash. 341, 166 Pac. 647; Dixon v. Parker Moran & Parker, 102 Wash. 101, 172 Pac. 856; Bellingham Bay etc. R. Co. v. Strand, 14 Wash. 144, 44 Pac. 140, 46 Pac. 238; Johnston v. Gerry, 34 Wash. 524, 76 Pac. 258, 77 Pac. 503; Happy v. Prickett, 24 Wash. 290, 64 Pac. 528.

Computation: See Remington's Digest, Interest, §§ 23—26.

§ 23. **Demand for Payment of Principal—Form and Sufficiency:** Western Mill etc. Co. v. Blanchard, 1 Wash. 230, 23 Pac. 839; Moylan v. Moylan, 49 Wash. 341, 95 Pac. 271.

§ 24. **Commencement of Action:** Bremer v. Burgess, 2 W. T. 290, 5 Pac. 733, 840; Edison Gen. Elec. Co. v. Canadian Pac. Nav. Co., 8 Wash. 370, 36 Pac. 260, 40 Am. St. Rep. 910, 24 L. R. A. 315; Tilden v. Gordon & Co., 34 Wash. 92, 74 Pac. 1016; Eilers Music House v. Hopkins, 73 Wash. 281, 131 Pac. 838; Tacoma v. Sperry & Hutchinson Co., 82 Wash. 393, 144 Pac. 544.

§ 25. **Creation or Accrual of Indebtedness:** Spokane v. Costello, 42 Wash. 182, 84 Pac. 652.

§ 25-1. **Suspension — Tender:** Tacoma Water Supply Co. v. Dumermuth, 51 Wash. 609, 99 Pac. 741; Ward v. Thorn-dyke, 65 Wash. 11, 117 Pac. 593; Kleebe v. McInturff, 71 Wash. 419, 128 Pac. 1076; Easton v. Littooy, 91 Wash. 648, 158 Pac. 531.

§ 26. **Application of Partial Payments:** Smythe v. New England Loan etc. Co., 12 Wash. 424, 41 Pac. 184.

RECOVERY: See Remington's Digest, Interest, § 27; Titus v. Larsen, 18 Wash. 145, 51 Pac. 351; Clark v. Eltinge, 29 Wash. 215, 69 Pac. 736.

Implied contract as to rate of interest. 20 Ann. Cas. 1268.

Right to recover interest on money paid by mistake. 10 Ann. Cas. 307; Ann. Cas. 1913B, 1259.

Right to interest on attorney's fees. Ann. Cas. 1916E, 249.

Rate of interest after maturity on contracts fixing rate "until payment." 6 A. L. R. 1196.

Validity and effect of anticipatory provision in contract in relation to rate of interest in the event of default. 12 A. L. R. 367; L. R. A. 1916E, 726.

Right to recover interest on fund in litigation or deposited in court. **Ann. Cas.** 1912B, 1004.

Effect of war legislation in nature of moratory statute on right to interest. 9 **A. L. R.** 44, 66.

Right to recover interest on solidier's bounty wrongfully withheld. 13 **A. L. R.** 601.

§ 7300. [6251.] Twelve Per Cent, Maximum Legal Rate.

Any rate of interest not exceeding twelve (12) per centum per annum agreed to in writing by the parties to the contract, shall be legal, and no person shall directly or indirectly take or receive in money, goods, or thing in action, or in any other way, any greater interest, sum or value for the loan or forbearance of any money, goods or thing in action than twelve (12) per centum per annum. [L. '95, p. 349, § 2; L. '99, p. 128, § 2.]

Cited in 33 Wash. 367; 37 Wash. 135; 42 Wash. 102; 57 Wash. 260; 64 Wash. 57; 73 Wash. 376, 386; 74 Wash. 384, 409, 411; 77 Wash. 378, 692; 86 Wash. 631; 98 Wash. 110; 110 Wash. 214.

What Law Governs: See Remington's Digest, Usury, §§ 2, 3; Brundage v. Burke, 11 Wash. 679, 40 Pac. 343; Bank v. Doherty, 42 Wash. 317, 84 Pac. 872, 114 Am. St. Rep. 123, 4 L. R. A. (N. S.) 1191; Crawford v. Seattle, Renton & S. R. Co., 86 Wash. 628, 150 Pac. 1155, L. R. A. 1916D, 732.

Effect on Pre-existing Contracts of Change in Statutory Rate of Interest: See Remington's Digest, Usury, § 5; Wortman v. Vorhies, 14 Wash. 152, 44 Pac. 129.

Bills and Notes: See Remington's Digest, Usury, §§ 6, 7; Blake v. Yount, 42 Wash. 101, 84 Pac. 652, 114 Am. St. Rep. 106, 7 Ann. Cas. 487; Thompson v. Koch, 62 Wash. 438, 113 Pac. 1110.

A note to secure \$4,000 payable in eighty-one monthly payments of \$72 each is usurious, as the recital of twelve per cent interest per annum is dominated by the amount required to be paid; and the interest must be computed by applying each monthly installment first on earned interest and the balance on the principal: Western Loan & Building Co. v. Larsen, 110 Wash. 213, 188 Pac. 390.

Where a mortgage note bearing eight per cent interest, which was in default, was extended for two years in consid-

eration of payment of the interest then due and the addition of two hundred dollars to the principal, such sum should be treated as interest to be paid at the new maturity date, and the note is not usurious when the total payments made and called for did not exceed the original principal and twelve per cent thereon at the new maturity date: Hensel v. Bissell, 110 Wash. 568, 188 Pac. 774.

Interest Subject to Condition—Obvious Evasion of This Section: See Remington's Digest, Usury, §10; Lay v. Bouton, 73 Wash. 372, 131 Pac. 1153.

Commission or Bonus to Agent, Broker, or Other Third Person: See Remington's Digest, Usury, § 11; Ridgway v. Davenport, 37 Wash. 134, 79 Pac. 606; Libert v. Unfried, 47 Wash. 186, 91 Pac. 776; Dale v. Duryea, 49 Wash. 644, 96 Pac. 223; Inland Trading Co. v. Edgecombe, 57 Wash. 257, 106 Pac. 768; Testera v. Richardson, 77 Wash. 377, 137 Pac. 998.

Usury in Transaction Through Agents: See Remington's Digest, Usury, § 12; Haynes v. Gay, 37 Wash. 230, 77 Pac. 794; Edmonds v. Altman, 89 Wash. 4, 153 Pac. 1082.

When provisions for increase of interest after maturity valid. 63 **Am Dec.** 438; 53 **Am Rep.** 21; 91 **Am. St. Rep.** 584; 7 **Ann. Cas.** 489.

Validity of agreement to pay interest on interest. 13 **Ann. Cas.** 151; 18 **L. R. A. (N. S.)** 633; 33 **L. R. A. (N. S.)** 296.

§ 7301. [6252.] Legal Rate on State Warrants.

All state warrants shall bear interest at a rate not greater than five (5) per centum per annum, unless a less rate be specified therein, and shall be paid by the treasurer in the order of their number, date and issue and shall cease to draw interest at the expiration of ten days from and after the date of the first publication of any call made by the treasurer for the payment of warrants. [L. '99, p. 129, § 3.]

Former laws cited in 22 Wash. 548.

Interest on State Warrants: See Remington's Digest, States, § 32; State ex rel. Theis v. Bowen, 11 Wash. 432, 39 Pac. 648; Spokane & Eastern Trust Co.

v. Young, 19 Wash. 122, 52 Pac. 1010; State ex rel. Capital Nat. Bank v. Young, 22 Wash. 547, 61 Pac. 725.

Liability of state for interest. **Ann. Cas.** 1914A, 361.

§ 7302. [6253.] Municipal Warrants—Rate.

All county, city, town and school warrants, and all warrants or other evidences of indebtedness, drawn upon or payable from any public funds, shall bear interest at a rate not greater than eight per centum per annum, unless a less rate be specified therein. [L. '99, p. 129, § 4. Cf. L. '95, p. 349, § 3.]

See supra, § 457, interest on judgments, which was a part of this act of 1899.

Under this section, the state treasurer must pay eight per centum on state warrant issued subsequent to the passage of the act, and which contain no provision as to the rate of interest, although another section of the same act provides that the legal rate shall be seven per cent as to private contracts, where no different rate is agreed to in writing: Spokane & Eastern Trust Co. v. Young, 19 Wash. 122, 52 Pac. 1010.

Municipal bonds sold at a discount which would result in greater interest

than six per cent, in violation of § 9491, infra, are not usurious, since this section authorizes eight per cent: Cuddy v. Sturtevant, 111 Wash. 308, 190 Pac. 909.

The sale of bonds at a discount is an irregularity merely, and does not affect the power to make and issue the bonds: *Id.*

Interest on county and city warrants. 3 **Ann. Cas.** 459; 10 **Ann. Cas.** 209; **Ann. Cas.** 1916C, 576.

§ 7303. [6254.] Issuing Officer to Regulate Rate.

It shall be the duty of every public officer issuing public warrants to make monthly investigation to ascertain the market value of the current warrants issued by him and he shall, so far as practicable, fix the rate of interest (not in any event, however, exceeding the maximum rate hereinbefore established therefor) on the warrants issued by him during the ensuing month so that the par value shall be the market value thereof. [L. '99, p. 129, § 5.]

§ 7304. [6255.] Effect of Illegal Rate, When Suit Brought.

If a greater rate of interest than is hereinbefore allowed shall be contracted for or received or reserved, the contract shall not, therefore, be void; but if in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the plaintiff shall only recover the principal, less the amount of interest accruing thereon at the rate contracted for, and the defendant shall recover costs; and if interest shall have been paid, judgment shall be for the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; and the acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is illegal interest contracted for by the transaction of any agent the principal shall be held thereby to the same extent as though he had acted in person. And where the same person acts as agent of the borrower and lender, he shall be deemed the agent of the lender for the purposes of this chapter. [L. '99, p. 129, § 7. Cf. L. '95, p. 350, § 5.]

Cited in 33 Wash. 367; 37 Wash. 135; 42 Wash. 327; 47 Wash. 106, 191; 57 Wash. 260; 64 Wash. 57, 61; 73 Wash. 379; 74 Wash. 410; 77 Wash. 692; 89 Wash. 5; 98 Wash. 110; 110 Wash. 214.

Recovery of Usury Paid: See Remington's Digest, Usury, § 13; Brundage v. Burke, 11 Wash. 679, 40 Pac. 343; Lee v. Hillman, 74 Wash. 408, 133 Pac. 583, Ann. Cas. 1915A, 759, L. R. A. 1918B, 581; Holland Co. v. Aitken, 98 Wash. 107, 167 Pac. 109.

A mortgagor who deeds the mortgaged property in satisfaction of a usurious mortgage note is not estopped, by making such payment, from maintaining an action to recover the usurious interest exacted: Hopgood v. Miller, 107 Wash. 449, 181 Pac. 919.

In an action to recover usurious interest exacted, after plaintiff deeded property to the defendant in satisfaction of the amount demanded, \$5,211.60, an answer denying that the property was worth any sum in excess of \$5,000, admits it was of that value; and it having been taken in satisfaction of the demand for \$5,211.60, such sum must be assumed to be the value of the property at that time: Hopgood v. Miller, 107 Wash. 449, 181 Pac. 919.

Pleading: See Remington's Digest, Usury, §§ 14, 15; McDaniel v. Pressler, 3 Wash. 636, 29 Pac. 209; Brundage v. Burke, 11 Wash. 679, 40 Pac. 343; Ayars v. O'Connor, 45 Wash. 132, 88 Pac. 119; Grubb v. Stewart, 47 Wash. 103, 91 Pac. 562; Fenby v. Hunt, 53 Wash. 127, 101 Pac. 492.

See, also, Hopgood v. Miller, 107 Wash. 449, 181 Pac. 919.

Evidence: See Remington's Digest, Usury, §§ 16, 17; Keene v. Behan, 40 Wash. 505, 82 Pac. 884; Washington Fire Ins. Co. v. Maple Valley Lbr. Co., 77 Wash. 686, 138 Pac. 553; Cissna Loan Co. v. Gawley, 87 Wash. 438, 151 Pac. 792, Ann. Cas. 1917D, 722, L. R. A. 1916B, 807; Murphy v. Prosser, 96 Wash. 493, 165 Pac. 390.

See, also, Robinson, Thieme & Morris v. Whittier, 112 Wash. 6, 191 Wash. 763.

Personal Nature of Right to Relief or Defense: See Remington's Digest, Usury, § 18; Grubb v. Stewart, 47 Wash. 103, 91 Pac. 562; Fenby v. Hunt, 53 Wash. 127, 101 Pac. 492; Thomson v. Koch, 62 Wash. 438, 113 Pac. 1110; Winsor v. Commonwealth Coal Co., 63 Wash. 62, 114 Pac. 908, 33 L. R. A. (N. S.) 63.

Privity With Parties to Usury: See Remington's Digest, Usury, § 19; Knight v. American Inv. & Imp. Co., 73 Wash. 380, 132 Pac. 219; Richardson v. Foster, 100 Wash. 57, 170 Pac. 321.

Amount and Extent of Penalties: See Remington's Digest, Usury, § 21; Libert v. Unfried, 47 Wash. 186, 91 Pac. 776.

Setoff and Counterclaim of Penalties. Under this section, there can be no recovery where the value of lots, exacted as interest, when doubled, exceeded the principal: Lay v. Bouton, 73 Wash. 372, 131 Pac. 1153.

Recovery of money paid as usury. 54 Am. Dec. 400; 22 Am. St. Rep. 41; 1 Ann. Cas. 421; L. R. A. 1918B, 585.

§ 7305. [6256.] Not to Affect Antecedent Obligations.

Nothing herein contained shall be construed as affecting previous to entry of judgment thereon any contract or obligation made or entered into prior to the taking effect of this act. [L. '95, p. 350, § 6; L. '99, p. 130, § 8.]

Cited in 23 Wash. 418; 111 Wash. 308.

This section applies only to contracts and obligations between parties, and not

to rights or obligations arising by operation of law: Palmer v. Laberee, 23 Wash. 409, 63 Pac. 216.

TITLE XLVII. INTOXICATING LIQUORS.

Chapter I. Prohibition and Regulation	Section 7306
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CHAPTER I.—PROHIBITION AND REGULATION.

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CHAPTER II.—CIVIL REMEDIES AGAINST LIQUOR DEALERS.

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CHAPTER I.

PROHIBITION AND REGULATION.

§ 7306. [6262-1.] Construction of Act.

This entire act shall be deemed an exercise of the police power of the state, for the protection of the economic welfare, health, peace and morals of the people of the state and all of its provisions shall be liberally construed for the accomplishment of that purpose. [L. '15, p. 2, § 1.]

Cited in 87 Wash. 84; 88 Wash. 510, 513; 92 Wash. 306; 93 Wash. 440, 442, 443; 94 Wash. 126; 95 Wash. 481, 530, 615, 616; 97 Wash. 142, 244; 98 Wash. 13, 283, 292; 99 Wash. 197, 481; 101 Wash. 465; 103 Wash. 215, 338; 104 Wash. 301, 546; 105 Wash. 158.

This act is not an unlawful interference with interstate commerce: *Gottstein v. Lister*, 88 Wash. 462, 153 Pac. 595; *State v. Warburton*, 97 Wash. 242, 166 Pac. 615.

This section precludes a strict construction thereof as a penal statute: *State v. Hemrich*, 93 Wash. 439, 161 Pac. 79, L. R. A. 1917B, 962.

Federal, constitutional or legislative provisions as to intoxicating liquors as affecting state legislation. 10 A. L. E. 1587; 11 A. L. E. 1320.

Construction and effect of the Volstead Act. 10 A. L. E. 1553.

§ 7307. [6262-2.] "Intoxicating Liquor" Defined.

The phrase "intoxicating liquor," whenever used in this act, shall be held and construed to include whiskey, brandy, gin, rum, wine, ale, beer and any spirituous, vinous, fermented or malt liquor, and every other liquor or liquid containing intoxicating properties, which is capable of being used as a beverage, whether medicated or not, and all liquids whether proprietary, patented or not, which contain any alcohol, which are capable of being used as a beverage. [L. '15, p. 2, § 2.]

Cited in 93 Wash. 444; 97 Wash. 640.

Liquors Prohibited—Description and Properties: See *Remington's Digest*, Int. Liq., § 27; *State v. Hemrich*, 93 Wash. 439, 161 Pac. 79, L. R. A. 1917B, 962.

An information charging the sale of "spirituous intoxicating liquors capable of being used as a beverage," is sufficient: *State v. Sullivan*, 97 Wash. 639, 166 Pac. 1123.

§ 7308. [6262-3.] "Person" Defined.

The word "person," wherever used in this act, shall be held and construed to mean and include natural persons, firms, copartnerships and corporations, and all associations of natural persons, whether acting by themselves or by a servant, agent or employee. [L. '15, p. 3, § 3.]

§ 7309. [6262-4.] Manufacture, Sale or Gift Prohibited.

It shall be unlawful for any person to manufacture, sell, barter, exchange, give away, furnish or otherwise dispose of any intoxicating liquor, or to keep any intoxicating liquor, with intent to sell, barter, exchange, give away, furnish or otherwise dispose of the same, except as in this act provided: [Provided, however, that it shall not be unlawful for a person to give away intoxicating liquor, to be drunk on the premises, to a guest in his private dwelling or apartment, which is not a place of public resort]. [L. '15, p. 3, § 4.]

The bracketed words held impliedly repealed by section 7328: See *State v. Giaudrone*, 109 Wash. 397, 186 Pac. 870.

Cited in 92 Wash. 3, 8; 95 Wash. 481; 97 Wash. 640; 98 Wash. 208; 99 Wash. 649; 109 Wash. 399.

Power to Prohibit Sale or Manufacture: See *Remington's Digest*, Int. Liq., § 6; *State v. Hemrich*, 93 Wash. 439, 161 Pac. 79, L. R. A. 1917B, 962; *State v. Fabbri*, 98 Wash. 207, 167 Pac. 133.

See, also, *State v. Giaudrone*, 109 Wash. 397, 186 Pac. 870.

Manufacture: See *Remington's Digest*, Int. Liq., § 28; Extracting the juice of

grapes and knowingly allowing it to ferment is a "manufacture," and "intent to sell" is not an element of the offense: *State v. Fabbri*, 98 Wash. 207, 167 Pac. 133.

SALES.—An information for selling a quart of "spirituous intoxicating liquors . . . capable of being used as a beverage," is sufficient as being substantially in the language of this section, prohibiting the sale of any intoxicating liquor: *State v. Sullivan*, 97 Wash. 639, 166 Pac. 1123.

A saloon-keeper is guilty of selling liquor to a minor, where the sale was

made by his barkeeper, although defendant was out of town at the time the sale was made and had no knowledge thereof: *State v. Constatine*, 43 Wash. 102, 86 Pac. 384, 117 Am. St. Rep. 1043.

Information — Requisites and Sufficiency in General: See *Remington's Digest*, Int. Liq., § 42; *State v. Sullivan*, 97 Wash. 639, 166 Pac. 1123; *State v. Holland*, 99 Wash. 645, 170 Pac. 332.

See, also, Charge in Language of Statute: *State v. Bachtold*, 106 Wash. 550, 180 Pac. 896.

Previous Conviction of Defendant—Statutes: *State v. Dericho*, 107 Wash. 468, 182 Pac. 597.

Conviction of Lesser Offense: *State v. Spillman*, 110 Wash. 662, 188 Pac. 915.

Opening and Conducting "Joint": *State v. Rousseau*, 111 Wash. 533, 191 Pac. 634; *State v. Burgess*, 111 Wash. 537, 191 Pac. 635.

Construction of statutes against sale of intoxicating liquors. 38 Am. Rep. 345; 12 Am. St. Rep. 353.

Validity of statute prohibiting giving away of intoxicating liquor. 13 Ann. Cas. 736.

Statutes prohibiting the manufacture of intoxicating liquor. 2 A. L. R. 1085.

Taking intoxicating liquor from the person of defendant as a sale. 3 A. L. R. 1096.

§ 7310. [6262-5.] Buildings, etc., Used Abated as Nuisances.

It shall be unlawful for any person owning, leasing, renting or occupying any premises, building, vehicle or boat to knowingly permit intoxicating liquor to be manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this act, or to be kept with intent to sell, barter, exchange, give away, furnish or otherwise dispose of the same in violation of the provisions of this act thereon or therein; and all premises, buildings, vehicles and boats whereon and wherein intoxicating liquor is manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept with intent to sell, barter, exchange, give away, furnish or otherwise dispose of the same in violation of the provisions of this act are common nuisances, and may be abated as such, and upon conviction of the owner, lessee, tenant or occupant of any premises, buildings, vehicle or boat of a violation of the provisions of this section, the court shall order that such nuisance be abated, and that such premises, building, vehicle or boat be closed until the owner, lessee, tenant or occupant thereof shall give bond, with a sufficient surety to be approved by the court making the order, in the penal sum of one thousand dollars, payable to the state of Washington, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereon and therein, or kept thereon or therein, with intent to sell, barter, exchange, give away or otherwise dispose of the same contrary to law, and that he will pay all fines, costs and damages that may be assessed against him for any violation of this act; and in case of the violation of any condition of such bond, the whole amount may be recovered as a penalty, for the use of the county wherein the premises are situated; and in all cases where any person has been convicted before a justice of the peace of a violation of the provisions of this section, and no appeal has been taken from such conviction, an information or complaint may be filed in the superior court of the county in which such conviction was had to abate the nuisance, and in any such action a certified copy of the records of such justice of the peace, showing such conviction, shall be competent evidence of the existence of such nuisance. [L. '15, p. 3, § 5.]

See note to § 7316.

Cited in 92 Wash. 3; 94 Wash. 131; 97 Wash. 411; 98 Wash. 16; 104 Wash. 547—549; 107 Wash. 469.

This section authorizes fine and imprisonment, as well as an abatement of the premises, for unlawfully keeping intoxicating liquors for sale, the one penalty being directed against the premises and the other against the violator; and recognizes that a fine may be imposed for its violation without specific mention of the extent of the fine, and the amount is therefore controlled by section 7338, which provides for conviction of any

violation of the act where the punishment is not specifically provided for: *State v. Clancy*, 97 Wash. 410, 166 Pac. 778.

Effect of Prohibition Law upon Leases: See *Remington's Digest, Landlord & Ten.*, § 36-2; *Stratford, Inc. v. Seattle Brewing & Malting Co.*, 94 Wash. 125, 162 Pac. 31, L. R. A. 1917C, 931; *Brunswick-Balke-Collender Co. v. Seattle Brewing & Malting Co.*, 98 Wash. 12, 167 Pac. 58; *Yesler Estate, Inc. v. Continental Distributing Co.*, 99 Wash. 480, 169 Pac. 967.

§ 7311. [6262-6.] Soliciting Orders or Advertising.

It shall be unlawful for any person to take or solicit orders for the purchase or sale of any intoxicating liquor, either in person or by sign, circular, letter, poster, hand bill, card, price list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice, naming, representing, describing, or referring to the quality or qualities of any intoxicating liquor, or giving the name or address of any person manufacturing or dealing in intoxicating liquor, or stating where any such liquor may be obtained. [L. '15, p. 4, § 6.]

Cited in 92 Wash. 3.

§ 7312. [6262-7.*] Druggists—Alcohol—Sale for Medicinal Purposes, etc.—Record—Permits—Transportation.

Nothing in this act shall be construed to prohibit a registered druggist or pharmacist, actually engaged in the wholesale drug business in this state, from selling alcohol to a retail druggist, a hospital or manufacturer, licensed to purchase the same under the provisions of this act, or from selling alcohol for export and shipping the same to places outside the state, or to prohibit a registered druggist or pharmacist, actually engaged in the retail drug business in this state, from selling alcohol to any person holding a permit to purchase the same, issued under the provisions of this act, or to prohibit an ordained clergyman, priest or rabbi actually engaged in ministering to a religious congregation in this state, from administering intoxicating liquor for sacramental purposes only; but it shall be unlawful for a registered druggist or pharmacist engaged in the wholesale drug business only, to sell alcohol to any other person than a retail druggist, a hospital, or a manufacturer, licensed to purchase the same under the provisions of this act, and it shall be unlawful for any person other than a registered druggist or pharmacist to sell alcohol for any purpose whatsoever, and it shall be unlawful for any druggist or pharmacist, or any other person, to dilute or adulterate alcohol, or compound it with any other substance in such proportions that it shall be capable of being used as a beverage, and sell, barter, exchange, give away, furnish, or otherwise dispose of the same, or to permit any alcohol to be diluted or adulterated, or compounded with any other substance, and drunk on the premises where sold. It shall be the duty of every druggist or pharmacist, engaged in the retail drug business, selling any alcohol for any of the purposes above provided, or to any

person holding a permit to purchase the same, to keep, in a well bound book provided by him for that purpose, a true and correct record of each sale made, and to enter in such record, at the time of every sale of alcohol made by him, or in or about his place of business, the date of sale, the name of the purchaser, his place of residence (stating the street name and house number, if such there be, and the city or town, and county of such residence), the quantity and price of the alcohol, the purpose for which it was sold, the date and number of the permit upon which it was sold, and the name of the county in which said permit was issued, and the initials of the person making the sale, and to require the purchaser to sign the record in the book. Such record of sales, shall be open to inspection by any prosecuting attorney, city attorney, justice of the peace, sheriff, constable, marshal, police officer, mayor or commissioner of any city or town, or member of a city or town council. It shall be unlawful for any druggist or pharmacist, or any other person, to destroy, mutilate or in any way alter any such record or an entry therein, or to permit or procure the same to be destroyed, mutilated or altered, or to refuse inspection thereof to any person entitled to such inspection, or to sell or to ship to any person holding a permit to purchase the same, any alcohol in excess of the quantity specified in such permit, or to sell any alcohol without obtaining the signature of the purchaser, in case delivery is made to the purchaser, or entering the name of the carrier to whom the alcohol was delivered for transportation, in the record of the sale, or to deliver any package containing alcohol so sold, without securely affixing thereto in a conspicuous place on the outside thereof, an original permit for the purchase of the same, issued to the purchaser, by a county auditor of this state, within thirty days prior to the date of such sale, and in case of delivery to the purchaser, without defacing and canceling such original permit, so that it cannot be used again, and receiving, from the purchaser the duplicate permit, of like number, date and tenor as the original, dated on the date of the sale, and signed by the purchaser in the same handwriting as the signature of the applicant upon the original permit, and witnessed by the person making the sale, but in case delivery is to be made by a common carrier, or person engaged in the business of transporting goods, wares and merchandise, it shall be lawful for the druggist or pharmacist, selling alcohol upon a permit to purchase the same, after securely affixing the original permit to the package containing the alcohol, in a conspicuous place on the outside thereof, to deliver such package to such common carrier for transportation to the person named in the permit, without defacing or canceling such permit, and in such case it shall be unlawful for such carrier to deliver such package to any other person than a forwarding common carrier, or the person named in the original permit attached to such package; or for any such common carrier or forwarding carrier to deliver such package to the person named in the permit, without defacing and canceling such original permit so that it cannot be used again, and receiving, from the person named in the permit, the duplicate permit of like number, date and tenor as the original, dated on the day of delivery, and signed by the person named in the permit

in the same handwriting as the signature of the applicant, upon the original permit, and witnessed by the person making the delivery. It shall be unlawful for any druggist or pharmacist, who has been or shall be convicted of any violation of the provisions of this act, to within two years thereafter, sell alcohol for any purpose whatsoever, and upon a second conviction of any such violation such druggist or pharmacist shall, in addition to the penalty provided by this act for such violation, forfeit his right to sell drugs or practice pharmacy, as the case may be, and it shall be the duty of the justice of the peace or judge of the superior court, before whom such second conviction is had, to so adjudge and to transmit a certified copy of such judgment to the board of pharmacy, and such board shall forthwith, upon the receipt of such copy, cancel the license of such druggist or pharmacist, and no other license shall be issued to such druggist or pharmacist within two years from the date of such cancellation. It shall be the duty of every druggist and pharmacist, and of every common carrier, to keep on file all duplicate permits for the purchase of alcohol, received upon the delivery thereof to the persons named in such permits, and such duplicate permits shall be open to inspection by any prosecuting attorney, city attorney, justice of the peace, sheriff, constable, marshal, police officer, mayor or commissioner of any city or town council, and it shall be unlawful for any druggist or pharmacist, or common carrier, or any other person, to destroy, mutilate, or in any way alter any such duplicate permit, or to permit or procure the same to be destroyed, mutilated or altered or to refuse inspection thereof, to any person entitled to such inspection. [L. '17, p. 46, § 1. Cf. L. '15, p. 4, § 7.]

Cited in 92 Wash. 3; 95 Wash. 481, 529, 530; 97 Wash. 570; 98 Wash. 281, 282; 99 Wash. 197, 451, 649, 651; 110 Wash. 73.

Druggists: See Remington's Digest, Int. Liq., § 26; *Rosenoff v. Cross*, 95 Wash. 525, 164 Pac. 236.

Where a registered pharmacist not engaged in business acquired a stock of intoxicating liquors before the prohibition law went into effect, and admitted that he kept them for a future druggist's business, instead of shipping them out of the state within ten days as required by law, the liquor is contraband and subject to condemnation in a proceeding in rem, and the owner cannot recant and reclaim the liquor to be kept for personal use in his home, the intent being an important element of the offense: *State v. Martin*, 92 Wash. 366, 159 Pac. 88.

This act refers only to druggists or pharmacists actively engaged in business; hence possession of an excess quantity by a registered pharmacist, not engaged in business either when the liquors were acquired or seized is an unlawful possession and not justified by the fact of acquisition before the law went into effect nor by intent to engage in the business: *State v. Martin*, 92 Wash. 366, 159 Pac. 88.

Under this section and section 7320, prescribing the manner in which druggists may secure intoxicating liquors "for use for purposes permitted by this law only," a druggist is guilty of unlawful possession of liquors in excess of the quantity in which they are procurable by others, when they are not kept for sale and disposition as prescribed in this section, and an information therefor is sufficient where it negatives possession for any and all lawful purposes: *State v. Gray*, 98 Wash. 279, 167 Pac. 951.

The fact that a druggist stored five quarts of whisky in his home does not show an intent to dispose of it unlawfully, as the law does not require that druggist's stocks of liquor be stored in any particular building: *State v. Snell*, 99 Wash. 195, 169 Pac. 320.

The good faith of a druggist in selling grain alcohol for mechanical purposes is put in issue by an information charging that the defendant knew at the time of the sale that it was not to be used, and was not sold, for such purposes: *State v. Holland*, 99 Wash. 645, 170 Pac. 332.

An allegation in an information for the unlawful sale of liquor that the defendant was a druggist and pharmacist is an immaterial description of the person and not an essential part of the main

charge that need be proved, under this section and § 7309, *supra*: *State v. Bartow*, 95 Wash. 480, 164 Pac. 227.

A complaint in justice court against a druggist for selling intoxicating liquors in contravention of an ordinance is sufficient without alleging the name of the individual to whom the liquor was sold: *State v. Koerner*, 103 Wash. 516, 175 Pac. 175.

Upon the prosecution of a druggist for keeping intoxicating liquors intended for unlawful sale, the quantity and kind of liquor kept on hand by the defendant is material, but not conclusive, to show that he had in possession quantities and kinds in excess of his apparent needs: *State v. McCaskey*, 97 Wash. 401, 166 Pac. 1163.

In a prosecution of a druggist for keeping specified liquors, it is error to admit evidence of possession of alcohol not named in the information: *State v. McCaskey*, 97 Wash. 401, 166 Pac. 1163.

The good faith of the druggist is an issuable fact: *State v. Holland*, 99 Wash. 645, 170 Pac. 332.

Admissibility of Evidence: See *Remington's Digest*, Int. Liq., § 49; *State v. Billingsley*, 99 Wash. 445, 169 Wash. 845.

This section did not prevent a convicted druggist from selling, in December, 1918, his drug-store and business as a whole, including liquor stock on hand: *State v. Northern Pacific R. Co.*, 110 Wash. 69, 188 Pac. 3.

Issues, Proof and Variance: See *Remington's Digest*, Int. Liq., § 47; *State v. McCaskey*, 97 Wash. 401, 166 Pac. 1163; *State v. Holland*, 99 Wash. 645, 170 Pac. 332.

§ 7313. [6262-8.*] Physicians' Prescriptions.

Nothing in this act shall be construed to prohibit a licensed physician from administering alcohol, but it shall be unlawful for any licensed physician to administer diluted or adulterated alcohol, or alcohol compounded with any other substance, in such proportions that it shall be capable of being used as a beverage, and, it shall be unlawful for any licensed physician to issue a prescription for alcohol to be diluted or adulterated, or compounded with any other substance in such proportions that it shall be capable of being used as a beverage, and it shall be unlawful for any druggist or pharmacist to knowingly fill any prescription for any diluted or adulterated alcohol or alcohol compounded with any other substance, in such proportions that it shall be capable of being used as a beverage. [L. '17, p. 49, § 2. Cf. L. '15, p. 6, § 8.]

Cited in 92 Wash. 4; 107 Wash. 689; 110 Wash. 103.

Physicians.—Upon a prosecution for issuing a prescription for whisky without reason to believe that the applicant was actually sick or that the liquor was

Time as Element of Offense.—Upon a prosecution of a druggist for keeping intoxicating liquors intended for unlawful sale, on or about the twenty-fourth day of March, evidence of the presence of liquors on the premises four days later is admissible, inasmuch as it is provided by statute that the precise time is not a material allegation: *State v. McCaskey*, 97 Wash. 401, 166 Pac. 1163.

A conviction of a druggist for an illegal sale of alcohol for other than mechanical or chemical purposes is sustained by the testimony of two detectives making the purchase to the effect that the defendant was informed at the time of making the sale that it might be used for other purposes; their credibility being for the jury: *State v. Holland*, 99 Wash. 645, 170 Pac. 332.

INSTRUCTIONS: See *Remington's Digest*, Int. Liq., § 51; *State v. Billingsley*, 99 Wash. 45, 169 Pac. 845; *State v. Gray*, 98 Wash. 279, 167 Pac. 951.

Validity of statute regulating use and sale of liquor by druggists. 10 *Ann. Cas.* 401.

Legality of sale by druggist as affected by element of intent or good faith. *Ann. Cas.* 1912D, 1345.

Must indictment or information for sale of liquor by druggists on prescription state name of purchaser. 23 *L. R. A. (N. S.)* 583.

May records of sales of liquor, which druggist is required by law to keep, be used as evidence against him in a criminal prosecution. 25 *L. R. A. (N. S.)* 818; 20 *Ann. Cas.* 1182.

required as medicine, evidence is admissible of the issuance by the accused of other prescriptions to various persons within a specified time, as bearing upon the issue of good faith: *Seattle v. Hewetson*, 95 Wash. 612, 164 Pac. 234.

In the prosecution of a physician for prescribing intoxicating liquors without good reason to believe that the patient was sick and required the liquor as medicine, evidence is admissible of the number of prescriptions given by the defendant to various persons about the same time, upon the issue as to the defendant's good faith. *Everett v. Cowles*, 97 Wash. 396, 166 Pac. 786.

This section, prior to amendment, providing that it shall be unlawful for a physician, after twice convicted of violating the prohibition law, to thereafter write any prescription for intoxicating liquor, is a valid exercise of legislative power: *State v. Emonds*, 107 Wash. 688, 182 Pac. 584.

In a prosecution of a physician for prescribing intoxicating liquors without

good reason to believe that the patient was sick and required the liquor as medicine it is not necessary to prove the physical condition of the patient, where quantities were prescribed in excess of the directions: *Everett v. Cowles*, 97 Wash. 396, 166 Pac. 786; *State v. Raub*, 103 Wash. 214, 173 Pac. 1094.

In a prosecution for illegally prescribing whisky to a patient, within such time as obviously called for more than was needed, the question of good faith being an issue under the statute, evidence of the issuance of fifty-six other prescriptions to other patients at or about the same time is admissible and is not objectionable as evidence of other crimes: *State v. Raub*, 103 Wash. 214, 173 Pac. 1094.

§ 7314. [6262-9.] Evidence—Internal Revenue Receipts and Records.

The issuance of an internal revenue special tax stamp or receipt by the United States to any person as a retail dealer in intoxicating liquor, shall be prima facie evidence of the sale of intoxicating liquor by such person at the place of business of such person where such stamp or receipt is posted, if, at the time, the stamp or receipt is in force and effect: Provided, that this section shall not apply to druggists. A copy of such stamp or of the records of the United States Internal Revenue office certified to by any United States Internal Revenue officer, deputy or assistant having charge of such records or stamps, which shows that the United States special liquor tax has been paid by any person charged with selling, bartering, exchanging, giving away, furnishing or otherwise disposing of intoxicating liquor in violation of this act, shall be competent and prima facie evidence that the person whose name appears on said records or stamp, as shown by said certified copy has paid the special liquor tax for the time stated therein. [L. '15, p. 7, § 9.]

Cited in 92 Wash. 4.

§ 7315. [6262-10.] Clubhouses for Distribution Among Members.

It shall be unlawful for any person to directly or indirectly keep or maintain by himself or by associating with others, or to in any manner aid, assist, or abet in keeping or maintaining any clubhouse or other place in which intoxicating liquor is received or kept for the purpose of use, gift, barter or sale or for the purpose of distribution or division among the members of any club or association. [L. '15 p. 7, § 10.]

Cited in 92 Wash. 4.

Serving liquors to members of a social club, at a fixed price, but not for profit, is a sale within the meaning of an act prohibiting their sale without first obtaining a license; since the matter of making a profit is immaterial and the principal object of the law is regulative: *Spokane v. Baughman*, 54 Wash. 315, 103 Pac. 14.

When distribution or sale of liquor by social clubs a violation of law. 24 *Am. St. Rep.* 35; 5 *A. L. R.* 1192; 10 *Ann. Cas.* 386; *Ann. Cas.* 1912A, 1088; *Ann. Cas.* 1915B, 1064; *Ann. Cas.* 1916D, 940; 12 *L. R. A. (N. S.)* 519; 20 *L. R. A.* 1095; *L. R. A.* 1915C, 877.

§ 7316. [6262-11.] Searches and Seizure.

If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court or justice of the peace that there is probable cause to believe that intoxicating liquor is being manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept in violation of the provisions of this act, such justice of the peace or judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any peace officer in the county, commanding him to search the premises designated and described in such complaint and warrant, and to seize all intoxicating liquor there found, together with the vessels in which it is contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing or otherwise disposing of such liquor, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such intoxicating liquor, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found, or, if there be no door, then in any conspicuous place upon the premises. [L. '15, p. 7, § 11.]

See supra, § 2240-1, warrant for search of dwelling necessary.

Cited in 92 Wash. 4; 95 Wash. 290, 291, 292; 99 Wash. 197; 104 Wash. 546, 547, 549.

SEARCHES AND SEIZURES—Property Subject, Warrants and Procedure: See Remington's Digest, Int. Liq., § 53; State ex rel. Hodge v. Gordon, 95 Wash. 289, 163 Pac. 772; State v. Great Northern R. Co., 98 Wash. 197, 167 Pac. 103; State v. Snell, 99 Wash. 195, 169 Pac. 320; State v. Great Nor. R. Co., 101 Wash. 464, 172 Pac. 546.

See, also, State v. Twenty Barrels of Whiskey, 104 Wash. 382, 176 Pac. 673.

A boat on which intoxicating liquors are found is not subject to seizure and

forfeiture by a justice of the peace, under this section, providing for the seizure and forfeiture of all "implements, furniture and fixtures" used or kept for the illegal sale of intoxicating liquors; in view of section 7310, supra, providing that premises, buildings, vehicles or boats unlawfully used may be abated as nuisances by action to be brought in the superior court, and may be released upon bond: Van Bug Fish Co. v. Herstrom, 104 Wash. 545, 177 Pac. 3334.

Constitutional guarantees against unreasonable searches and seizures, as applied to search for or seizure of intoxicating liquors. 3 A. L. R. 1514; 13 A. L. R. 1316.

§ 7317. [6262-12.] Hearings—Burden of Proof—Proceedings.

Upon the return of the warrant as provided in the next preceding section, the judge or justice of the peace shall fix a time not less than ten days, and not more than thirty days thereafter, for the hearing of said return when he shall proceed to hear and determine whether or not the articles so seized, or any part thereof, were used or in any manner kept or possessed by any person with the intention of violating any of the provisions of this act. At such hearing, any person claiming any interest in any of the articles seized may appear and be heard upon filing a written claim setting forth particularly the character and

extent of his interest, but upon such hearing, the sworn complaint or affidavit upon which the search-warrant was issued and the possession of such intoxicating liquor shall constitute prima facie evidence of the contraband character of the liquor and articles seized, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest in the articles claimed and that the same were not used in the violation of any of the provisions of this act, and were not in any manner kept or possessed with the intention of violating any of the provisions of this act. If, upon such hearing, the evidence warrants, or if no person shall appear as claimant, the judge or justice of the peace shall thereupon enter a judgment of forfeiture, and, order such articles destroyed forthwith: Provided, however, that if in the opinion of the justice of the peace or judge, any of such forfeited articles other than intoxicating liquor are of value and adapted to any lawful use, such judge or justice of the peace shall as a part of the order and judgment direct that said articles other than intoxicating liquor shall be sold as upon execution by the officer having them in custody and the proceeds of such sale after payment of all costs in this proceeding shall be paid into the common school fund of the school district in which the same were seized. Action under this section and the forfeiture, destruction or sale of any articles thereunder shall not be a bar to any prosecution under any other provision or provisions of this act. [L. '15, p. 8, § 12.]

See notes to § 7316, *supra*.

Cited in 92 Wash. 4; 95 Wash. 291, 293; 98 Wash. 200, 203; 99 Wash. 197, 198; 104 Wash. 546, 547, 549; 110 Wash. 70.

gest, Int. Liq., § 48; State v. Great Northern R. Co., 98 Wash. 197, 167 Pac. 103; State v. Gray, 98 Wash. 279, 167 Pac. 951.

Burden of Proof: See Remington's Di-

§ 7318. [6262-13.] Exoneration of Witnesses Criminating Selves.

In any action or proceeding under this act or under any other law relating to the unlawful disposition or possession of intoxicating liquor, no person shall be excused from testifying in any court or before any grand jury, on the ground that his testimony may incriminate him, but no person shall be prosecuted or punished on account of any transaction or matter or thing concerning which he shall be compelled to testify, nor shall such testimony be used against him in any prosecution for any crime or misdemeanor, under the laws of this state. [L. '15, p. 9, § 13.]

Cited in 92 Wash. 4; 108 Wash. 290.

This section does not render a witness immune from prosecution where he tes-

tified voluntarily without claiming his privilege: State v. Whalen, 108 Wash. 287, 183 Pac. 130.

§ 7319. [6262-14.] Associate Counsel for Prosecuting Attorney.

Any citizen or organization within this state may employ an attorney to assist the prosecuting attorney in any action or proceeding under this act, and such attorney shall be recognized by the prosecuting attorney and the court as associate counsel in the case, and no prosecution shall be dismissed over the objection of such associate counsel until the reasons of such prosecuting attorney for such dismissal, to-

gether with the objections of such associate counsel, shall have been filed in writing, argued by counsel and fully considered by the court. [L. '15, p. 9, § 14.]

Cited in 92 Wash. 4.

§ 7320. [6262-17.*] Application for Shipment by Druggists.

Every registered druggist or pharmacist actually engaged in the wholesale drug business in this state and desiring to import alcohol for sale under the provisions of this act, and every registered druggist or pharmacist actually engaged in the retail drug business in this state and desiring to import or purchase alcohol for sale or for use in compounding and manufacturing drugs and medicines, under the provisions of this act, and every person actually engaged in maintaining and conducting a hospital, containing not less than twenty beds for patients, and desiring to import or purchase alcohol for use in such hospital for medicinal, surgical, massage, antiseptic or other hospital purposes only, under the provisions of this act, and every person actually engaged in the business of manufacturing products containing alcohol, other than intoxicating liquors, or products requiring the use of alcohol in their process of manufacture, and desiring to import or purchase alcohol for use in manufacturing such products, under the provisions of this act, shall file with the county auditor, of the county in which his place of business is situated, an application for a license so to do, and every person desiring to purchase alcohol from a retail druggist for mechanical, chemical, scientific, medicinal, or hygienic purposes, under the provisions of this act, shall make and file with the county auditor of the county in which he resides, an application in writing for a permit so to do. Every such application for a license to import or purchase alcohol shall be in writing in duplicate and be signed and verified under oath by the applicant, that the statements therein contained are true, and shall state: the name and place of residence of the applicant; the name under which he is engaged in business; the exact location of his place of business (giving the street name and number, if any there be, and the city or town and county); the nature of the business in which the applicant is engaged, whether wholesale, retail, maintaining a hospital or manufacturing, and, in case of a hospital, the number of beds for patients therein, and in case of manufacturing, the products manufactured; that it is necessary from time to time to import or purchase alcohol; the quantities and frequency of such importations or purchases; that such alcohol is not to be used, sold or disposed of in violation of law, but is to be obtained for sale or use in compliance with the provisions of this act; that the applicant, or the officers, or agents or servants in charge of the business of a corporation applicant, or the members of a copartnership applicant, have not, within two years prior to the date of the application, been convicted of any violation of the provisions of this act; and, in case the application is made on behalf of a corporation or a copartnership, shall state the names and places of residence of the managing officers of the corporation, or of the members of the copartnership, as the case may be, and the official position or other connection therewith of the

person signing and verifying the application. Applications for licenses to import or purchase alcohol for wholesale, retail or manufacturing purposes or any of them may be combined, and licenses granted for one or more of such purposes: Provided, that a license to import or purchase alcohol for sale, shall not be granted to an applicant engaged in manufacturing only. Every such application for a permit to purchase alcohol from a retail druggist for mechanical, chemical, scientific, medicinal or hygienic purposes, shall be signed and verified under oath by the applicant, that the statements contained therein are true, and shall state the name and place of residence of the applicant, (giving the street name and house number, if any there be, and the city or town and county) the quantity of alcohol which he desires to purchase, the purpose for which he desires to purchase and use the same, and the facts showing his reasonably necessary use therefor. [L. '17, p. 50, § 3; L. '15, p. 12, § 17.]

Cited in 92 Wash. 4; 95 Wash. 526—528; 97 Wash. 142; 98 Wash. 282, 284, 286; 99 Wash. 197; 101 Wash. 468; 104 Wash. 385.

Permits to Druggist: See *Rosenoff v. Cross*, 95 Wash. 525, 164 Pac. 236.

See notes to § 7312, *supra*.

Transportation: See *Remington's Digest*, Int. Liq., § 29; *State v. Warburton*, 97 Wash. 242, 166 Pac. 615; *State v. Great Northern R. Co.*, 97 Wash. 137, 165 Pac. 1073, 167 Pac. 1117; *State v. Great Northern R. Co.*, 98 Wash. 197, 167 Pac. 103.

One who ships liquor into this state in violation of the prohibition law, through the instrumentality of an agent, is liable as though he had personally participated, although out of the jurisdiction; and a common carrier may be made the agent

in this sense: *State v. Warburton*, 97 Wash. 242, 166 Pac. 615.

Sufficiency of Evidence: *State v. Sullivan*, 97 Wash. 639, 166 Pac. 1123; *State v. Gray*, 98 Wash. 279, 167 Pac. 951; *State v. Great Northern R. Co.*, 98 Wash. 197, 167 Pac. 103; *State v. Pierce*, 113 Wash. 694, 194 Pac. 546.

After a shipment of intoxicating liquor to a druggist has been seized as contraband, the time limit for delivery having expired, the shipper cannot rescind the sale, interrupt the transit, and claim the liquor for reshipment out of the state, in view of this section, providing that the permit shall be void at the expiration of thirty days and making it unlawful for the carrier to transport any liquor without a valid permit: *State v. Twenty Barrels of Whiskey*, 104 Wash. 382, 176 Pac. 673.

§ 7321. Import for Sacramental Purposes—Application for Licenses.

Every regularly ordained clergyman, priest or rabbi, actually engaged in ministering to a religious congregation and desiring to import intoxicating liquor for sacramental purposes only, shall file with the county auditor of the county in which his congregation has its place of worship, an application for a license so to do. Every such application shall be in writing, in duplicate, and be signed and verified under oath, or upon affirmation, by the applicant, that the statements therein contained are true, and shall state: the name and place of residence of the applicant; the office which he holds; the place and date of his ordination; the name of the congregation to which he ministers and the exact location of its place of worship (giving the street name and number, if any there be, and the city or town and county); that it is necessary from time to time to import intoxicating liquor for sacramental purposes; the kind of liquor; the quantities and frequency of such importations; that such intoxicating liquor is not to be sold or disposed of in violation of law, but is to be imported and used for sacramental purposes only; and that the applicant has not, within two

years prior to the date of the application, been convicted of any violations of the provisions of this act. [L. '17, p. 52, § 4.]

§ 7322. Hearing of Application—Issuance of License—Appeals—Permits.

Upon the filing of an application for a license to import or purchase alcohol, or to import intoxicating liquor for sacramental purposes, as provided in the preceding sections, and the payment of a fee of three dollars, it shall be the duty of the county auditor to give the application a serial number and set it for hearing at a time not less than ten or more than twenty days from the date of filing, to notify the applicant of the time and place of the hearing, and to transmit the duplicate application, with the serial number and time and place of hearing indorsed thereon, to the prosecuting attorney of the county, and it shall be the duty of the prosecuting attorney to investigate the facts stated in the application, and attend the hearing and inform the auditor of the result of such investigation. At the hearing the applicant shall appear and offer such proof in support of the application as the auditor may reasonably require, and the prosecuting attorney may offer such proof in opposition to granting the application as the auditor may deem material, which proof may be affidavit or other documentary evidence, and the auditor shall have power to administer oaths and examine witnesses under oath. If at the hearing it shall appear to the auditor that the applicant, or any officer, agent or servant in charge of the business of a corporation applicant, or member of a copartnership applicant, has been convicted of a violation of any of the provisions of this act within two years prior to the date of the application, or that the person signing the application has willfully made any false statement therein, the application shall be denied. If it shall appear to the auditor that the statements contained in the application are true, and that the license is sought in good faith and for a lawful purpose, he shall issue a license in the name of the applicant and bearing the serial number of the application, granting to the licensee the right, for the period of one year from the date of the license, to have issued to him from time to time, and at such intervals only as are specified in the license, permits for the importation or purchase, and transportation of alcohol for the purpose or purposes to be specified in the license, or for the importation and transportation of intoxicating liquor, for sacramental purposes only, of such kind as may be specified in the license, as the case may be, in such quantities, to be specified in the license, as the auditor may determine are reasonably required by the licensee for the purposes specified. Every such license shall be signed by the auditor or his authorized deputy, be sealed with his official seal, and bear the date of its issue, and be issued in duplicate and one of such duplicates shall be filed in the auditor's office with the application therefor, and such license shall remain in force for the period of one year from the date of issue, unless sooner revoked by order of court or by the county auditor, upon notice to the licensee and a finding made that the licensee has ceased to do business at the place specified in the application, or in case of a clergyman, priest or rabbi, has ceased to minister to the congregation specified, or that the

licensee, or some officer, agent or servant in charge of the business of a corporation licensee, or some member of a copartnership licensee, has been convicted of a violation of this act. Any applicant feeling himself aggrieved by the refusal of a county auditor to grant a license, or by the restrictions, as to quantities or intervals of importation or purchase, contained in any license granted, or any licensee feeling himself aggrieved by any revocation of his license by the county auditor, or any prosecuting attorney believing that any license has been wrongfully issued, or that such license does not contain the proper restrictions as to the quantities or intervals of importation or purchase, or that the auditor has wrongfully refused to revoke a license, may, at any time within ten days from the date of the decision of the auditor, appeal therefrom to the superior court of the county, by filing with the auditor, and serving upon the applicant or licensee, or prosecuting attorney, as the case may be, a notice in writing setting forth the decision appealed from, and all such appeals shall be heard de novo and summarily determined as the court may in the exercise of a sound discretion decide. Upon the filing of an application for a permit to purchase alcohol from a retail druggist, and the payment of a fee of ten cents, the county auditor, if he shall be satisfied of the truth of the statements made in the application, and that the applicant is of good moral character, shall issue to the applicant an original and duplicate permit of like number and date as the application, which permit shall be for such quantity of alcohol as the auditor, in the exercise of a sound discretion, shall determine is reasonably necessary for the needs of the applicant, for the purposes stated in the application. If the county auditor shall have reason to believe that the applicant has made any false statement in the application, or that the application is not made in good faith, and for a legitimate purpose, he may require the applicant to be identified and vouched for by some reputable citizen of the county. [L. '17, p. 52, § 5.]

§ 7323. Alcohol and Sacramental Liquors—Permits for Importation.

So long as any license, issued under the provisions of the preceding section, shall remain in force, the county auditor shall, from time to time and at such intervals only as are specified in the license, and upon the filing of a request therefor in writing signed and verified under oath by the licensee and stating the number of the license and the amount of alcohol, or other intoxicating liquor as the case may be, remaining on hand of previous importations or purchases, and the payment of a fee of ten cents for each permit, issue to the licensee permits for the importation or purchase and transportation of alcohol, or the importation and transportation of intoxicating liquor for sacramental purposes only, as the case may be, in accordance with the terms of the license, and shall indorse the numbers of the permits issued on the request, with the date of issue, and file the same with the original application and the duplicate license. Blank forms of permits shall be printed on paper of such quality, color, size and shape, and with such style of type, as may be determined from time to time, and at least once in each calendar year, by the state bureau of inspection and supervision

printed: "Received the above described shipment this — day of —, 19—.

_____,
Consignee."

All permits, both original and duplicate, shall be signed by the county auditor issuing the same, or by his authorized deputy, and bear the serial number of the license upon which they are issued, the serial number of the individual permit, the date of issue, and the official seal of the auditor. Permits for the purchase of alcohol for mechanical, chemical, scientific, medicinal or hygienic purposes, from a retail druggist, shall be in substantially the form of permits for the importation, or purchase, of alcohol, as hereinabove set forth, except that they shall not bear the license number, or contain the word "import." [L. '17, p. 55, § 6.]

§ 7324. Alcohol Sales by Wholesale Druggists—Transportation.

It shall be unlawful for any wholesale druggist licensed to import alcohol under the provisions of this act, to sell alcohol to any person other than a retail druggist, hospital or manufacturer licensed to purchase the same under the provisions of this act, or to sell or ship any alcohol to any such licensed retail druggist, hospital or manufacturer, without affixing in a conspicuous place on each package containing the alcohol so sold, an original permit, issued by a county auditor as in this act provided, authorizing the purchase, or to sell or ship any quantity of alcohol in excess of that specified in the permit affixed to the package so sold or shipped, or to deliver to the purchaser any package of alcohol sold without defacing and canceling the original permit affixed thereto so that the same cannot be used again, and receiving the duplicate permit, of like number, date and tenor as the original, signed by the purchaser: Provided, that nothing herein contained shall be construed to prohibit a wholesale druggist from selling alcohol for export and shipping the same to a place outside the state, and it shall be unlawful for any common carrier or person engaged in the business of transporting goods, wares and merchandise to knowingly transport for delivery in this state any intoxicating liquor other than alcohol or any alcohol, without having an original permit, issued by a county auditor, as in this act provided, authorizing the transportation thereof, affixed in a conspicuous place on the package containing such intoxicating liquor or alcohol, or to knowingly transport intoxicating liquor of any other kind, than, or any quantity of intoxicating liquor or alcohol in excess of, that specified in the permit affixed to the package so transported, or to deliver such package of intoxicating liquor or alcohol, to any other person than a forwarding common carrier or the consignee named in the permit affixed to such package, or to deliver such package to the consignee, without defacing and canceling the original permit affixed thereto so that the same cannot be used again and receiving the duplicate permit, of like number, date and tenor, as the original, signed by the consignee, and it shall be unlawful for any person, other than a forwarding common carrier, to knowingly receive from any common carrier or person engaged in the business of transporting goods, wares

and merchandise, any intoxicating liquor other than alcohol or any alcohol, without the package containing the same has affixed thereto, in a conspicuous place, the original permit for the transportation thereof properly defaced and canceled, or without delivering the duplicate permit signed by the consignee named therein, or for any other person than the consignee named therein to sign and deliver such duplicate permit. It shall be the duty of every wholesale druggist and of every common carrier to keep on file all duplicate permits for the importation or purchase, and transportation, of alcohol or intoxicating liquor, received upon the delivery thereof to the consignee, and such duplicate permit shall be open to inspection by any prosecuting attorney, city attorney, justice of the peace, sheriff, constable, marshal, police officer, mayor or commissioner of any city or town, or member of a city or town council. It shall be unlawful for any wholesale druggist or pharmacist, or common carrier, or any other person, to destroy, mutilate or in any way alter any such duplicate permit, or to permit or procure the same to be destroyed, mutilated or altered, or to refuse inspection thereof to any person entitled to such inspection. [L. '17, p. 57, § 7.]

§ 7325. Permits, License Necessary.

It shall be unlawful for any county auditor, deputy county auditor or other person, to issue a permit for the importation or purchase, and transportation of alcohol, or intoxicating liquor for sacramental purposes, except upon and in accordance with the terms of a license duly issued authorizing the issuance of such permit except permits for the purchase of alcohol for mechanical, chemical, scientific, medicinal or hygienic purposes, from a retail druggist, as herein above provided. [L. '17, p. 59, § 8.]

§ 7326. False Statements in Application.

It shall be unlawful for any person to willfully make any false statement in any application filed with any county auditor for the purpose of obtaining a permit to import or purchase, and transport alcohol, or intoxicating liquor for sacramental purposes, or to sign any other than his true name upon any such application, or upon any duplicate permit for the importation or purchase, and transportation of alcohol, or intoxicating liquor for sacramental purposes, for the purpose of obtaining any shipment thereof from a common carrier, or any purchase of alcohol from a wholesale or retail druggist, and every person convicted of a violation of any of the provisions of this section shall be guilty of a felony. [L. '17, p. 60, § 9.]

§ 7327. False Statements to Physicians.

It shall be unlawful for any person to make any false statement to a physician for the purpose of obtaining alcohol. [L. '17, p. 60, § 10.]

§ 7328. Possession of Intoxicating Liquor Unlawful—Unlawful Sales—Jointist—Bootlegger—Penalties.

It shall be unlawful for any person other than a regularly ordained clergyman, priest or rabbi actually engaged in ministering to a religious

congregation, to receive from any common carrier or person engaged in the business of transporting goods, wares and merchandise, any intoxicating liquor other than alcohol and it shall be unlawful for any person other than a regularly ordained clergyman, priest or rabbi actually engaged in ministering to a religious congregation, to have in his possession any intoxicating liquor other than alcohol.

Any person who opens up, conducts or maintains, either as principal or agent, any place for the unlawful sale of intoxicating liquor, be and hereby is defined to be a "jointist." Any person who carries about with him intoxicating liquor for the purpose of the unlawful sale of the same be and hereby is defined to be a "bootlegger." Any person convicted of being either a "jointist" or "bootlegger" as herein defined shall be deemed guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years.

A violation of any of the provisions of this section shall constitute a separate, substantive offense irrespective of any other provisions of this act. [L. '17, p. 60, § 11.]

Cited in 108 Wash. 607; 109 Wash. 162, 399; 110 Wash. 666; 111 Wash. 534, 538; 112 Wash. 54, 58.

Illegal Possession: See Remington's Digest, Int. Liq., § 30; State v. Eden, 92 Wash. 1, 158 Pac. 967, 159 Pac. 700; State v. Martin, 92 Wash. 366, 159 Pac. 88; State v. Clancy, 97 Wash. 410, 166 Pac. 778; Seattle v. Brookins, 98 Wash. 290, 167 Pac. 940; State v. Snell, 99 Wash. 195, 169 Pac. 320.

A conviction of the unlawful possession of whiskey is sustained, though accused testified it was found to be only colored water, where he obtained it from a drug-store at the agreed price for whiskey, approximately the same amount of whiskey disappeared from the store, and the accused signed a confession that he got the whiskey: State v. Seablom, 103 Wash. 53, 173 Pac. 721.

The possession of less than a pint of whiskey in an automobile is not necessarily unlawful, especially when knowledge of its presence is not shown: Mitchell v. Hughes, 104 Wash. 231, 176 Pac. 26.

This section, making it unlawful for any person except clergymen or priests to have possession of any intoxicating liquor other than alcohol, is not unconstitutional as abridging the privileges or immunities of citizens or as depriving any person of life, liberty or property without due process of law: State v. Giaudrone, 109 Wash. 397, 186 Pac. 870.

This section, amendatory of the prohibition act, providing that it shall be unlawful for any person except clergymen or priests to have possession of any intoxicating liquor other than alcohol, is inconsistent with and impliedly repeals the provisions of the original act making it lawful to give intoxicating liquors in a private residence to be

drunk on the premises: State v. Giaudrone, 109 Wash. 397, 186 Pac. 870.

It is not unlawful possession to partake of a friend's hospitality by drinking a glass of liquor, it being the intention that "possession" should be of such quantities or under such conditions as would make it available for unlawful transportation or sale: State v. Jones, 114 Wash. 144, 194 Pac. 585.

A conviction of the illegal possession of intoxicating liquor is sustained by proof that, during a search of the premises, accused threw a broken demijohn from the window, and intoxicating liquor was found dripping from it and on the floor and wall of the room: State v. Franich, 109 Wash. 17, 186 Pac. 259.

In a prosecution for illegal possession of intoxicating liquors, an instruction that there could be no conviction if the accused had an illegal quantity in his possession which he intended to be drunk by himself and guests at his private apartments is favorable to the accused: State v. Conner, 107 Wash. 571, 182 Pac. 602.

Excess Quantities: State v. Blackwell, 103 Wash. 337, 174 Pac. 646.

A conviction of possessing intoxicating liquors in excess of two quarts is sustained where the accused admitted the possession of two quarts of whiskey which he claimed belonged to another and a half quart of absinthe; and especially where there was evidence to justify a finding that he had possession of other intoxicating liquors: Seattle v. Brookins, 98 Wash. 290, 167 Pac. 940.

Under Rem. Code, section 6262-23, making possession of more than two quarts of intoxicating liquors other than beer prima facie evidence of possession for an unlawful purpose, in a prosecution of a druggist thereunder for the

possession of excess quantities at a place other than his place of business, the burden of proof is upon the defendant to prove possession of a permit for lawful transportation: *State v. Gray*, 98 Wash. 279, 167 Pac. 951.

Rem. 1915 Code, section 6262-22, of the initiative prohibition law, making it unlawful for any person to have in his possession more than the prescribed quantity of intoxicating liquors, applies only to liquor unlawfully held or obtained after the taking effect of the act, and not to an excess quantity acquired for personal use prior to the taking effect of the act in view of this section: *State v. Eden*, 92 Wash. 1, 158 Pac. 967, 159 Pac. 700. (But see *State v. Giaudrone*, 109 Wash. 397, 186 Pac. 870.)

BOOTLEGGING.—In a prosecution for bootlegging it is proper to instruct the jury as to both actual and constructive possession, and that one may have possession without having it actually on his person: *State v. Spillman*, 110 Wash. 662, 188 Pac. 915.

In a prosecution for bootlegging, the corpus delicti is sufficiently proved by admissions of the accused showing that part of the whiskey seized belonged to him and had been brought by him into the state, thinking he could sell it or give it to his friends: *State v. Spillman*, 110 Pac. 662, 188 Pac. 915.

This section defining bootlegging is not unconstitutional as punishing an "intent" without any overt act; or on the ground that it provides cruel and unusual punishment: *State v. Hessel*, 112 Wash. 53, 191 Pac. 637.

It is proper to admit evidence of separate and distinct unlawful sales, to

prove guilty intent: *State v. Hessel*, 112 Wash. 53, 191 Pac. 637.

It is error to refuse a requested instruction that defendant accused of bootlegging was not being prosecuted for other offenses: *State v. Hessel*, 112 Wash. 53, 191 Pac. 637.

Sufficiency of evidence to sustain a conviction: *State v. Hessel*, 112 Wash. 53, 191 Pac. 637; *State v. Sills*, 113 Wash. 497, 194 Pac. 580.

JOINTIST.—This section defining a jointist is not unconstitutional as making an "intent" criminal without any overt act: *State v. Burgess*, 111 Wash. 537, 191 Pac. 635.

This section is not unenforceable because of failing to specify any place of imprisonment, in view of § 2265, supra: *State v. Burgess*, 111 Wash. 537, 191 Pac. 635.

was committed in the county: *State v. Burgess*, 111 Wash. 537, 191 Pac. 635.

other than charging that the offense
An information against a jointist is sufficient without fixing the location

A charge of being a jointist is sufficient without alleging that defendant acted as principal or agent: *State v. Rousseau*, 111 Wash. 533, 191 Pac. 634; *State v. Burgess*, 111 Wash. 537, 191 Pac. 635.

Power to prohibit possession of intoxicating liquor, irrespective of any intention to traffic therein. 2 A. L. B. 1085; 19 Ann. Cas. 163; Ann. Cas. 1916A, 285; Ann. Cas. 1916E, 780; Ann. Cas. 1917E, 695; 26 L. B. A. (N. S.) 394; L. B. A. 1915D, 172; L. B. A. 1917D, 938.

§ 7329. [6262-23.*] Prosecutions—Prima Facie Evidence.

In any prosecution for the violation of any provision of this act, it shall be competent to prove that any person, other than a regularly ordained clergyman, priest or rabbi actually engaged in ministering to a religious congregation, had in his possession any intoxicating liquor other than alcohol, and such possession and proof thereof shall be prima facie evidence that said liquor was so held and kept for the purposes of unlawful sale or disposition. [L. '17, p. 61, § 12. Cf. L. '15, p. 15, § 23.]

Cited in 92 Wash. 5, 7—9; 98 Wash. 283, 287; 104 Wash. 302; 106 Wash. 551, 552; 107 Wash. 573; 109 Wash. 18; 110 Wash. 665.

An information charging, in the language of Rem. Code, § 6262-22, the unlawful possession of an excess quantity of whiskey is sufficient without alleging that it was held for unlawful sale or disposition, in view of the section making possession of more than two quarts prima facie evidence that it was kept for unlawful sale or disposition: *State v. Bachtold*, 106 Wash. 550, 182 Pac. 602.

Under this section, proof of the possession of twenty-five gallons raises a question for the jury, notwithstanding defendant testified to its lawful acquisition and that it was kept for his personal use: *State v. Bachtold*, 106 Wash. 550, 182 Pac. 602.

This section making possession of more than two quarts of intoxicating liquors prima facie evidence that it was kept for unlawful sale or disposition, proof of the possession of twenty-three quarts of whiskey raises a question for the jury, notwithstanding defendant testified

to its lawful acquisition and that it was kept for his personal use: *State v. Conner*, 107 Wash. 571.

In a prosecution for illegal possession of intoxicating liquors, the burden is upon the defendant to show that he was not a clergyman, priest or rabbi, excepted by this section: *State v. Harding*, 108 Wash. 607, 185 Pac. 579; *State v. Franich*, 109 Wash. 17, 186 Pac. 259.

This section, providing that, in any prosecution under the act, possession of any intoxicating liquor other than alcohol shall be prima facie evidence that the liquor was kept for the purpose of unlawful sale, is applicable to a prosecution for bootlegging as well as to prosecution for unlawful possession: *State v. Spillman*, 110 Wash. 662, 188 Pac. 915.

§ 7330. Prosecutions, Burden of Proof.

In any prosecution for the violation of the provisions of this act, it shall not be necessary for the indictment or information, or complaint, to set forth any negative allegation, nor for the plaintiff to prove that the defendant does not come within any of the exceptions herein contained; but such exceptions shall be considered as a matter of defense, and the burden shall be upon defendant to show that he comes within such exceptions. [L. '19, p. 53, § 1.]

See notes to § 7328, supra.

§ 7331. [6262-24.] Unbroken Packages in Interstate Commerce.

The provisions of this act relating to the shipment or having in possession of intoxicating liquor shall not apply to shipments transported by any common carrier of unbroken packages of intoxicating liquor in continuous transit through this state from a point outside of the state to another point outside of the state. [L. '15, p. 15, § 24.]

Cited in 92 Wash. 5; 98 Wash. 203.

Under this section, it was the duty of a common carrier to accept a shipment in continuous transit through this state unless it knew the goods were to be diverted and made contraband: *State v. Great Northern R. Co.*, 98 Wash. 197, 167 Wash. 103.

In proceedings to seize from a common carrier a shipment of liquor billed from Butte, Montana, to Alaska, and prima facie an interstate shipment, per-

mitted by this section, the burden was upon the state to show that the goods were contraband and not a bona fide interstate shipment, notwithstanding section 7317, casts the burden of proof upon any person claiming any interest in the goods to show by competent evidence his property right therein, and that the articles were not used in violation of the act: *State v. Great Northern R. Co.*, 98 Wash. 197, 167 Pac. 103.

§ 7332. [6262-25.] Vinegar, Cider, Fruit Juice, Denatured Alcohol.

The provisions of this act shall not be construed to prohibit the manufacture of vinegar, sweet cider, or unfermented fruit juice for domestic consumption or for sale, nor to prohibit the manufacture and sale of denatured alcohol. [L. '15, p. 15, § 25.]

Cited in 92 Wash. 5.

§ 7333. [6262-26.] Partial Invalidity of Act.

If any provision or section of this act shall be held void or unconstitutional, all other provisions and all other sections of the act, which are not expressly held to be void or unconstitutional, shall continue in full force and effect. [L. '15, p. 15, § 26.]

Cited in 92 Wash. 5.

Under this section, the constitutionality of other parts of the act is not affected by the unconstitutionality of section 7341, providing that the act shall

take effect and be in full force from and after the first day of January, 1916: *Gottstein v. Lister*, 88 Wash. 462, 153 Pac. 595, Ann. Cas. 1917D, 1008.

§ 7334. [6262-27.] Citizens may Prosecute.

Every justice of the peace or superior judge shall recognize and act upon any sworn complaint of a violation of this act filed by any citizen of the state in the same manner and to the same extent as though the same were filed by a prosecuting officer. [L. '15, p. 15, § 27.]

Cited in 92 Wash. 5.

§ 7335. [6262-28.] Time Allowed for Removal of Liquor from State.

Within ten days after the date when this act has become operative, every person except registered druggists and pharmacists shall remove or cause to be removed all intoxicating liquor in his possession from the state, and failure so to do shall be prima facie evidence that such liquor is kept therein for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this act: Provided, however, that this section shall not apply to alcohol kept for chemical or manufacturing purposes, or to one-half gallon of intoxicating liquor, other than beer, or twelve quarts or twenty-four pints of beer held by an individual: And, provided, further, that for said ten-day period of time, it shall not be necessary to obtain any permit or permits for the shipment of any such intoxicating liquor, lawfully held within the state at the date this act goes into effect, to points outside of the state. [L. '15, p. 15, § 28.]

Cited in 92 Wash. 5, 6, 11; 104 Wash.302.

§ 7337. [6262-30.] Duty of Attorney General.

It is hereby made the duty of the attorney general to enforce the provisions of this act, and prosecute violations thereof in any county where the prosecuting attorney of such county fails, neglects or refuses to enforce the provisions hereof and said attorney general may assist the prosecuting attorney of any county in any prosecution for the violation of this act. [L. '15, p. 16, § 30.]

Cited in 92 Wash. 5.

§ 7338. [6262-31.*] Penalties in Cases not Specified.

Every person convicted of a violation of the provision of this act, for which the punishment is not specifically prescribed, shall be punished by a fine of not more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days or by both such fine and imprisonment.

Every person convicted of the sale, barter or exchange of intoxicating liquor or of the keeping or transporting of any such liquor with intent to sell, barter or exchange the same shall be punished by a fine of not less than \$250 nor more than \$500 and by imprisonment in the county jail for not less than sixty days nor more than six months. Every person convicted a second time of the sale, barter or exchange of intoxicating liquor or of the keeping or transporting of any such liquor with intent to sell, barter, or exchange the same shall be punished by a fine of not less than \$500 nor more than \$1,000, and by imprisonment in the county jail for not less than four months nor more than one year.

Every person convicted of the manufacture of intoxicating liquor for the purpose of sale, barter or exchange thereof shall be punished by a fine of not less than \$500 nor more than \$1,000, and by imprisonment in the county jail for not less than ninety days nor more than six months. Every person convicted a second time of the manufacture of intoxicating liquor for the purpose of sale, barter or exchange thereof shall be punished by a fine of not less than \$1,000 nor more than \$2,000, and by imprisonment in the county jail for not less than six months nor more than one year.

The provisions and penalties of this section are independent of those of section 7328, relating to the offenses of "jointist" and "bootlegger," which shall remain in full force and effect.

Every justice of the peace shall have jurisdiction to hear and determine any offense in this section prescribed and to impose any punishment in this section provided except in cases where previous conviction under this section is charged. [L. '21, p. 398, § 1; L. '17, p. 61, § 14; L. '15, p. 16, § 31.]

Cited in 92 Wash. 5; 95 Wash. 528; 97 Wash. 412; 109 Wash. 79.

§ 7339. [6262-32.*] Penalty for Subsequent Convictions—Evidence of Prior Convictions.

Every person convicted the second time of a violation of any provision of this act, for which the punishment is not specifically prescribed, shall be punished by a fine of not less than two hundred nor more than five hundred dollars and by imprisonment in the county jail for not less than thirty days nor more than six months and every person convicted the third time of a violation of any provision of this act shall, for such third and each subsequent conviction, be punished by imprisonment in the penitentiary for not less than one nor more than five years. Every prosecuting attorney, and every justice of the peace, having knowledge of any previous conviction or convictions of any person accused of violating this act, shall in preparing a complaint, information or indictment, for subsequent offenses, allege such previous conviction or convictions therein, and a certified transcript from the docket of any justice of the peace, or a copy of the record of any court of record, certified by the clerk thereof under the seal of the court, shall be sufficient evidence and proof of such previous conviction or convictions. [L. '17, p. 61, § 15; L. '15, p. 16, § 32.]

Cited in 92 Wash. 6; 107 Wash. 469; 110 Wash. 182, 191.

This section authorizing increased punishments on subsequent convictions and requiring prosecuting attorneys to allege a previous conviction in the information, is a proper police regulation to discourage violations of the law, and not open to the objection that it deprives the accused of a fair trial: *State v. Dericho*, 107 Wash. 468, 182 Pac. 597.

In a prosecution for prescribing intoxicating liquor after being twice convicted of violating the prohibition law, it is not error to permit proof of more than two convictions: *State v. Emonds*, 107 Wash. 688, 182 Pac. 584.

In a prosecution for the aggravated offense, after prior convictions, defendant is entitled to an instruction as to lesser or simple offense included in the charge; and it is an invasion of the province of the jury to instruct that it has nothing to do with the fact of a former conviction: *State v. Dale*, 110 Wash. 181, 188 Pac. 473.

A general verdict of guilty as charged constitutes a finding of the prior convictions alleged: *State v. Dale*, 110 Wash. 181, 188 Pac. 473.

Proof of other offenses in prosecution for violation of liquor law. 18 *Ann. Cas.* 846.

§ 7340. Time Allowed for Removal of Liquors.

Nothing in this act shall be construed to prohibit a registered druggist or pharmacist, at any time within ten days after this act shall take effect, from removing from or shipping out of the state any intoxicating liquors in his possession at the time this act takes effect, and no permit for such removal or shipment shall be required. [L. '17, p. 62, § 16.]

§ 7341. [6262-33.] Time of Taking Effect.

This act shall take effect and be in full force and effect from and after the first day of January, 1916. [L. '15, p. 17, § 33.]

Cited in 92 Wash. 6.

This law, adopted by initiative at the general election of 1914, does not have the effect of repealing the local option

law or suspending its provisions during the interval until January 1, 1916; in view of this section: *State v Paul*, 87 Wash. 83, 151 Pac. 114.

§ 7342. [6277.] Keeping Room for Unlawful Use—Penalty.

Every person who shall, directly or indirectly, keep or maintain, by himself or by associating or combining with others, or who shall in any manner aid, assist, or abet in keeping or maintaining any room or rooms, place or places in which intoxicating liquors are received or kept for unlawful use, barter or sale or for unlawful distribution; and every person who shall receive, barter, sell, assist or abet another in receiving, bartering or selling any intoxicating liquors so received or kept, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [L. '03, p. 31, § 1.]

Cited in 46 Wash. 597, 598; 57 Wash. 369.

§ 7343. [6278.] Same — A Common Nuisance — Complaint — Seizure of Liquors, etc.

The keeping or maintaining of any place in which intoxicating liquors are sold or given away, contrary to law, or in which such liquors are kept or harbored for the evident purpose of selling or giving away said liquors contrary to law, or where persons are permitted to resort for the purpose of drinking intoxicating liquors or where intoxicating liquors are kept for the purpose of inducing people to resort, to buy or receive intoxicating liquors in violation of law is hereby declared to be a common nuisance. Upon complaint being made of the violation of this section a magistrate shall issue a search-warrant in which the premises in question shall be particularly described, commanding the sheriff or constable to thoroughly search the premises in question and to seize and hold all intoxicating liquors, vessels, bar fixtures, screens, bottles, glasses, jugs and other appurtenances found therein adapted to be used in retailing, giving away or distributing liquors in violation of law, to make a complete inventory thereof and deposit the same with the magistrate. [L. '03, p. 31, § 2.]

See *infra*, § 9924, saloon deemed nuisance, when.

Cited in 73 Wash. 426.

§ 7344. [6279.] Custody and Disposal of Seized Property.

The property seized under the warrant shall remain in the custody of the officer until the case has been decided by the court; if the defendant is found guilty the property seized shall be destroyed by the officer under the direction of the magistrate. [L. '03, p. 32, § 3.]

§ 7345. [6280.] Payment of United States Revenue Tax, Prima Facie Evidence.

The payment of the United States revenue tax shall be held to be prima facie evidence that the person is a common seller of intoxicating liquors and his place a common nuisance when conducted in violation of law. [L. '03, p. 32, § 4.]

§ 7346. [6281.] Penalty for Violations.

Any person violating any of the provisions of this act shall, upon the conviction of the same, be punished by a fine or not less than fifty (50) nor more than five hundred (500) dollars, or in lieu thereof be imprisoned not less than thirty (30) days nor more than ninety (90) days in the county jail. For each subsequent offense the punishment shall be by imprisonment in the county jail for not less than six (6) months nor more than one (1) year. [L. '03, p. 32, § 5.]

"Act" refers to §§ 7342—7346.

Cited in 57 Wash. 369.

§ 7347. [6288.] Sale to Indians Prohibited—Penalty.

Any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous or vinous liquor of any kind whatever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label or brand, which produces intoxication, to any Indian, either of the whole or mixed blood to whom allotment of land has been made while the title to the same shall be held in trust by the government of the United States, or to any Indian of the whole or mixed blood, a ward of the government of the United States, under the charge of any Indian superintendent or agent, or any Indian of the whole or mixed blood, over whom the government of the United States, through its departments, superintendent or agent exercises or assumes to exercise guardianship, or to any Indian of the whole or mixed blood the subject of any foreign nation, or to any Indian of the whole or mixed blood a member of any tribe of Indians, or to any Indian whatsoever, or a mixed blood Indian being more than one-eighth Indian, shall be guilty of a felony and punished therefor by imprisonment in the penitentiary for a period of not less than one or more than two years, or by imprisonment in the county jail not less than thirty days nor more than six months or by fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by both such fine and imprisonment in the discretion of the court. [L. '09, p. 537, § 1. Cf. L. '67, p. 95, § 1; L. '69, p. 228, § 133; Cd. '81, § 942; 2 H. C., § 137; Bal. Code, § 7316.]

Cited in 58 Wash. 631; 67 Wash. 337; 69 Wash. 438; 83 Wash. 442.

Selling or Furnishing Liquors: See Remington's Digest, Indians, § 14-1; State v. Mamlock, 58 Wash. 631, 109 Pac. 47, 137 Am. St. Rep. 1085; State v. Nicolls, 61 Wash. 142, 112 Pac. 269, Ann. Cas. 1912B, 1088; State v. Bailey, 67 Wash. 336, 121 Pac. 821; State v. Reese, 69

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Validity and construction of statutes forbidding sale of liquor to Indians. 3 Ann. Cas. 326; Ann. Cas. 1912B, 1090; Ann. Cas. 1914B, 653; Ann. Cas. 1915D, 372.

CHAPTER II.

CIVIL REMEDIES AGAINST LIQUOR DEALERS.

§ 7348. [6289.] Action for Injuries Caused by Intoxicated Person.

Every husband, wife, child, parent, guardian, employee, or other person who shall be injured in person or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action, in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving intoxicating liquors, have caused the intoxication of such person, for all damages sustained, and the same may be recovered in a civil action in any court of competent jurisdiction. On the trial of such action, the plaintiff or plaintiffs must prove that such intoxicating liquors were sold under circumstances sufficient to lead a man of ordinary intelligence to believe that such sale would probably result in intoxication. A married woman may bring such action in her own name, and all damages recovered by her shall inure to her separate use, and all damages recovered by a minor under this chapter shall be paid either to such minor or to such person in trust for him, and on such terms as the court may direct. In case of the death of either party, the action and right of action to or against his executor or administrator shall survive. [L. '05, p. 120, § 1. Cf. L. '79, p. 132, § 1; Cd. '81, § 2059; 1 H. C., § 2814.]

See supra, § 1708 et seq., habitual drunkards, proceedings to adjudge.

Cited in 2 Wash. 195; 25 Wash. 607; 38 Wash. 37, 38; 54 Wash. 506; 91 Wash. 359.

Validity of Conveyances and Contracts: See Remington's Digest, Int. Liq., § 62; State v. Considine, 16 Wash. 358, 47 Pac. 755; Lower v. Cornelius, 72 Wash. 124, 129 Pac. 911; Rowland v. Snyder, 88 Wash. 151, 152 Pac. 690; Rashford v. Ridgefield State Bank, 94 Wash. 207, 161 Pac. 1196.

See, also, Greene v. Atwood, 106 Wash. 416, 180 Pac. 399.

CIVIL DAMAGE LAWS—Grounds of Action—Injuries to Means of Support: See Remington's Digest, Int. Liq., §§ 56—61; Woodring v. Jacobino, 54 Wash. 504, 103 Pac. 809; Judson v. Parry, 38 Wash. 37, 80 Pac. 194; Delfel v. Hanson, 2 Wash. 194, 26 Pac. 220; Nordlund v. Pearson, 91 Wash. 358, 157 Pac. 875; Burkman v. Jamieson, 25 Wash. 606, 66 Pac. 48.

Civil damage laws affording remedy for injuries caused by intoxicated persons. 48 Am. Dec. 625; 25 Am. Rep. 362; 85 Am. St. Rep. 449.

§ 7349. [6290.] License for Selling Liquors to be Refused, When.

No license for the sale of intoxicating liquors shall hereafter be granted without the consent in writing of the owner or lessor of the building or premises in which the business is to be conducted; and the paper containing such written consent shall be kept on file by the

officer issuing such license. [L. '79, p. 133, § 2; Cd. '81, § 2060; 1 H. C., § 2815.]

Cited in 67 Wash. 163.

§ 7350. [6291.] Action by Owner to Recover Money Paid for Act of Tenant.

Any owner or lessor of real estate, who shall pay any money on account of his liability incurred under this chapter, for any act of his tenant, may, in a civil action, recover of such tenant the money so paid. [L. '79, p. 133, § 3; Cd. '81, § 2061; 1 H. C., § 2816.]

Cited in 25 Wash. 609.

IRRIGATION AND WATER RIGHTS.

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IRRIGATION AND WATER RIGHTS.

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CHAPTER I.

WATER CODE.

§ 7351. State Control—Appropriation of Water Rights—Existing Rights Preserved.

The power of the state to regulate and control the waters within the state shall be exercised as hereinafter in this act provided. Subject to existing rights all waters within the state belong to the public, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and in the manner provided

and not otherwise; and, as between appropriations, the first in time shall be the first in right. Nothing contained in this act shall be construed to lessen, enlarge, or modify the existing rights of any riparian owner, or any existing right acquired by appropriation, or otherwise. They shall, however, be subject to condemnation as provided in section 7354 hereof, and the amount and priority thereof may be determined by the procedure set out in sections 7364 to 7377 inclusive hereof. [L. '17, p. 447, § 1.]

Cited in 107 Wash. 94, 95.

A prior action at law to establish existing rights is not affected by this act; which saved all existing rights: *Pate v. Peterson*, 107 Wash. 93, 180 Pac. 894.

Waters Open to Appropriation: See Remington's Digest, Waters, § 1; *Geddis v. Parrish*, 1 Wash. 587, 21 Pac. 314; *Dickey v. Maddux*, 48 Wash. 411, 93 Pac. 1090; *Mason v. Yearwood*, 58 Wash. 276, 108 Pac. 608, 30 L. R. A. (N. S.) 1158; *Still v. Palous Irrigation & Power Co.*, 64 Wash. 606, 117 Pac. 466; *State ex rel. Olding v. Stumpfly*, 69 Wash. 368, 125 Pac. 148; *Sander v. Bull*, 76 Wash. 1, 135 Pac. 489.

The rights of riparian owners are not to be disturbed by the appropriation of water from a stream on an Indian reservation, where the lands were not public lands at the time of the diversion or at any time since: *Hough v. Taylor*, 110 Wash. 361, 188 Pac. 458.

Persons Entitled to appropriate Water: See Remington's Digest, Waters, § 2; *Avery v. Johnson*, 59 Wash. 332, 109 Pac. 1028; *Sander v. Bull*, 76 Wash. 1, 135 Pac. 489.

Effect of Local Customs and Rules: See Remington's Digest, Waters, § 4; *Thorpe v. Tenem Ditch Co.*, 1 Wash. 566, 20 Pac. 588; *Isaacs v. Barber*, 10 Wash. 124, 38 Pac. 871, 45 Am. St. Rep. 772, 30 L. R. A. 665; *Benton v. Johncox*, 17 Wash. 277, 49 Pac. 495, 61 Am. St. Rep. 912, 39 L. R. A. 107.

Proceedings to Effect Appropriation—Diligence and Intent to Apply Water to Beneficial Use: See Remington's Digest, Waters, § 6; *Offield v. Ish*, 21 Wash. 277, 57 Pac. 809; *Longmire v. Smith*, 26 Wash. 439, 67 Pac. 246, 58 L. R. A. 308; *Still v. Palouse Irrigation & Power Co.*, 64 Wash. 606, 117 Pac. 466; *Ham, Yearsley & Ryrie v. Superior Court*, 70 Wash. 442, 126 Pac. 945; *Grant Realty Co. v. Ham, Yearsley & Ryrie*, 96 Wash. 616, 165 Pac. 495; *Pleasant Valley Irrigation & Power Co. v. Okanogan Power & Irrigation Co.*, 98 Wash. 401, 167 Pac. 1122.

— Notice of Appropriation: See Remington's Digest, Waters, § 8; *Kendall v. Joyce*, 48 Wash. 489, 93 Pac. 1091; *State ex rel. Ham, Yearsley &*

Ryrie v. Superior Court, 70 Wash. 442, 126 Pac. 945; *Colburn v. Winchell*, 93 Wash. 388, 160 Pac. 1052.

Time of Vesting of Rights Under Appropriation: See Remington's Digest, Waters, § 9; *Benton v. Johncox*, 17 Wash. 277, 49 Pac. 495, 61 Am. St. Rep. 912, 39 L. R. A. 107; *New Whatcom v. Fairhaven Land Co.*, 24 Wash. 493, 64 Pac. 735, 54 L. R. A. 190; *Kendall v. Joyce*, 48 Wash. 489, 93 Pac. 1091; *Avery v. Johnson*, 59 Wash. 332, 109 Pac. 1028; *Sumner Lumber & Shingle Co. v. Pacific Coast Power Co.*, 72 Wash. 631, 131 Pac. 230; *Barnes v. Belsaas*, 73 Wash. 205, 131 Pac. 817.

An appropriation of water for irrigation having been made in 1903, while the title to the lands was in the federal government, the state, in subsequently taking title for the purposes of a scientific school, takes the same subject to the previous vested right: *Colburn v. Winchell*, 93 Wash. 388, 160 Pac. 1052.

Successive Appropriations and Priorities Thereof: See Remington's Digest, Waters, § 10; *Weidensteiner v. Mally*, 55 Wash. 79, 104 Pac. 143; *Sander v. Bull*, 76 Wash. 1, 135 Pac. 489.

Effect of Appropriation as Against Prior Riparian Proprietors: See Remington's Digest, Waters, § 11; *Benton v. Johncox*, 17 Wash. 277, 49 Pac. 495, 61 Am. St. Rep. 912, 39 L. R. A. 107; *Sanders v. Wilson*, 34 Wash. 659, 76 Pac. 280.

Effect of Appropriation as Against Subsequent Grants, Entries and Patents: See Remington's Digest, Waters, § 12; *Thorpe v. Tenem Ditch Co.*, 1 Wash. 566, 20 Pac. 588; *Ellis v. Pomeroy Imp. Co.*, 1 Wash. 572, 21 Pac. 27; *Geddis v. Parrish*, 1 Wash. 587, 21 Pac. 314; *Longmire v. Smith*, 26 Wash. 439, 67 Pac. 246; *Isaacs v. Barber*, 10 Wash. 124, 38 Pac. 871, 45 Am. St. Rep. 772, 30 L. R. A. 665; *Wold v. May*, 10 Wash. 157, 38 Pac. 875; *Lynch v. Lower Yakima Irrigation Co.*, 73 Wash. 173, 131 Pac. 829.

Nature and Extent of Rights Acquired—Quantity of Water: See Remington's Digest, Waters, § 13; *Longmire v. Smith*, 26 Wash. 439, 67 Pac. 246, 58 L. R. A. 308; *Miller v. Wheeler*, 54 Wash. 429,

103 Pac. 641, 23 L. R. A. (N. S.) 1065; Avery v. Johnson, 59, Wash. 332, 109 Pac. 1028; Pleasant Valley Irrigation & Power Co. v. Okanogan Power & Irrigation Co., 98 Wash. 401, 167 Pac. 1122.

RIGHTS UNDER FORMER LAWS.—No prescriptive right to waters of a bog or marsh, used since 1884, can be claimed under Laws of 1891, page 327, where there has been no attempt to comply with the provisions of such law since its enactment: Dickey v. Maddux, 48 Wash. 411, 93 Pac. 1090.

Under Rem. Code, § 6327, a lower riparian owner may not go above an upper appropriator and divert the water already appropriated by such upper proprietor, to be used on lands down the stream or on contiguous lands that are not riparian to the stream, to the exclusion of the upper proprietor: Miller v. Baker, 68 Wash. 19, 122 Pac. 604.

The United States government having by acts of congress waived its right to waters flowing within the boundaries of any state, the state had a right in 1899, by Rem. Code, § 6333, to authorize the appropriation of waters for irrigation purposes, as an impairment, by reason of necessity, of the common law right to the undiminished flow of a stream in its natural channel: Colburn v. Winchell, 93 Wash. 388, 160 Pac. 1052.

Riparian owners who quitclaimed all the waters of a stream are not entitled to stored waters belonging to the plaintiff which plaintiff caused to flow down the channel without exceeding high-water mark; in view of Rem. Code, § 6337: Pleasant Valley Irrigation & Power Co. v. Barker, 98 Wash. 459, 167 Pac. 1092.

The riparian owner on a navigable lake is not given any right superior to others to appropriate the water thereof for the purpose of irrigation, by Rem. & Bal. Code, §§ 6325, 6326: State ex rel. Ham, Yearsley & Ryrie v. Superior Court, 70 Wash. 442, 126 Pac. 945.

Rem. Code, § 6338, did not give a riparian owner any right to appropriation superior to the right of other owners not bordering upon the lake, other than the right of appropriation common to all: State ex rel. Ham, Yearsley & Ryrie v. Superior Court, 70 Wash. 442, 126 Pac. 945.

Rem. Code, § 6339, has no application to fountain-heads of watercourses which have been appropriated by others: Miller v. Wheeler, 54 Wash. 429, 103 Pac. 641, 23 L. R. A. (N. S.) 1065.

That section had no application to springs having sufficient flow to form watercourses, and the common law rule governs riparian rights on such a water-

course: Hollett v. Davis, 54 Wash. 326, 103 Pac. 423.

The common-law rights of riparian owners to the natural flow of waters of a non-navigable stream are subject to condemnation for irrigation purposes, under Rem. Code, § 6369: State ex rel. Kettle Falls Power etc. Co. v. Superior Court, 46 Wash. 500, 90 Pac. 650.

In proceedings to condemn the right to water for irrigation purposes it is not a fatal defect to omit from the petition a statement of the time that the water is to be used, as required by Rem. Code, § 6369, where from other allegations, it appears that a perpetual use is desired: State ex rel. Liberty Lake Irr. Co. v. Superior Court, 47 Wash. 310, 91 Pac. 968.

Under Rem. Code, § 6382, condemnation of the rights of abutting owners to the use of the waters of a stream is limited, and cannot include waters used or needed by the riparian owner for his lands then irrigated or which he intends to irrigate within a reasonable time: State ex rel. Liberty Lake Irr. Co. v. Superior Court, 47 Wash. 310, 91 Pac. 968.

Such section establishes the policy of this state for a joint user in many instances of waters sought to be condemned for irrigation purposes: Spokane Valley Land & Water Co. v. Jones & Co., 53 Wash. 37, 101 Pac. 515.

Rem. Code, § 6398, prescribes only ministerial or administrative duties, and not judicial or quasi-judicial duties, and has no relation to judicial proceedings: State ex rel. Bennett v. Taylor, 54 Wash. 150, 102 Pac. 1029.

ACT OF 1899.—This act, for the appropriation of waters and the condemnation or rights of way for irrigation purposes, relates to but one subject, and its provisions are germane to the title: Weed v. Goodwin, 36 Wash. 31, 78 Pac. 36.

This act sufficiently provides for the assessment of damages aside from the value of the land taken: Weed v. Goodwin, 36 Wash. 31, 78 Pac. 36.

Ample notice and due process of law is obtained under this act: Weed v. Goodwin, 36 Wash. 31, 78 Pac. 36.

Respective rights of appropriators of water and riparian owners. 43 Am. Dec. 269; 20 Am. St. Rep. 225.

What constitutes appropriation of water. 98 Am. Dec. 542; 60 Am. St. Rep. 799.

Corrective rights of upper and lower riparian proprietors. 41 L. R. A. 737.

Nature of riparian rights and lands to which they attach. 9 Ann. Cas. 1235; Ann. Cas. 1913E, 709; Ann. Cas. 1915C, 1026.

Meaning of phrase "domestic purposes" in relation to riparian rights. Ann. Cas. 1912B, 621; Ann. Cas. 1914D, 563.

§ 7352. Units of Measurement.

The legally recognized units of water measurement shall be as follows: For flowing water—one cubic foot of water per second of time, and to be designated "second-foot." For absolute volume or quantity of water—forty-three thousand five hundred sixty cubic feet of water, and to be designated "acre-foot." [L. '17, p. 447, § 2.]

§ 7353. Right to Convey Water.

Any person may convey any water which he may have a right to use along any of the natural streams or lakes of this state, but not so as to raise the water thereof above ordinary high-water mark, without making just compensation to persons injured thereby; but due allowance shall be made for evaporation and seepage, the amount of such seepage to be determined by the state hydraulic engineer, upon the application of any person interested. [L. '17, p. 447, § 3.]

§ 7354. Eminent Domain for Beneficial Use of Water—Restrictions.

The beneficial use of water is hereby declared to be a public use, and any person may exercise the right of eminent domain to acquire any property or rights now or hereafter existing when found necessary for the storage of water for, or the application of water to, any beneficial use, including the right to enlarge existing structures employed for the public purposes mentioned in this act and use the same in common with the former owner, and including the right and power to condemn an inferior use of water for a superior use. In condemnation proceedings the court shall determine what use will be for the greatest public benefit, and that use shall be deemed a superior one: Provided, that no property right in water or the use of water shall be acquired hereunder by condemnation for irrigation purposes, which shall deprive any person of such quantity of water as may be reasonably necessary for the irrigation of his land then under irrigation to the full extent of the soil, by the most economical method of artificial irrigation applicable to such land according to the usual methods of artificial irrigation employed in the vicinity where such land is situated. In any case, the court shall determine what is the most economical method of irrigation. Such property or rights shall be acquired in the manner provided by law for the taking of private property for public use by private corporations. [L. '17, p. 448, § 4.]

Cited in 102 Wash. 292; 111 Wash. 618—622.

This act did not repeal section 8078; and the right to condemn state property is not given by this section: State ex rel. Mason County v. Superior Court, 102 Wash. 291, 173 Pac. 19.

Condemnation by joint owners for car-

rying additional waters does not deprive them of the right to the beneficial use of waters declared by this section; this section, by necessary implication, grants the right to use such waters, and does not violate the obligation of contracts: State ex rel. Lincoln v. Superior Court, 111 Wash. 615, 191 Pac. 805.

Exercise of power of eminent domain for water supply. 58 L. R. A. 241; 22 L. R. A. (N. S.) 156.

Furnishing water and water-power to the public for manufacturing pur-

poses as a public purpose justifying the exercise of eminent domain. 21 L. R. A. (N. S.) 410.

§ 7355. Administration of Water Code.

The administration of this act is imposed upon an engineer to be known as the state hydraulic engineer. [L. '17, p. 448, § 5.]

See *infra*, § 10819, division of hydraulics.

See *infra*, § 10824, supervisor of hydraulics.

See *infra*, § 10830, duties devolve upon director of conservation and development.

See *infra*, § 10893, hydraulic engineer abolished.

§ 7356. State Hydraulic Engineer — Appointment — Salary — Oath and Bond.

There shall be a state hydraulic engineer appointed by the governor, who, at the time of his appointment shall be a technically qualified and experienced civil and hydraulic engineer in the practice of his profession. He shall, unless sooner removed for cause, hold office for a term of six years or until his successor shall be appointed and shall have qualified. The governor may remove said hydraulic engineer for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him, and an opportunity of being publicly heard in person or by counsel in his own defense upon not less than ten (10) days' notice. If such officer shall be removed the governor shall file in the office of the secretary of state a complete statement of all charges made against such officer, and his findings thereon, together with a complete record of the proceedings, and there shall be no right to a review of the same in any court whatsoever. The governor shall fill all vacancies in the office of hydraulic engineer by appointment, and the person so appointed shall fill out the unexpired term of his predecessor. His office shall be located at the seat of state government. He shall receive a salary of five thousand dollars (\$5,000) per annum, payable in the same manner as other state officers, and reimbursement for actual necessary expenses incurred while absent from his office on official business, and shall not accept any other employment during his term of office. Before entering upon the duties of his office, he shall take and subscribe an oath faithfully to perform the duties of his office and file with the secretary of state said oath and his official bond in the penal sum of twenty thousand dollars (\$20,000), with surety or sureties, to be approved by the governor, and conditioned for the faithful discharge of the duties of his office. [L. '17, p. 448, § 6.]

§ 7357. Assistant and Deputies.

The state hydraulic engineer may appoint an assistant and a sufficient number of deputies to aid in the administration of this act, and may employ such clerical assistance and purchase such supplies and equipment as he may deem necessary for the proper conduct and development of his department, in pursuance of appropriations made by the legislature for such purposes. The state hydraulic engineer may

authorize such assistant or deputy to execute any power or perform any duty vested in the engineer and he shall be liable on his official bond for their acts. [L. '17, p. 449, § 7.]

§ 7358. Powers and Duties of Engineer.

There is hereby imposed upon the state hydraulic engineer the following duties and powers:

(1) The supervision of public waters within the state and their appropriation, diversion and use, and of the various officers connected therewith.

(2) In so far as may be necessary to assure safety to life or property, he shall inspect the construction of all dams, canals, ditches, irrigation systems, hydraulic power plants, and all other works, systems and plants pertaining to the use of water, and he may require such necessary changes in the construction or maintenance of said works, to be made from time to time, as will reasonably secure safety to life and property.

(3) He shall regulate and control the diversion of water in accordance with the rights thereto.

(4) He shall determine the discharge of streams and springs and other sources of water supply and the capacities of lakes and of reservoirs whose waters are being or may be utilized for beneficial purposes.

(5) He shall keep such records as may be necessary in the administration of his department and for the recording of the financial transactions and statistical data of his department, and shall procure all necessary documents, forms and blanks. He shall keep a seal of the office, and all certificates by him covering any of his acts or the acts of his office, or the records and files of his office, under said seal, shall be taken as evidence thereof in all courts.

(6) He shall render to the governor, on or before the last day of November immediately preceding the regular session of the legislature, and at other times when required by the governor, a full written report of the work of his office, including a detailed statement of the expenditure thereof, with such recommendations for legislation as he may deem advisable for the better control and development of the water resources of the state.

(7) He shall establish and promulgate rules governing the administration of this act.

(8) The state hydraulic engineer and his duly authorized deputies shall be empowered to administer oaths, and shall perform such other duties as may be prescribed by this act or imposed by law. [L. '17, p. 450, § 8.]

See notes to § 7355.

§ 7359. District Water-masters—Compensation.

Water-masters shall be appointed by the state hydraulic engineer upon application by interested parties making a reasonable showing of the necessity therefor, at such time, for such districts, and for such periods of service, as local conditions may indicate to be necessary to provide the most practical supervision on the part of the state

and to secure to water users and owners the best protection in their rights. The districts for or in which the water-masters serve shall be designated water districts, which shall be fixed from time to time by the state hydraulic engineer, as required, and they shall be subject to revision as to boundaries or to complete abandonment as local conditions may indicate to be expedient, the spirit of this provision being that no districts need be created or maintained, or water-masters appointed therefor, where the need for the same does not exist. Water-masters shall be under the supervision of the state hydraulic engineer, and shall be technically qualified to the extent of understanding the elementary principles of hydraulics and irrigation, and of being able to make water measurements in streams and in open and closed conduits of all characters, by the usual methods employed for that purpose. Each water-master shall, if employed by the day, receive a wage of not to exceed five dollars (\$5) per day for each day he shall be actually employed in the duties of his office, or, if employed continuously he shall receive a salary of not to exceed one hundred dollars (\$100) per month, to be paid by the county in which the work is performed. In case the service extends over more than one county each county shall pay its equitable part of such wage to be apportioned by the state hydraulic engineer. He shall be reimbursed for actual necessary expenses when absent from his designated headquarters in the performance of his duties, such expenses to be paid by the county in which he renders the service. The accounts of the water-master shall be audited and certified by the state hydraulic engineer and the county auditor shall issue a warrant therefor upon the current expense fund. [L. '17, p. 451, § 9.]

See notes to § 7355.

§ 7360. Duties of Water-master.

It shall be the duty of the water-master, acting under the direction of the state hydraulic engineer, to divide in whole or in part, the water supply of his district among the several water conduits and reservoirs using said supply, according to the right and priority of each, respectively. He shall, as near as may be, divide, regulate and control the use of water within his district by such closure or partial closure of headgates as will prevent its use in excess of the amount to which the owner of the right is lawfully entitled. He shall as may be required in times of scarcity of water, and in respect of priorities of rights, shut and fasten or cause to be shut and fastened the headgates of water conduits, and shall regulate or cause to be regulated the controlling works of reservoirs. Whenever, in the pursuance of his duties, the water-master regulates a headgate of a water conduit or the controlling works of a reservoir, he shall attach to such headgate or controlling works a written notice, properly dated and signed, stating that such headgate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties. He shall enforce such rules and regulations as the state hydraulic engineer shall from time to time prescribe. [L. '17, p. 452, § 10.]

§ 7361. Appeals to Superior Court—Procedure—Attorney General, Legal Adviser—Compensation of Assistant Engineer.

Any person, corporation or association feeling aggrieved at any order, decision, or determination of the state hydraulic engineer, or of any assistant or deputy, or any water-master, affecting his interests, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county in which the matter affected, or a portion thereof is situated. The proceedings in every such appeal shall be heard and tried by the court and shall be informal and summary, but full opportunity to be heard and present evidence shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal containing a statement of the substance of the order, decision, or determination complained of and the manner in which the same injuriously affects the appellant's interests, shall have been served personally upon the state hydraulic engineer, or by registered mail, at his office at the state capital, within twenty days following the rendition of the order, decision or determination appealed from and communication thereof in writing to the person affected thereby. No bond shall be required except a stay is desired and an appeal shall not be a stay, unless within five days following the service of notice of appeal a bond shall be filed in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court. Costs shall be paid as in civil cases brought in the superior court, and the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. In all court proceedings under or pursuant to this section the decision of the state hydraulic engineer shall be prima facie correct. The attorney general shall be the legal adviser of the state hydraulic engineer and shall represent him in all proceedings whenever so requested. Wherever it shall appear to the state hydraulic engineer that any litigation, whether now pending or hereafter brought, may adversely affect the rights of the public in water, it shall be his duty to request the attorney general to appear and protect the interests of the state. He shall assign one of his assistants to perform such legal services as may be required in connection with proceedings to determine water rights and may require him to perform such other legal services for the state hydraulic engineer as may be necessary to assist him in the performance of his duties. The proportionate part of the salary and expenses of such assistant for services in connection with the determination of water rights shall be included in the statement of the state hydraulic engineer required by section 7371. The state hydraulic engineer may expend such of the funds appropriated for his department for such portion of the salary and expenses of such assistant as may be agreed upon between the state hydraulic engineer and attorney general. [L. '19, p. 141, § 1; L. '17, p. 452, § 11.]

See notes to § 7355.

Cited in 107 Wash. 95.

§ 7362. Water-master's Power of Arrest.

The water-master shall have the power, within his district, to arrest any person in the act of violating any of the provisions of this act and

to deliver such person promptly into the custody of the sheriff or other competent officer within the county and immediately upon such delivery the water-master making the arrest shall, in writing and upon oath, make complaint before the proper justice of the peace against the person so arrested. [L. '17, p. 453, § 12.]

§ 7363. Prosecuting Attorney to Represent Engineer.

It shall be the duty of the prosecuting attorney of any county to appear for or on behalf of the state hydraulic engineer or his deputy, or any water-master, upon request of any such officer in any case which may arise in the performance of the official duties of any such officer within the jurisdiction of said prosecuting attorney. [L. '17, p. 454, § 13.]

§ 7364. Determination of Rights to Water—Engineer's Statement and Map—Filing.

Upon the filing of a petition with the state hydraulic engineer by one or more persons claiming the right to divert any waters within the state or when, after investigation, in the judgment of the state hydraulic engineer, the interest of the public will be subserved by a determination of the rights thereto, it shall be the duty of the state hydraulic engineer to prepare a statement of the facts, together with a plan or map of the locality under investigation, and file such statement and plan or map in the superior court of the county in which said water is situated, or, in case such water flows or is situated in more than one county, in the county which the state hydraulic engineer shall determine to be the most convenient to the parties interested therein. Such statement shall contain substantially the following matter, to wit:

(1) The names of all known persons claiming the right to divert said water, the right to the diversion of which is sought to be determined, and

(2) A brief statement of the facts in relation to such water, and the necessity for a determination of the rights thereto. [L. '17, p. 454, § 14.]

. See notes to § 7355.

§ 7365. Summons to Claimants.

Upon the filing of the statement and map as provided in the preceding section the judge of such superior court shall make an order directing summons to be issued, and fixing the return day thereof, which shall be not less than sixty nor more than ninety days, after the making of such order. A summons shall thereupon be issued out of said superior court, signed and attested by the clerk thereof, in the name of the state of Washington, as plaintiff, against all known persons claiming the right to divert the water involved and also all persons unknown claiming the right to divert the water involved, which said summons shall contain a brief statement of the objects and purpose of the proceedings and shall require the defendants to appear on the return day thereof, and make and file a statement of claim to, or interest in, the water involved and a statement that unless they appear at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evi-

dence: Provided, however, that any persons claiming the right to the use of water by virtue of a contract with claimant to the right to divert the same, shall not be necessary parties to the proceeding. [L.'17, p. 454, § 15.]

§ 7366. Service of Summons—Publication.

Service of said summons shall be made in the same manner and with the same force and effect as service of summons in civil actions commenced in the superior courts of the state. If the defendants, or either of them cannot be found within the state of Washington, of which the return of the sheriff of the county in which the proceeding is pending shall be prima facie evidence, upon the filing of an affidavit by the state hydraulic engineer, or his attorney, in conformity with the statute relative to the service of summons by publication in civil actions, such service may be made by publication in a newspaper of general circulation printed and published at the county seat of the county in which such proceeding is pending, and also publication of said summons in a newspaper published at the county seat of each county in which any portion of the water is situated, once a week for six consecutive weeks before the return day thereof. In cases where personal service can be had, such summons shall be served at least twenty (20) days before the return day thereof. [L.'17, p. 455, § 16.]

§ 7367. Defendants to File Verified Statements.

On or before the return day of such summons, each defendant shall file in the office of the clerk of said court a statement, and therewith a copy thereof for the state hydraulic engineer, containing substantially the following, to wit:

- (1) The name and postoffice address of defendant.
- (2) The full nature of the right, or use, on which the claim is based.
- (3) The time of initiation of such right and commencement of such use.
- (4) The date of beginning and completion of construction.
- (5) The dimensions and capacity of all ditches existing at the time of making said statement.
- (6) The amount of land under irrigation and the maximum quantity of water used thereon prior to the date of said statement and if for power, or other purposes, the maximum quantity of water used prior to date of said statement.
- (7) The legal description of the land upon which said water has been, or may be, put to beneficial use.

Such statement shall be verified on oath by the defendant, and in the discretion of the court may be amended. [L.'17, p. 455, § 17.]

§ 7368. Guardians Ad Litem.

Whenever any defendant in any proceeding instituted under this act is an infant, insane or incompetent person, the court shall, on application of any party thereto, appoint a guardian ad litem for such person as in civil actions. If such infant, insane or incompetent person has a general

guardian, such general guardian shall be appointed guardian ad litem. [L. '17, p. 456, § 18.]

§ 7369. Reference to Engineer to Take Testimony.

Upon the completion of the service of summons as hereinbefore provided, the superior court in which said proceeding is pending shall make an order referring said proceeding to the state hydraulic engineer to take testimony, by himself or by his duly authorized deputy, as referee, and he or his said deputy shall report to and file with the superior court of the county in which such cause is pending a transcript of such testimony for adjudication thereon by such court. [L. '17, p. 456, § 19.]

See notes to § 7355.

§ 7370. Notice of Hearing—Powers of Referee—Decree.

Thereupon the state hydraulic engineer shall fix a time and place for such hearing and serve written notice thereof upon all persons who have appeared in said proceeding, their agents or attorneys. Notice of such hearing shall be served at least ten days before the time fixed therefor. Such hearings may be adjourned from time to time and place to place. The state hydraulic engineer or his duly authorized deputy shall have authority to subpoena witnesses and administer oaths in the same manner and with the same powers as referees in civil actions. The fees and mileage of witnesses shall be advanced by the party at whose instance they are called as in civil actions. A final decree adjudicating rights or priorities, entered in any case decided prior to taking effect of this act, shall be conclusive among the parties thereto and the extent of use so determined shall be prima facie evidence of rights to the amount of water and priorities so fixed as against any person not a party to said decree. [L. '17, p. 456, § 20.]

See notes to § 7355.

§ 7371. Fees—Apportionment of Expenses—Audit.

At the time of filing the statement as provided in section 7367, each defendant shall pay to the clerk of the superior court a fee of one dollar (\$1). The state hydraulic engineer shall keep a record of the expenses incurred by him in the determination of the rights on any stream, including the proportionate share of the expense of his office, such expense to date from the filing of a petition or the institution of any investigation as provided in section 7364. Immediately upon receipt of a decree of the superior court determining the rights of parties as provided in section 7373, the state hydraulic engineer shall prepare and file in the superior court a statement of such expense, showing the total expense of the determination and apportioning such expense to the various rights as determined by the court in proportion to the amount of such rights. Such records shall be subject to audit by the bureau of inspection and supervision of public offices as are other accounts of state offices. The amount of such expense apportioned to each diverter shall be paid by such diverter before he shall be entitled to receive a certificate of diversion from the state hydraulic engineer. [L. '19, p. 143, § 2; L. '17, p. 457, § 21.]

See notes to § 7355.

§ 7372. Transcript of Testimony—Filing—Notice of Hearing.

Upon the completion of the taking of testimony it shall be the duty of the state hydraulic engineer to prepare and file with the clerk of the superior court where such proceeding is pending, a transcript of the testimony taken at such hearing, in triplicate, together with all papers and exhibits offered and received in evidence and not already a part of the record. He shall also make and file in said court a full and complete report as in other cases of reference in the superior court. Two of said transcripts shall be for the use of the parties as the court may direct. The court shall set a time for the hearing and the state hydraulic engineer shall thereupon prepare a notice designating a time for the hearing of said report and serve a copy thereof, together with a copy of his report, on all persons, their agents or attorneys who have appeared in such proceeding. Such service shall be made not less than twenty days before the time for said hearing, either personally or by registered mail, and an affidavit of such service filed with the clerk. [L. '17, p. 457, § 22.]

§ 7373. Exceptions to Report—Procedure—Appeals to Supreme Court.

Upon the filing of the evidence and the report of the state hydraulic engineer, any interested party may, on or before five days prior to the date of said hearing, file exceptions to such report in writing and such exceptions shall set forth the grounds therefor and a copy thereof shall be served personally or by registered mail upon all parties who have appeared in the proceeding. If no exceptions be filed, the court shall enter a decree determining the rights of the parties according to the evidence and the report of the state hydraulic engineer, whether such parties have appeared therein or not. If exceptions are filed the action shall proceed as in case of reference of a suit in equity and the court may in its discretion take further evidence or, if necessary, remand the case for such further evidence to be taken by the state hydraulic engineer, and may require further report by him. Costs, not including taxable attorneys' fees, may be allowed or not; if allowed, may be apportioned among the parties in the discretion of the court. Appeal may be taken to the supreme court from such decree in the same manner as in other cases in equity, except that notice of appeal must be both served and filed within sixty days from the entry thereof. [L. '17, p. 458, § 23.]

See notes to § 7355.

§ 7374. Regulation of Stream Pending Proceedings.

During the pendency of such adjudication proceedings prior to judgment or upon appeal to the supreme court of the state or other appellate court, the stream or other water involved shall be regulated or partially regulated according to the schedule of rights specified in said state hydraulic engineer's report upon an order of the court authorizing such regulation: Provided, any interested party may file a bond and obtain an order staying the regulation of said stream as to him, in the same manner as provided in section 7361, in which case the court shall make such order regarding the regulation of the stream or other water as he may deem just. [L. '21, p. 303, § 1.]

§ 7375. Failure of Defendant to Appear—Estoppel.

Whenever proceedings shall be instituted for the determination of the rights to the use of the water, any defendant who shall fail to appear in such proceedings, after legal service, and submit proof of his claim, shall be estopped from subsequently asserting any right to the use of such water embraced in such proceeding, except as determined by such decree. [L. '17, p. 458, § 24.]

§ 7376. Decree—Entry.

The clerk of the superior court, immediately upon the entry of any decree by the superior court, shall transmit a certified copy thereof to the state hydraulic engineer, who shall immediately enter the same upon the records of his office. [L. '17, p. 458, § 25.]

§ 7377. Certificates of Right to Diversion.

Upon the final determination of the rights to the diversion of water it shall be the duty of the state hydraulic engineer to issue to each person entitled to the diversion of water by such determination, a certificate under his official seal, setting forth the name and postoffice address of such person; the priority and purpose of the right; the period during which said right may be exercised, the point of diversion and the place of use; the land to which said water right is appurtenant and when applicable the maximum quantity of water allowed. [L. '17, p. 459, § 26.]

See notes to § 7355.

§ 7378. Applications for Permits to Use Water—Temporary Permits.

Any person, municipal corporation, firm, irrigation district, association, corporation or water users' association hereafter desiring to appropriate water for a beneficial use shall make an application to the state hydraulic engineer for a permit to make such appropriation, and shall not use or divert such waters until he has received a permit from such state hydraulic engineer as in this chapter provided. The construction of any ditch, canal or works, or performing any work in connection with said construction or appropriation, or the use of any waters, shall not be an appropriation of such water nor an act for the purpose of appropriating water unless a permit to make said appropriation has first been granted by the state hydraulic engineer: Provided, that a temporary permit may be granted upon a proper showing made to the hydraulic engineer to be valid only during the pendency of such application for a permit unless sooner revoked by said hydraulic engineer: Provided, further, that nothing in this act contained shall be deemed to affect chapter III of this title, except that the notice and certificate therein provided for in section 7410 thereof shall be addressed to the state hydraulic engineer after the passage of this act, and the state hydraulic engineer shall exercise the powers and perform the duties prescribed by said section 7410. [L. '17, p. 459, § 27.]

See notes to § 7355.

§ 7379. Contents of Applications—Purposes.

Each application for permit to appropriate water shall set forth the name and postoffice address of the applicant, the source of water supply, the nature and amount of the proposed use, the time during which water will be required each year, the location and description of the proposed ditch, canal, or other work, the time within which the completion of the construction and the time for the complete application of the water to the proposed use. If agricultural purposes, it shall give the legal subdivision of the land and the acreage to be irrigated, as near as may be, and the amount of water expressed in acre-feet to be supplied per season. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied. If for construction of a reservoir, it shall give the height of the dam, the capacity of the reservoir, and the uses to be made of the impounded waters. If for municipal water supply, it shall give the present population to be served, and, as near as may be, the future requirement of the municipality. If for mining purposes, it shall give the nature of the mines to be served and the method of supplying and utilizing the water; also their location by legal subdivisions. All applications shall be accompanied by such maps and drawings, in duplicate, and such other data, as may be required by the state hydraulic engineer, and such accompanying data shall be considered as a part of the application. [L. '17, p. 459, § 28.]

§ 7380. Filing With Engineer—Date—Priority.

Upon receipt of an application it shall be the duty of the state hydraulic engineer to make an indorsement thereon of the date of its receipt, and to keep a record of same. If upon examination, the application is found to be defective, it shall be returned to the applicant for correction or completion, and the date and the reasons for the return thereof shall be indorsed thereon and made a record in his office. No application shall lose its priority of filing on account of such defects, provided acceptable maps, drawings and such data as is required by the state hydraulic engineer shall be filed in the office of the state hydraulic engineer within such reasonable time as he shall require. [L. '17, p. 460, § 29.]

See notes to § 7355.

§ 7381. Notice of Proposed Use or Diversion—Publication.

Upon filing an application which complies with the provisions of this act and the rules and regulations established hereunder, the state hydraulic engineer shall instruct the applicant to publish notice thereof, in a form prescribed by said state hydraulic engineer, in one newspaper of general circulation published at the county seat of the county or counties in which the storage, diversion and use is to be made, and in such other newspapers as the state hydraulic engineer may direct, once a week for two consecutive weeks. [L. '17, p. 461, § 30.]

§ 7382. Investigation and Report on Application—Permits—Approval—Fees.

When an application complying with the provisions of this chapter and with the rules and regulations of the state hydraulic engineer has been filed, the same shall be placed on record in the office of the state hydraulic engineer, and it shall be his duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the state hydraulic engineer shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. The state hydraulic engineer shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if he shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, he shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: Provided, that where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such lands as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard for the highest feasible development of the use of the waters belonging to the public, it shall be the duty of the state hydraulic engineer to reject such application and to refuse to issue the permit asked for. If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under section 7354 hereof, said engineer may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the state hydraulic engineer to investigate all facts relevant and material to the application. After the state hydraulic engineer approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in section 7399. [L. '17, p. 461, § 31.]

See notes to § 7355.

§ 7383. Denial of Permit for Appropriation.

That no permit for the appropriation of water shall be denied because of the fact that the point of diversion described in the application for such permit, or any portion of the works in such application described and to be constructed for the purpose of storing, conserving, diverting or distributing such water, or because the place of intended use or the lands to be irrigated by means of such water, or any part thereof,

may be situated in some other state or nation, but in all such cases where either the point of diversion or any of such works or the place of intended use, or the lands, or part of the lands, to be irrigated by means of such water, are situated within the state of Washington, the permit shall issue as in other cases: Provided, however, that the state hydraulic engineer may in his discretion, decline to issue a permit where the point of diversion described in the application is within the state of Washington but the place of beneficial use in some other state or nation, unless under the laws of such state or nation water may be lawfully diverted within such state or nation for beneficial use in the state of Washington. [L. '21, p. 305, § 3.]

See notes to § 7355.

§ 7384. Assignment of Permits.

Any permit to appropriate water may be assigned subject to the conditions of the permit, but no such assignment shall be binding or valid unless filed for record in the office of the state hydraulic engineer. Any application for permits to appropriate water prior to permit issuing, may be assigned by the applicant, but no such assignment shall be valid or binding unless the written consent of the state hydraulic engineer is first obtained thereto, and unless such assignment is filed for record in the office of the state hydraulic engineer. [L. '17, p. 462, § 32.]

See notes to § 7355.

§ 7385. Construction Work Under Permits—Limitations—Extension of Time—Cancellation of Permit.

Actual construction work shall be commenced on any project for which permit has been granted within such reasonable time as shall be prescribed by the state hydraulic engineer, and shall thereafter be prosecuted with diligence and completed within the time prescribed by the state hydraulic engineer. The state hydraulic engineer, in fixing the time for the commencement of the work, or for the completion thereof and the application of the water to the beneficial use prescribed in the permit, shall take into consideration the cost and magnitude of the project and the engineering and physical features to be encountered, and shall allow such time as shall be reasonable and just under the conditions then existing, having due regard for the public welfare and public interests affected: and, for good cause shown, he shall extend the time or times fixed as aforesaid, and shall grant such further period or periods as may be reasonably necessary, having due regard to the good faith of the applicant and the public interests affected. If the terms of the permit or extension thereof, are not complied with the state hydraulic engineer shall give notice by registered mail that such permit will be canceled unless the holders thereof shall show cause within sixty days why the same should not be so canceled. If cause be not shown, said permit shall be canceled. [L. '17, p. 462, § 33.]

See notes to § 7355.

§ 7386. Certificate of Due Appropriation—Registration and Recording.

Upon a showing satisfactory to the state hydraulic engineer that any appropriation has been perfected in accordance with the provisions

of this act, it shall be the duty of such state hydraulic engineer to issue to the applicant a certificate stating such facts in a form to be prescribed by him, and such certificate shall thereupon be recorded in his office. Any original water right certificate or permit to divert water, issued, as provided by this act, shall be recorded in his office and thereafter, at the expense of the party receiving the same, be by such engineer transmitted to the county auditor of the county or counties where the distributing system or any part thereof is located, and be recorded in the office of such county auditor, and thereafter be transmitted to the owner thereof. [L. '17, p. 463, § 34.]

See notes to § 7355.

§ 7387. Date of Initiation of Water Right.

The right acquired by appropriation shall relate back to the date of filing of the original application in the office of the state hydraulic engineer. [L. '17, p. 463, § 35.]

§ 7388. Storage Dams—Approval by Engineer.

Any person, corporation or association intending to construct any dam or controlling works for the storage of ten-acre feet or more of water, shall, before beginning said construction, submit plans and specifications of the same to the state hydraulic engineer for his examination and approval as to its safety. Such plans and specifications shall be submitted in duplicate, one copy of which shall be retained, as a public record, by the state hydraulic engineer, and the other returned with his approval or rejection indorsed thereon. No such dam or controlling works shall be constructed until the same or any modification thereof shall have been approved as to its safety by the state hydraulic engineer. [L. '17, p. 463, § 36.]

See notes to § 7355.

§ 7389. Controlling Works and Measuring Devices—Duty to Maintain.

The owner or owners of any ditch or canal shall maintain, to the satisfaction of the state hydraulic engineer, substantial controlling works, and a measuring device at the point where the water is diverted, and these shall be so constructed as to permit of accurate measurement and practical regulation of the flow of water diverted into said ditch or canal. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the state hydraulic engineer, any measuring device necessary to ascertain the natural flow into and out of said reservoir. [L. '17, p. 464, § 37.]

See notes to § 7355.

Meaning of "inch" as used with respect to water measurement. **Ann. Cas.** 1916B, 1230.

§ 7390. Reservoir Permits—Applications for Secondary Permits.

All applications for reservoir permits shall be subject to the provisions of sections 7378 to 7385, both inclusive. But the party or parties proposing to apply to a beneficial use the water stored in any such res-

ervoir shall also file an application for a permit, to be known as the secondary permit, which shall be in compliance with the provisions of sections 7378 to 7385, both inclusive. Such secondary application shall refer to such reservoir as its source of water supply and shall show documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When the beneficial use has been completed and perfected under the secondary permit, the state hydraulic engineer shall take the proof of the water users under such permit and the final certificate of appropriation shall refer to both the ditch and works described in the secondary permit and the reservoir described in the primary permit. [L. '17, p. 464, § 38.]

§ 7391. Water Appurtenant to Land—Transfer—Change in Point of Diversion—Notice and Hearing—Certificates.

The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: Provided, however, that said right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the state hydraulic engineer, and said application shall not be granted until notice of the hearing upon said application shall be published as provided in section 7381. If upon such hearing it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the state hydraulic engineer shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record in the office of the state hydraulic engineer and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water. The applicant shall pay the fee of one dollar (\$1) for the certificate provided for by this section. [L. '17, p. 465, § 39.]

See notes to § 7355.

Transfer of right to use water to nonriparian land. 14 A. L. R. 330.

Transfer of right to use water for irrigation. 65 L. R. A. 407.

§ 7392. Unauthorized Use of Water.

The unauthorized use of water to which another person is entitled or the willful or negligent waste of water to the detriment of another, shall be a misdemeanor. The possession or use of water without legal right shall be prima facie evidence of the guilt of the person using it.

It shall also be a misdemeanor to use, store or divert any water until after the issuance of permit to appropriate such water. [L. '17, p. 465, § 40.]

§ 7393. Interference With Appliances or Wrongful Use of Water.

(1) Any person or persons who shall willfully interfere with, or injure or destroy any dam, dike, headgate, weir, canal or reservoir, flume or other structure or appliance for the diversion, carriage, storage, apportionment or measurement of water for irrigation, reclamation, power or other beneficial uses, or who shall willfully use or conduct water into or through his ditch, which has been lawfully denied him by the water-master or other competent authority, or shall willfully injure or destroy any telegraph, telephone or electric transmission line, or any other property owned, occupied or controlled by any person, association, or corporation, or by the United States and used in connection with said beneficial use of water, shall be guilty of a misdemeanor.

(2) Any person or persons who shall willfully or unlawfully take or use water, or conduct the same into [to] his ditch or to his land, or land occupied by him, and for such purpose shall cut, dig, break down or open any headgate, bank, embankment, canal or reservoir, flume or conduit, or interfere with, injure or destroy any weir, measuring-box or other appliance for the apportionment and measurement of water, or unlawfully take or cause to run or pour out of such structure or appliance any water, shall be guilty of a misdemeanor.

(3) The use of water through such structure or structures, appliance or appliances hereinbefore named after its or their having been interfered with, injured or destroyed, shall be prima facie evidence of the guilt of the person using it. [L. '21, p. 304, § 2. Cf. L. '17, p. 466, § 41.]

§ 7394. Obstruction of Appropriator's Right of Way.

Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto or trespass thereon. [L. '17, p. 466, § 42.]

§ 7395. Partnership Ditches.

In all cases where irrigation ditches are owned by two or more persons, and one or more of such persons shall fail or neglect to do his, or her or their proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such work as is reasonably necessary to maintain the ditch, may, after having given ten days' written notice to such owner or owners who have failed to perform his, her or their proportionate share of such work, necessary for the operation and maintenance of said ditch or ditches, perform his, her or their share of such work, and recover therefor from such person or persons so failing to perform his, her or their share of such work in any court having jurisdiction of the matter the expense

or value of such work or labor so performed: Provided, that no improvement involving an expenditure in excess of one hundred dollars (\$100) shall be made without the written approval of the state hydraulic engineer having first been obtained. [L. '19, p. 143, § 3.]

§ 7396. Division of Water Between Joint Owners—Determination—Costs—Collection.

When two or more persons, joint owners in an irrigation ditch or reservoir, not incorporated, or their lessees, are unable to agree relative to the division or distribution of water received through their ditch or from their reservoir, and where there is no disagreement as to the ownership of said water, it shall be lawful for any such owner or owners, his or their lessee or lessees, or either of them, to apply to the state hydraulic engineer, in writing, setting forth such fact and giving such information as shall enable the state hydraulic engineer to estimate the probable expense of such service, asking the state hydraulic engineer to appoint some suitable person to take charge of such ditch or reservoir for the purpose of making a just division or distribution of the water from the same to the parties entitled to the use thereof. The state hydraulic engineer shall upon receipt of such application notify the applicant of the probable expense of such division and upon receipt of certified check for said amount, he shall appoint a suitable person to make such division. The person so appointed shall take exclusive charge of such ditch or reservoir for the purpose of dividing the water therefrom in accordance with the established rights of the diverters therefrom, and continue the said work until the necessity therefor shall cease to exist. The expense of such investigation and division shall be a charge upon all of the co-owners and the person advancing the payment to the state hydraulic engineer shall be entitled to recover in any court of competent jurisdiction from his co-owners their proportionate share of the expense. [L. '19, p. 144, § 4.]

See notes to § 7355.

§ 7397. Lien for Services of Co-owner—Maintenance Labor.

Upon the failure of any co-owner to pay his proportionate share of such expense as mentioned in section 7395 within thirty days after receiving a statement of the same as performed by his co-owner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county auditor of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons who shall fail to perform their proportionate share of the work requisite to the proper maintenance of said ditch, which said lien when so taken may be enforced in the same manner as provided by law for the enforcement of mechanics' and builders' liens. [L. '19, p. 145, § 5.]

§ 7398. Inchoate Rights not Impaired.

That nothing in this act contained shall operate to effect an impairment of any inchoate right to divert and use water while the appli-

cation of the water in question to a beneficial use is being prosecuted with reasonable diligence, having due regard to the circumstances surrounding the enterprise, including the magnitude of the project for putting the water to a beneficial use and the market for the resulting water right for irrigation or power or other beneficial use, in the locality in question. [L. '17, p. 467, § 43.]

§ 7399. Schedule of Fees.

The following fees shall be collected by the state hydraulic engineer in advance and be paid by him into the general fund of the state treasury on the last day of March, June, September and December of each year; (a) for examining an application for a permit to appropriate water, five dollars (\$5); (b) for filing and recording permit to appropriate water for irrigation purposes, ten cents (10c) per acre for each acre to be irrigated up to and including one hundred acres, and five cents (5c) per acre for each acre in excess of one hundred acres up to and including one thousand acres, and two and one-half cents (2½c) for each acre in excess of one thousand acres; and also ten cents (10c) for each theoretical horse-power up to and including one hundred h. p. and five cents (5c) for each theoretical h. p. up to and including one thousand h. p. and one cent (1c) for each theoretical h. p. in excess of one thousand h. p.; (c) for filing and recording any other water right instrument, one dollar (\$1) for the first hundred words and ten cents (10c) for each additional hundred words or fraction thereof; (d) for making copy of any document recorded or filed in his office, ten cents (10c) for each hundred words or fraction thereof, but where the amount exceeds five dollars (\$5), then only the actual cost in excess of that amount shall be charged; (e) for certifying to copies, documents, records, or maps, one dollar (\$1) for each certification; (f) for blue print copies of any map or drawing, ten cents (10c) per square foot or fraction thereof. For such other work of a similar nature as may be required of his office, at actual cost of the work. [L. '17, p. 467, § 44.]

See notes to § 7355.

§ 7400. "Person" Defined.

The term "person," whenever used in this act, may be construed to mean firm, association, water users' association, corporation, irrigation district, or municipal corporation, as well as an individual. [L. '17, p. 468, § 46.]

§ 7401. [6364.] Number of Ditches on Same Parcel of Land Limited.

No tract or parcel of improved or occupied land in this state shall, without the written consent of the owner thereof, be subjected to the burden of two or more irrigating ditches constructed for the purpose of conveying water through said property to lands adjoining or beyond the same, when the same object can feasibly and practicably be attained by uniting any [and] conveying all the water necessary to be conveyed through such property in one ditch. [L. '90, p. 717, § 39; 1 H. C., § 1756.]

See note to § 7403.

Cited in 111 Wash. 621.

Under this section, the ditch is the only property that can be condemned for carrying additional water: State ex rel. Lincoln v. Superior Court, 111 Wash. 615, 191 Pac. 805.

§ 7402. [6345.] Ditch Owner to Bridge Crossings—Procedure in Case of Failure.

Any person constructing a ditch, whenever the same be taken across any public highway, shall put a good, substantial bridge, not less than sixteen feet in breadth, over such watercourse where it crosses said road, which said bridge shall be constructed within three days after any ditch has been constructed across any highway, and in case any bridge is not so constructed within the time named by the owners thereof, it shall be the duty of the supervisors of the road district wherein said crossing is situated to put a bridge over said ditch of the dimensions specified in this section, and call on the owner of the ditch to pay the expenses of constructing such bridges; and if the owner of such ditch refuse to pay the said expense, the said supervisor may go before any justice of the peace and make oath to the correctness of the bill, and that the owner of the ditch refuses payment thereof, and thereupon such justice of the peace shall issue a summons against such owner, requiring him to appear and answer to the complaint of such supervisor in an action for the amount due, such summons to be made returnable, and such proceedings to be had and taken thereon, as in other cases. And in case judgment shall be given against such owner, the justice of the peace shall assess, in addition to the amount due for the building of said bridge, the sum of ten dollars as damages, arising from the delay of such owner; such judgment to be collected as in other cases, and to be a fund in the hand of the supervisor of roads for such district for the repairs of roads therein, except the ten dollars damages, which shall go to the supervisor to pay him for his trouble and expense in collecting the cost of said bridge. [L. '90, p. 711, § 21; 1 H. C., § 1738.]

See note to § 7403.

CHAPTER II.

ARTESIAN WELLS.

§ 7403. [6342.] Artesian Wells, Right of Way from.

Any person who may be entitled to water from any artesian well shall have the right to condemn the right of way for a ditch to convey such water for the purpose of irrigation over the lands intervening between such well and the place where the party owning such water wishes to use the same, and such right of way may be condemned sufficient for the purpose of conveying the water, together with the right of ingress and egress, to construct, maintain, and repair said ditch, as is hereinafter provided for in this act. [L. '90, p. 711, § 18; 1 H. C., § 1735.]

"This act," Laws of '90, repealed by L. '17, p. 468, § 47, excepting this and the two preceding sections.

§ 7404. [6404.] Unlawful to Allow to Flow During Certain Seasons.

It shall be unlawful for any person, firm, corporation or company having possession or control of any artesian well within the state, whether as contractor, owner, lessee, agent or manager, to allow or permit water to flow or escape from such well between the first day of October in any year and the first day of April next ensuing: Provided, that this chapter shall only apply to sections and communities wherein the use of water for the purpose of irrigation is necessary or customary: And providing further, that nothing herein contained shall prevent or prohibit the use of water from any such well between said first day of October and the first day of April next ensuing, for household, stock and domestic purposes only, water for said last named purposes to be taken from such well through a one-half inch stop and waste cock to be inserted in the piping of such well for that purpose. [L. '01, p. 259, § 1.]

"This chapter," all herein except § 7403.

§ 7405. [6405.] Capping to Prevent Flow—Exceptions.

It shall be the duty of every person, firm, corporation or company having possession or control of any artesian well, as provided in section 7404, to securely cap the same over on or before the first day of October in each and every year in such manner as to prevent the flow or escape of water therefrom, and to keep the same securely capped and prevent the flow or escape of water therefrom until the first day of April next ensuing: Provided, however, it shall and may be lawful for any such person, firm, corporation or company to insert a one-half inch stop and waste cock in the piping of such well, and to take and use water therefrom through such stop and waste cock at any time for household, stock or domestic purposes, but not otherwise. [L. '01, p. 260, § 2.]

§ 7406. [6406.] Penalty.

Any person whether as owner, lessee, agent or manager having possession or control of any such well, violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding two hundred dollars for each and every such offense, and the further sum of two hundred dollars for each ten days during which such violation shall continue. [L. '01, p. 260, § 3.]

§ 7407. [6407.] Adjacent Owners may Stop Flow—Penalty—Costs.

Whenever any person, firm, corporation or company in possession or control of an artesian well shall fail to comply with the provisions of this act, any person, firm, corporation or company lawfully in the possession of land situate adjacent to or in the vicinity or neighborhood of such well and within five miles thereof may enter upon the land upon which such well is situate, and take possession of such from which water is allowed to flow or escape in violation of the provisions of section 7404, and cap such well and shut in and secure the flow

or escape of water therefrom, and the necessary expenses incurred in so doing shall constitute a lien upon said well, and a sufficient quantity of land surrounding the same for the convenient use and operation thereof, which lien may be foreclosed in a civil action in any court of competent jurisdiction, and the court in any such case shall allow the plaintiff a reasonable attorney's fee to be taxed as a part of the cost. This shall be in addition to the penalty provided for in section 7406. [L. '01, p. 260, § 4.]

CHAPTER III.

USE OF STATE WATERS.

§ 7408. [6408.] Eminent Domain by United States.

The United States is hereby granted the right to exercise the power of eminent domain to acquire the right to the use of any water, to acquire or extinguish any rights, and to acquire any lands or other property, for the construction, operation, repairs to, maintenance or control of any plant or system of works for the storage, conveyance, or use of water for irrigation purposes, and whether such water, rights, lands or other property so to be acquired belong to any private party, association, corporation or to the state of Washington, or any municipality thereof; and such power of eminent domain shall be exercised under and by the same procedure as now is or may be hereafter provided by the law of this state for the exercise of the right of eminent domain by ordinary railroad corporations, except that the United States may exercise such right in the proper court of the United States as well as the proper state court. [L. '05, p. 180, § 1.]

Power of United States to condemn water for navigation purposes. *Ann. Cas.* 1918E, 47.

§ 7409. [6409.] Rights of United States to Use Watercourses.

The United States shall have the right to turn into any natural or artificial watercourse, any water that it may have acquired the right to store, divert, or store and divert, and may again divert and reclaim said waters from said watercourse for irrigation purposes subject to existing rights. [L. '05, p. 180, § 2.]

§ 7410. [6410.] Exemptions Pending Federal Investigation.

Whenever the secretary of the interior of the United States, or any officer of the United States duly authorized, shall notify the commissioner of public lands of this state that pursuant to the provisions of the act of congress approved June 17, 1902, entitled, "An act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," or any amendment of said act or substitute therefor, the United States intends to make examinations or surveys for the utilization of certain specified waters, the waters so described shall not thereafter be subject to appropriation under any law of this state for a period of one year from and after the date of the receipt of such notice by such commissioner of public lands; but

such notice shall not in any wise affect the appropriation of any water theretofore in good faith initiated under any law of this state, but such appropriation may be completed in accordance with the law in the same manner and to the same extent as though such notice had not been given. No adverse claim to any such waters initiated subsequent to the receipt by the commissioner of public lands of such notice shall be recognized, under the laws of this state, except as to such amount of the waters described in such notice or certificate hereinafter provided as may be formally released in writing by a duly authorized officer of the United States. If the said secretary of the interior or other duly authorized officer of the United States shall, before the expiration of said period of one year, certify in writing to the said commissioner of public lands that the project contemplated in such notice appears to be feasible and that the investigation will be made in detail, the waters specified in such notice shall not be subject to appropriation under any law of this state for the further period of three years following the date of receipt of such certificate, and such further time as the commissioner of public lands may grant, upon application of the United States or some one of its authorized officers and notice thereof first published once in each week for four consecutive weeks in a newspaper published in the county where the works for the utilization of such waters are to be constructed, and if such works are to be in or extend into two or more counties, then for the same period in a newspaper in each of such counties: Provided, that in case such certificate shall not be filed with said commissioner of public lands within the period of one year herein limited therefor the waters specified in such notice shall, after the expiration of said period of one year, become unaffected by such notice and subject to appropriation as they would have been had such notice never been given: And provided further, that in case such certificate be filed within said one year and the United States does not authorize the construction of works for the utilization of such waters within said three years after the filing of said certificate, then the waters specified in such notice and certificate shall, after the expiration of said last named period of three years, become unaffected by such notice or certificate and subject to appropriation as they would have been had such notice never been given and such certificate never filed. [L. '05, p. 180, § 3.]

§ 7411. [6411.] Appropriation—Title to Beds and Shores.

Whenever said secretary of the interior or other duly authorized officer of the United States shall cause to be let a contract for the construction of any irrigation works or any works for the storage of water for use in irrigation, or any portion or section thereof, for which the withdrawal has been effected as provided in section 7410, any authorized officer of the United States, either in the name of the United States or in such name as may be determined by the secretary of the interior, may appropriate, in behalf of the United States, so much of the unappropriated waters of the state as may be required for the project, such appropriation to be made, maintained and perfected in the same manner and to the same extent as though such appropriation

had been made by a private person, corporation or association, except as to the time for the initiation, prosecution and completion of the necessary works for the utilization of the waters so appropriated; which time shall be controlled by the provisions of section 7410 of this chapter. Such appropriation by or on behalf of the United States shall inure to the United States, and its successors in interest, in the same manner and to the same extent as though said appropriation had been made by a private person, corporation or association. The title to the beds and shores of any navigable lake or stream utilized by the construction of any reservoir or other irrigation works created or constructed as a part of such appropriation hereinbefore in this section provided for, shall vest in the United States to the extent necessary for the maintenance, operation and control of such reservoir or other irrigation works. [L. '05, p. 182, § 4.]

§ 7412. [6412.] Reservation of Necessary Lands by United States—Procedure.

When the notice provided for in section 7410 shall be given to the commissioner of public lands the proper officers of the United States may file with the said commissioner a list of lands (including in the term "lands" as here used, the beds and shores of any lake, river, stream, or other waters) owned by the state, over or upon which the United States may require rights of way for canals, ditches or laterals or sites for reservoirs and structures therefor or appurtenant thereto, or such additional rights of way and quantity of land as may be required for the operation and maintenance of the completed works for the irrigation project contemplated in such notice, and the filing of such list shall constitute a reservation from the sale or other disposal by the state of such lands so described, which reservation shall, upon the completion of such works and upon the United States by its proper officers filing with the commissioner of public lands of the state a description of such lands by metes and bounds or other definite description, ripen into a grant from the state to the United States. The state, in the disposal of lands granted from the United States to the state, shall reserve for the United States rights of way for ditches, canals, laterals, telephone and transmission lines which may be required by the United States for the construction, operation and maintenance of irrigation works. [L. '05, p. 182, § 5.]

§ 7413. [6413.] Restrictions on Sale of State Lands Within Project.

After the receipt by the commissioner of public lands of the notice from the secretary of the interior or other officer of the United States provided for in section 7410, no lands belonging to the state, susceptible of irrigation and within the area to be irrigated from the works projected by the United States and specified in such notice shall be sold except in conformity to the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from

such works and shall produce the evidence thereof duly issued: Provided, that the restrictions upon the sale or other disposal by the state of any state lands provided for in this section shall continue for the same periods, respectively, and upon the same conditions, as specified in section 7410 for the withdrawal of waters from appropriation: And provided further, that in case the authorization by the United States for the construction of irrigation works pursuant to section 7410 shall be made within the period of three years specified therefor in said section, then the restrictions upon and conditions prescribed for the sale or other disposal of said lands in this section shall continue so long as any such lands shall remain unsold or not disposed of. [L. '05, p. 183, § 6.]

§ 7414. [6414.*] Water Users' Associations Exempt from Tax — Corporate Filing Fee—Dissolution.

Any water users' association which is organized in conformity with the requirements of the United States under said act of congress. and which under its articles of incorporation is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax, and from the payment of any annual franchise tax; but shall be required to pay, as preliminary to its incorporation, only a fee of twenty dollars for the filing and recording of its articles of incorporation and the issuance of certificates of incorporation. Whenever, with the consent of the secretary of the interior of the United States, the stockholders of any such association shall adopt any other form of organization to manage the affairs of such reclamation project in connection with which any such water users' association has been organized, such association may dissolve or disincorporate itself by the procedure and subject to the laws relating to the disincorporation of corporations in this state when such dissolution is authorized by a vote of two-thirds of all the stockholders represented at a meeting of the stockholders called for such purpose. [L. '19, p. 86, § 1. Cf. L. '05, p. 184, § 7.]

§ 7415. [6415.] County Auditor to Provide Record Books.

It shall be the duty of the county auditor to provide record books containing printed forms of the articles of incorporation and stock subscriptions to the stock of water users' associations organized in conformity with the requirements of the United States under said act of congress, and to use such books for recording stock subscriptions of such associations, and the charges for the recording thereof shall be made on the basis of the number of words actually written therein and not for the printed form. [L. '05, p. 184, § 8.]

§ 7416. [6415-1.] Dams and Works for Irrigation and Power Purposes.

There is hereby granted to persons, firms and corporations organized among other things, for irrigation and power purposes, the right to construct and maintain dams and works incident thereto over, upon and across the beds of the rivers of the state of Washington in connection with such power and irrigation purposes, and there is hereby

granted to such persons, firms and corporations an easement over, upon and across the beds of such rivers for such purposes. Such easement shall be limited however, to so much of the beds of such rivers as may be reasonably convenient and necessary for such uses. All such dams and works shall be completed within five years after the commencement of construction work upon the same. The rights and privileges granted by this act shall inure to the benefit of such persons, firms or corporations from the date of the commencement of construction work upon such dams and works incident thereto, and such construction work shall be diligently prosecuted to completion, and the rights, privileges and easements granted by this act shall continue so long as the same shall be utilized by the grantees for the purposes herein specified, and the failure to maintain and use such dams and works after the same shall have been constructed, for a continuous period of two years, shall operate as a forfeiture of all the rights hereby granted and the same shall revert to the state of Washington: Provided, that nothing in this act shall be construed in such a way as to interfere with the use of said rivers for navigation purposes, and all of such rights, privileges and easements granted hereby shall be subject to the paramount control of such rivers for navigation purposes by the United States: And, provided, further, that the use and enjoyment of the grants and privileges of this act shall not interfere with the lawful and rightful diversion of the waters of said rivers by other parties under water appropriations in existence at the time any such persons, firms or corporations shall avail themselves of the benefits and privileges of this act, but no such persons, firms or corporations shall have any right to construct any such dams or works over, upon or across the land between ordinary high water and extreme low water of any river of this state without first having acquired the right to do so from the owner or owners of the lands adjoining the land between ordinary high water and extreme low water over or across which said dam or works are constructed. [L. '11, p. 436, § 1.]

§ 7416-1. Columbia River Basin Project—Survey and Report to Federal Government.

It shall be the duty of said commission to make or cause to be made a survey of the Columbia Basin Irrigation Project and to prepare a compilation and report of the result of such survey and present the same to the proper department or departments of the federal government for consideration, and to recommend and urge the appropriation of funds for the carrying out of the project for the improvement of the Columbia River Basin by irrigation. The commission shall have the power to employ such persons as may be necessary to assist them in their work, and to expend such of the funds appropriated by this act as they may deem necessary for such purposes. [L. '19, p. 125, § 2.]

"Said commission," refers to "Columbia Basin Survey Commission" provided for by section 1 of the act, and which is abolished by § 10893, *infra*.

See *infra*, § 10829, duties of commissioner devolve upon director of conservation and developments.

CHAPTER IV.

IRRIGATION DISTRICTS.

§ 7417. [6416.*] Formation of.

Whenever fifty or a majority of the holders of title to, or of evidence of title to land susceptible of "irrigation" desire to provide for the construction of works for the irrigation of the same, or desire to provide for the reconstruction, betterment, extension, purchase, operation or maintenance of works already constructed, or for the assumption as principal or guarantor of indebtedness on account of district lands to the United States under the federal reclamation laws, they may propose the organization of an irrigation district under the provisions of this chapter, and when so organized, such district shall have the power conferred, or that may hereafter be conferred, by law upon such irrigation district. [L. '17, p. 723, § 1. Cf. L. '15, p. 605, § 1. Cf. L. '90, p. 671, § 1; 1 H. C., § 1784; L. '95, p. 432, § 1.]

See *infra*, § 10462, power of certain companies to build canals to reclaim arid lands.

Cited in 19 Wash. 384; 32 Wash. 309; 56 Wash. 489; 70 Wash. 529; 75 Wash. 302, 303; 79 Wash. 435; 98 Wash. 413.

Irrigation Districts and Proceedings for Establishment, Generally: See Remington's Digest, Waters, §§ 88—94, and cases cited.

This section, providing for the organization of an irrigation district upon the petition of "fifty or a majority of holders of title," does not require fifty in any event, but a petition by forty-two freeholders, constituting more than a majority, is sufficient: *Rothchild Bros. v. Rollinger*, 32 Wash. 307, 73 Pac. 367.

In forming an irrigation district under this act, the commissioners have jurisdiction to determine whether the lands included have a sufficient water supply for irrigation from any source, and their decision thereon is final and conclusive, unless set aside or annulled by a court

in a proceeding to review the same: *Hanson v. Kittitas Reclamation District*, 75 Wash. 297, 134 Pac. 1083.

Proceedings in the superior court to confirm the formation of an irrigation district under this section are in rem, the object being to fix the status of the district and issue valid bonds, and may be instituted by publication of notice without personal service on all persons who are within the jurisdiction of the court: *Hanson v. Kittitas Reclamation District*, 75 Wash. 297, 134 Pac. 1083.

An irrigation district formed under this act is a municipal corporation: *Peters v. Union Gap Irrig. Dist.*, 98 Wash. 412, 167 Pac. 1085.

Scope and import of terms "owner" and "freeholder" in statutes relating to formation of irrigation districts. 2 A. L. B. 791; *Ann. Cas.* 1913D, 335.

§ 7418. [6417.*] Petition—Notice—Hearing—Order—Election.

For the purpose of organizing an irrigation district, a petition, signed by the required number of holders of title or evidence of title to land within the proposed district, shall be presented to the board of county commissioners of the county in which the lands, or the greater portion thereof, are situated, which petition shall set forth and particularly describe the proposed boundaries of such district, and the number of directors, either three (3) or five (5), desired by such district, and shall pray that the territory embraced within the boundaries of such proposed district may be organized as an irrigation district. The petition must be accompanied by a good and sufficient bond, to be approved by the board of county commissioners, in double the amount of the probable cost of organizing the district, and conditioned that the bondsmen will pay all of the costs in case such

organization shall not be effected. Said petition shall be presented at a regular meeting of the said board, or at any special meeting ordered to consider and act upon said petition, and shall be published once a week, for at least two weeks before the time at which the same is to be presented, in some newspaper of general circulation printed and published in the county where said petition is to be presented, together with a notice by the petitioners stating the time of the meeting at which the same will be presented. There shall also be published a notice of the hearing on said petition in a newspaper published at Olympia, Washington, to be designated by the hydraulic engineer from year to year until such time as the director of conservation and development shall be appointed and qualified and assume and exercise the duties of his office after which said newspaper shall be designated by said director, which said notice shall be published for at least two weeks prior to the date of said meeting and shall contain the name of the county or counties and the number of each township and range in which the lands embraced within the boundaries of the proposed district are situated, also the time, place and purpose for said meeting, which said notice shall be signed by the petitioner whose name first appears upon the said petition. If any portion of the lands within said proposed district lie within another county or counties, then the said petition and notice shall be published for the time above provided in one newspaper printed and published in each of said counties. The said notice shall also be served by registered mail at least two weeks before said hearing upon the state hydraulic engineer who shall sit with the board of county commissioners at the hearing upon said petition in an advisory capacity. When the petition is presented, the board of county commissioners shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing may make such changes in the proposed boundaries as it may find to be proper and just, and shall establish and define the boundaries of the district: Provided, that said board shall not modify the boundaries so as to except from the operation of this chapter any territory within the boundaries of the district proposed by said petitioners, which is susceptible of irrigation by the same system of works applicable to other lands in such proposed district and for which the water supply is available; nor shall any lands which, in the judgment of said board, will not be benefited be included within such district; any lands included within any district which have a partial or full water right shall be given equitable credit therefor in the apportionment of the assessments in this act provided for: And provided further, that any owner, whose lands are susceptible of irrigation from the same source, and in the judgment of the board it is practicable to irrigate the same by the proposed district system, shall, upon application to the board at the time of the hearing, be entitled to have such lands included in the district. The board of county commissioners shall, as soon as it has established the boundaries of said proposed district, enter an order establishing and defining such boundaries, and ordering that directors for such district be elected from the district at large, and designating a name for the proposed district, and calling an election to be held

in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act, and for the purpose of electing directors. The clerk of the board of county commissioners shall then give notice of the election ordered to be held as aforesaid, which notice shall describe the district boundaries as established, and shall give the name by which said proposed district has been designated, and shall state the purposes and objects of said election, and shall be published once a week, for at least two weeks prior to said election, in a newspaper of general circulation published in the county where the petition aforesaid was presented; and if any portion of said proposed district lies within another county or counties, then said notice shall be published in like manner in a newspaper within each of said counties. Said election notice shall also require the electors to cast ballots which shall contain the words "Irrigation District—Yes," and "Irrigation District—No," and also the names of persons to be voted for as directors of the district: Provided, that where in this act publication is required to be made in a newspaper of any county, the same may be made in a newspaper of general circulation in such county, selected by the person or body charged with making the publication and such newspaper shall be the official paper for such purpose. [L. '21, p. 422, § 1; L. '19, p. 527, § 1; L. '15, p. 605, § 2. Cf. L. '13, p. 558, § 1; L. '90, p. 671, § 2; 1 H. C., § 1785; L. '95, p. 433, § 2.]

Cited in 79 Wash. 439; 91 Wash. 66.

The title, "An act relating to the organization and government of irrigation districts, and amending specified sections is sufficient to authorize the amendment of this section amending the requirement that a petition for organization of a district be presented at a regular meeting, so that it might be presented at a special meeting: Board of Directors of Quincy Valley Irr. Dist. v. Scott, 79 Wash. 434, 140 Pac. 391.

In General: See Remington's Digest, Waters, § 89; Hanson v. Kittitas Reclamation District, 75 Wash. 297, 134 Pac. 1083.

Under this section, the record need not show whether the meeting was a regular or a special one: Wenatchee Reclamation District, In re, 91 Wash. 60, 157 Pac. 38.

The purchase of an existing system of irrigation works to be enlarged and reconstructed is authorized as within the spirit of this act: Wenatchee Reclamation District, In re, 91 Wash. 60, 157 Pac. 38.

See, also, Estimate of Cost—Powers of Officers—Compliance With Statute: Board of Directors Horse Heaven Irr. Dist. v. Mineah, 112 Wash. 325, 192 Pac. 997.

§ 7419. Inclusion of State Lands—Request for—Notice—Hearing—Assessment—Collection.

Whenever any state, granted, school or other public lands of the state shall be situated in any irrigation district organized under this act, such lands shall be subject to the provisions of this act in the same manner in which lands of like character held under private ownership are subject thereto except as hereinafter provided: Provided, that no state, granted, school or other public lands of the state shall be included in any such district except upon the consent of the commissioner of public lands to the inclusion of such lands in such district, and he shall be served with a copy of the petition proposing to include any such lands in any district, together with notice of the time and place of hearing the same, at least twenty days prior to such hearing, and if he shall determine that such public lands will be benefited by

being included in such district, he shall give his consent thereto in writing or shall file with the board a statement of his objections thereto: Provided further, that any state, granted, school or other public lands of the state which are situated within the boundaries of any irrigation district, but were not included within such district at the time of its organization, may be so included in such district after a hearing as herein provided. Whenever the commissioner of public lands or any interested person shall desire to have such lands included in the district, he shall file a request to that [e]ffect in writing with the district board, which shall thereupon fix a time and place for hearing such request and cause a notice of the same to be given by posting a copy of said notice in three (3) public conspicuous places in the district, one of which shall be at the place of hearing, at least twenty (20) days before the hearing, and by mailing, by registered mail, a copy of the notice to the commissioner of public lands. Said notice shall describe the lands to be included and direct all persons objecting to such inclusion to appear at the time and place stated and present their objections. At said hearing, the district board shall consider all objections to such inclusion and shall have the power to adjourn to a later date for cause and by resolution to determine the matter. The determination of the district board shall be final and conclusive upon all persons, except in no case shall any such lands be included in any district without the written consent of the commissioner of public lands.

Upon the inclusion of any state, granted, school or other public lands of the state within the limits of such organized district, the state shall be entitled to receive its proportion of water as in case of other land owners upon payment by the state, as herein provided, of such sums as shall be determined by the board of directors upon agreement with the commissioner of public lands, and at the time to be so fixed, which sums shall be such equitable amount as such lands should pay having regard to the length of time the district has been organized and to the present condition of the irrigation system, as well as to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit, if equitable, for any sums paid as water rent by the occupant of said lands prior to the inclusion of same in the district, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed.

Any public lands which shall be included in any irrigation district shall not be sold for delinquencies, but immediately after the delinquency thereof, the amount of the assessment shall be certified by the county treasurer of the county in which the land is situated to the commissioner of public lands, whose duty it shall be to certify the same to the state auditor, who shall, at the next session of the legislature, unless such assessment, or assessments, have been paid in the meantime, certify to the legislature the amount of such assessments and the legislature shall provide for the payment of the same with interest by appropriation out of the general fund of the state, and the amount so paid shall be added to the appraised value of the tract of land against which the delinquent assessment was certified and shall be

collected at the time and in the manner provided in section 4480 of this Code. The certificate of the county treasurer herein provided for shall contain (1) a description of the state, school, or granted lands by legal subdivisions, (2) the amount of the assessment against each legal subdivision separately stated. [L. '21, p. 425, § 2; L. '19, p. 530, § 2.]

Power of legislature to authorize appropriation of school or other pub-

lic lands for irrigation purposes. *Ann. Cas.* 1914B, 335.

§ 7420. [6418.*] Elections, How Conducted—Qualification of Electors.

For the purpose of the election above provided for, the board of county commissioners must establish a convenient number of election precincts in the proposed district and define the boundaries thereof, and designate a polling place for, and appoint the necessary election officers for each of said precincts, but said precincts may thereafter be changed by the board of directors of said district. Such election shall be conducted as nearly as may be practicable in the manner provided in the election of directors for the district: Provided, that where any nonassessable area is situated within the boundaries of any irrigation district, any notice, delinquent list or other announcement required by this act to be posted, may be so posted in such area, and any election held or to be held pursuant to the provisions of this chapter, may be held within such area.

The board of county commissioners shall meet on the second Monday next succeeding such election and proceed to canvass the returns of the votes cast thereat, and if upon such canvass it appears that at least two-thirds of all the votes cast are "Irrigation District Yes," the board shall, by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the three, or in case of five directors, then the five, persons receiving the highest number of votes to be duly elected directors of such district, and shall cause a copy of such order, duly certified, to be filed for record in the offices of the county auditor and the county assessor of each county in which any portion of the district may lie. From and after the date of the filing of such order, the organization of the district shall be complete and the directors thereof shall be entitled to enter immediately upon the duties of their office, upon qualifying in accordance with law, and shall hold office until their successors are elected and qualified. Immediately upon the filing of said certified copy of said order, it shall be the duty of the county assessor to write the name of the irrigation district on the permanent tax roll in a column provided for that purpose opposite each description of land, or any portion thereof, which is included within the boundaries of said district. Said column shall be carried forward each year on the current tax-roll. In the event of a change in the boundaries of any irrigation district, the assessor shall note the same in said column upon the tax-roll.

Any person of the age of twenty-one (21) years, being a citizen of the United States and a resident of the state of Washington and who holds title to land or evidence of title to land embraced within the boundaries of any irrigation district, or proposed irrigation district,

in the case of an election for the organization thereof, shall be entitled to vote at any election held therein. Additional qualifications for voting, required by the general election laws of the state shall not apply, provided at all times the majority of the board of directors shall be residents of the county or counties within which the district is situated; and if at any election more than one elector residing outside of such county or counties be voted for, only that one of the nonresident candidates who received the highest number of votes shall be considered in ascertaining and computing the result of the election: And provided further, that where the title or evidence of title to community land is held by the husband or the wife, both members of such community shall be entitled to vote: Provided, that at any election held under the provisions of this act, one officer or agent of any corporation owning land in the district, duly authorized thereto in writing, may cast a vote on behalf of said corporation; when so voting he shall file with the election officers such written instrument of his authority, and such officer or agent shall be deemed an elector within the meaning of this act. An elector resident within the district shall vote in the precinct in which he resides; and an elector not residing in the district shall vote in the precinct nearest his place of residence. [L. '21, p. 428, § 3; L. '17, p. 724, § 2; L. '13, p. 560, § 2. Cf. L. '90, p. 672, § 3; 1 H. C., § 1786.]

Cited in 75 Wash. 303.

§ 7421. [6419.*] Directors, Election of—Oath and Bond—Vacancies.

There shall be elected in each organized irrigation district of this state, a board of directors who are electors of the district. An annual election to the office of director shall be held on the second Tuesday of December of each and every year, and the term of each director shall be three years from and after the first Tuesday of January next succeeding his election: Provided, that the directors elected at any organization election called by the board of county commissioners shall serve until the first Tuesday of January following the first annual election; and at the first annual election there shall be elected three directors, if the board consists of three directors, and the candidate receiving the highest number of votes shall serve a term of three years next succeeding such election, the candidate receiving the next highest number of votes shall serve a term of two years next succeeding such election, and the candidate receiving the next highest number of votes shall serve a term of one year next succeeding such election, and when a board of five directors exists, the two candidates receiving the highest number of votes shall each serve a term of three years next succeeding such election, the two candidates receiving the next highest number of votes shall each serve a term of two years next succeeding such election, and the candidate receiving the next highest number of votes shall serve for a term of one year next succeeding such election, or until a successor is elected and qualified. Whenever a district now organized desires to increase the number of its board of directors, such question shall be submitted to the electors at a regular election, and at the same time two directors shall be elected to serve as such in the

event the electors by majority of votes cast at such election increase the number of said board. The person receiving the highest number of votes for the office of director at said election shall serve for the three-year term next succeeding and the person receiving the next highest number of votes shall serve for a term of two years. In case of any vacancy occurring in the office of director, such vacancy shall be filled by appointment by the board of county commissioners of the county in which the proceedings for the organization of the district were had, and the person so appointed shall serve until the next annual election of directors, when an election by the district shall be had to fill the vacancy for the remainder of the unexpired term. Each director shall take and subscribe an official oath for the faithful discharge of the duties of his office, and shall execute an official bond to the district in the sum of twenty-five hundred dollars (\$2500), conditioned for the faithful discharge of the duties of his office, which bond shall be approved by the judge of the superior court of the county where the organization of the district was effected, and said oath and bond shall be recorded in the office of the county clerk of said county and filed with the secretary of the board of directors. The secretary of the district shall take and subscribe a written oath of office and execute an official bond in the sum of not less than twenty-five hundred dollars (\$2500), to be fixed by the board of directors, and which said bond shall be approved and filed as in the case of the bond of a director: Provided, that in case any irrigation district is appointed fiscal agent of the United States, or is authorized by the United States in connection with any irrigation project in which the United States is interested, to make collections of money for or on behalf of the United States, such secretary and each such director and the county treasurer shall each execute a further additional official bond in such sum, respectively, as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his respective office, and the faithful discharge by the district of its duties as fiscal or other agent of the United States in such appointment or authorization; such additional bonds to be approved, recorded and filed as herein provided for other official bonds, and any such additional bonds may be sued upon by the United States or any person injured by the failure of such officer or the district to fully, promptly and completely perform their respective duties; the bonds executed by the said officers shall be secured at the cost of the district. [L. '21, p. 430, § 4. Cf L. '19, p. 531, § 3; L. '15, p. 608, § 3. Cf. L. '90, p. 673, § 4; 1 H. C., § 1787; L. '95, p. 435, § 3; L. '13, p. 562, § 3.]

§ 7422. [6420.] Elections, Notice of—Officers of Election.

Fifteen days before any election held under this chapter, subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board, specifying the polling places of each precinct. Prior

to the time for posting the notices, the board must appoint for each precinct, from the electors thereof, one inspector and two judges, who shall constitute a board of election for such precinct. If the board fail to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the house or place within the precinct where the election must be held. [L. '90, p. 674, § 5; 1 H. C., § 1788.]

§ 7423. [6421.] Election Officers—Duties and Authority of—Polls.

The inspector is chairman of the election board, and may—

1. Administer all oaths required in the progress of an election;
2. Appoint judges and clerks, if during the progress of the election any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct must, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at 9 o'clock A. M. on the morning of the election, and be kept open until 4 P. M., when the same must be closed. The provisions of the general election law of this state concerning the form of ballots to be used shall not apply to elections held under this chapter. [L. '90, p. 674, § 6; 1 H. C., § 1789.]

§ 7424. [6422.] Voting—Counting of Ballots—Record of Ballots.

Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain opened. As soon as the polls are closed, the judges shall open the ballot-box and commence counting the votes; and in no case shall the ballot-box be removed from the room in which the election is held until all the ballots have been counted. The counting of ballots shall in all cases be public. The ballots shall be taken out, one by one, by the inspector or one of the judges, who shall open them and read aloud the names of each person contained therein, and the office for which every such person is voted for. Each clerk shall write down each office to be filled, and the name of each person voted for for such office, and shall keep the number of votes by tallies, as they are read aloud by the inspector or judge. The counting of votes shall be continued without adjournment until all have been counted. [L. '90, p. 675, § 7; 1 H. C., § 1790.]

§ 7425. [6423.] Election Returns, How Made and Disposed of.

As soon as all the votes are read off and counted, a certificate shall be drawn upon each of the papers containing the poll-list and tallies, or attached thereto, stating the number of votes each one voted for has

received, and designating the office to fill which he was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerk[s], judge[s], and the inspector. One of said certificates, with the poll-list and the tally paper, to which it is attached, shall be retained by the inspector, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the inspector, during the counting thereof, in the order in which they are entered upon the tally-lists by the clerks; and said ballots, together with the other of said certificates, with the poll-lists and tally paper to which it is attached, shall be sealed by the inspector in the presence of the judges and clerks, and indorsed "Election returns of [naming the precinct] precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept unopened for at least six months; and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted. [L. '90, p. 675, § 8; 1 H. C., § 1791.]

§ 7426. [6424.] Canvassing Returns—How and When Done—Result Declared.

No list, tally paper, or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election, to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the board of directors must then and there proceed to canvass the returns, but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public, and by opening the returns and estimating the vote of the district, for each person voted for, and declaring the result thereof. [L. '90, p. 676, § 9; 1 H. C., § 1792.]

Cited in 94 Wash. 235.

Under this section, the board has no power to go behind the return certified

by the election officers and examine the ballots: *Edes v. Haley*, 94 Wash. 232, 162 Pac. 50.

§ 7427. [6425.] Statement of Result—Certificates.

The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the district;
2. The name of the persons voted for;
3. The office to fill which each person was voted for;
4. The number of votes given in each precinct to each of such persons;

5. The number of votes given in each precinct for and against any proposition voted upon.

The board of directors must declare elected the person having the highest number of votes given for each office. The secretary must immediately make out, and deliver to such person a certificate of election signed by him and authenticated by the seal of the district. [L. '13, p. 563, § 4. Cf. L. '90, p. 676, § 10; 1 H. C., § 1793; L. '95, p. 435, § 4.]

§ 7428. [6426.*] Powers and Duties of Board—By-laws, etc.

The directors of the district shall organize as a board and shall elect a president from their number, and appoint a secretary, who shall keep a record of their proceedings. The office of the directors and principal place of business of the district shall be at some place in the county in which the organization was [e]affected, to be determined by the directors. The directors shall hold a regular monthly meeting at their office, on the first Tuesday in every month, or on such other day in each month as the board shall direct in their by-laws, and may adjourn any meeting from time to time as may be required for the proper transaction of business. Special meetings may be called at any time by order of a majority of the directors, but in case all directors do not join in said order, the secretary shall give the members not joining, five (5) days' notice of such meeting, which notice shall specify what business shall be transacted, and none other than that specified shall be transacted at such special meeting: Provided, that if all members of the board are present, no order for said special meeting shall be necessary and any business may be transacted at such special meeting as could be transacted at a regular meeting. All meetings of the directors must be public. A majority of the directors shall constitute a quorum for the transaction of business, and in all matters requiring action by the board there shall be a concurrence of at least a majority of the directors. All records of the board shall be open to the inspection of any electors during business hours. The board shall have the power, and it shall be its duty, to adopt a seal of the district, to manage and conduct the business and affairs of the district, to make and execute all necessary contracts, to employ and appoint such agents, officers and employees as may be necessary and prescribe their duties, and to establish equitable by-laws, rules and regulations for the government and management of the district, and for the equitable distribution of water to the lands within the district, upon the basis of the beneficial use thereof, and generally to perform all such acts as shall be necessary to fully carry out the provisions of this chapter, including the acquisition, construction and operation and maintenance of drainage works and wasteways: Provided, that all water, the right to the use of which is acquired by the district under any contract with the United States shall be distributed and apportioned by the district in accordance with the acts of congress, and rules and regulations of the secretary of the interior until full reimbursement has been made to the United States, and in accordance with the provisions of said contract in relation thereto. The by-laws, rules and regulations must be printed in convenient form for distribution in the district. All leases, contracts,

or other form of holding any interest in any state or other public lands shall be, and the same are hereby declared to be title to and evidence of title to lands and for all purposes within this act, shall be treated as the private property of the lessee or owner of the contractual or possessory interest: Provided, that nothing in this section shall be construed to affect the title of the state or other public ownership, nor shall any lien for such assessment attach to the fee-simple title of the state or other public ownership. The board of directors shall have authority to develop and to sell, lease, or rent the use of water or power derived from the operation of the district irrigation or drainage works for delivery to occupants of public or other lands situated within or adjacent to the district, or to municipal corporations, at such prices and on such terms as it deems best: Provided, no water or power shall be furnished for use outside of said district until all demands and requirements for water and power for use in said district are furnished and supplied by said district: And provided further, that as soon as any public lands situated within the limits of the district shall be acquired by any private person, or held under any title of private ownership, the owner thereof shall be entitled to receive his proportion of water as in case of other land owners, upon payment by him of such sums as shall be determined by the board, and at the time to be fixed by the board, which sums shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [L. '21, p. 432, § 5; L. '19, p. 533, § 3; L. '15, p. 616, § 4. Cf. L. '90, p. 677, § 11; 1 H. C., § 1794; L. '13, p. 564, § 5.]

Cited in 25 Wash. 93.

Under this section, the board has power to make an agreement with a contractor that a contract lawfully entered into by them for the construction of an irrigating ditch may be annulled

and work thereunder suspended: Dyer v. Middle Kittitas Irr. Dist., 25 Wash. 80, 64 Pac. 1009.

Lands which may be included in irrigation district. *Ann. Cas.* 1916A, 1222.

§ 7429. [6427.*] Powers of Board of Directors—Use of Waters a Public Use—Actions—Consolidation—Right of Eminent Domain.

The board, and its agents and employees, shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation or drainage works, power plants, power sites or power lines and the line for any canal or canals, and the necessary branches of laterals for the same, on any lands which may be deemed best for such location. Said board shall also have the power to acquire, either by purchase or condemnation, or other legal means, all lands, waters, water rights, and other property necessary for the construction, use, supply, maintenance, repair and improvements of said canal or canals and irrigation and drainage works, including canals and works constructed or being constructed by private owners, or any other person, lands for reservoirs for the storage of needful waters and all necessary appurtenances. The board may also construct the necessary dams, reservoirs and works for the collection of water for the said district, and may enter into contracts for a water

supply to be delivered to the canals and works of the district, and do any and every lawful act necessary to be done in order to carry out the purposes of this act; and in carrying out the aforesaid purposes the bonds of the district may be used by the board, at not less than ninety per centum of their par value in payment. The board may enter into any obligation or contract with the United States or with the state of Washington for the supervision of the construction, for the construction, reconstruction, betterment, extension, sale or purchase, or operation and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the state reclamation act, or under the provisions of the federal reclamation act, and all amendments or extensions thereof, and the rules and regulations established thereunder, or it may contract with the United States for a water supply or for reclamation purposes in general under any act of congress which, for the purposes of this act, shall be deemed to include any act of congress for reclamation purposes heretofore or hereafter enacted providing for and permitting such contract, or for the collection of money due or to become due to the United States, or for the assumption of the control and management of the works; and in case contract has been or may hereafter be made with the United States, as herein provided, bonds of the district may be deposited with the United States as payment or as security for future payment at not less than ninety per centum of their par value, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited, it shall be the duty of the board of directors to include as part of any levy or assessment provided in section 7440 an amount sufficient to meet each year all payments accruing under the terms of any such contract. The board may accept on behalf of the district appointment of the district as fiscal agent of the United States or the state of Washington or other authorization of the district by the United States or the state of Washington to make collections of money for or on behalf of the United States or the state of Washington in connection with any federal or other reclamation project, whereupon the district, and the county treasurer for the district, shall be authorized to so act and to assume the duties and liability incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto.

The use of all water required for the irrigation of the lands within any district, together with rights of way for canals, laterals, ditches, sites for reservoirs, power plants, sites, and lines, and all other property required in fully carrying out the purposes of the organization of the district is hereby declared to be a public use; and in condemnation proceedings to acquire any property or property rights for the use of the district, the board of directors shall proceed in the name of the district, in the manner provided in this state in cases of appropriation of lands, real estate and other property by private corporations: Provided, that the irrigation district, at its option, pursuant to resolution to that end duly passed

by its board of directors may unite in a single action proceedings for the acquisition and condemnation of different tracts of land needed by it for rights of way for canals, laterals, power plants, sites, and lines and other irrigation works which are held by separate owners. And the court may, on the motion of any party, consolidate into a single action separate suits for the condemnation of rights of way for such irrigation works whenever from motives of economy or the expediting of business it appears desirable so to do: Provided further, that there shall be a separate finding of the court or jury as to each tract held in separate ownership.

In any condemnation proceeding brought under the provisions of this act to acquire canals, laterals and ditches and rights of way therefor, sites, reservoirs, power plants and pumping plants and sites therefor, power canals, transmission lines, electrical equipment and any other property, and if the owner or owners thereof or their predecessors shall have issued contracts or deeds agreeing to deliver to the holders of said contracts or deeds water for irrigation purposes, or authorizing the holders thereof to take or receive water for irrigation purposes from any portion of said property or works, and if the delivery of said water or the right to take or receive the same shall in any manner constitute a charge upon, or a right in the property and works sought to be acquired, or any portion thereof, the district shall be authorized to institute and maintain said condemnation proceedings for the purpose of acquiring said property and works, and the interest of the owners therein subject to the rights of the holders of such contracts or deeds, and the court or jury making the award shall determine and award to such owner or owners the value of the interest to be so appropriated in said condemnation proceedings. [L. '21, p. 435, § 6; L. '19, p. 533, § 4; L. '15, p. 612, § 5. Cf. L. '90, p. 678, § 12; 1 H. C., § 1795; L. '13, p. 566, § 6.]

Cited in 112 Wash. 334.

The board has power to purchase from an irrigation company its surveys, notes and water rights and pay for them by delivery of bonds of the district: Board of Directors Horse Heaven Irrig. Dist. v. Mineah, 112 Wash. 325, 192 Pac. 997.

Exercise of eminent domain for purpose of irrigating land of private owner. 9 A. L. B. 583.

Irrigation company as a public utility. 8 A. L. B. 268.

Irrigation as public use or benefit. 1 Ann. Cas. 304; 4 Ann. Cas. 1174; 14 Ann. Cas. 905; 1 L. R. A. (N. S.) 208; 33 L. R. A. (N. S.) 807.

§ 7430. [6428.*] Title to Property in Whom Vested—Conveyance to United States or State.

The title to all property acquired under the provisions of this chapter shall immediately, and by operation of law, vest in such irrigation district and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this chapter; and said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided: Provided, however, that any property so acquired by the district may be conveyed to the United States, or the state of Washington, in so far as the same may be for the benefit of the district under any contract that may be entered into with the United States, or the state of Washington, pursuant to this act.

The title acquired by an irrigation district under the provisions of this act shall be the fee-simple title or such lesser estate as shall be designated in the decree of appropriation. [L. '21, p. 438, § 7; L. '17, p. 725, § 3; L. '15, p. 614, § 6. Cf. L. '90, p. 679, § 13; 1 H. C., § 1796.]

§ 7431. [6429.] Conveyances—Actions by and Against District.

The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this chapter, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this chapter, or acquired in pursuance thereof; and in all courts, actions, suits, or proceedings, the said board may sue, appear, and defend, in person or by attorney, and in the name of such irrigation district. [L. '90, p. 679, § 14; 1 H. C., § 1797.]

Cited in 98 Wash. 414.

An irrigation district, under section 7417, is a municipal corporation that may be sued for breach of contract

to deliver water, in view of this section: Peters v. Union Gap Irr. Dist., 98 Wash. 412, 167 Pac. 1085.

§ 7432. [6430.*] Bonds—Elections for—Form and Contents of Bonds—Cancellation—Reissue.

For the purpose of construction, reconstruction, betterment, extension or acquisition of the necessary property and rights therefor, and otherwise carrying out the provisions of this chapter, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and whenever thereafter the board deems it necessary or expedient to raise additional money for said purpose, estimate and determine the amount of money to be raised, and shall immediately thereafter call a special election. At such election shall be submitted to the electors of said district possessing the qualifications prescribed by this chapter the question of whether or not the bonds of said district in the amount and of the maturities determined by the board of directors shall be issued. Bonds issued under the provisions of this act shall be serial bonds payable in gold coin of the United States in such series and amounts as shall be determined and declared by the board of directors in the resolution calling the election: Provided, that the first series shall mature not later than ten years and the last series not later than forty years from the date thereof.

Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, and the amount and maturities of bonds proposed to be issued; and said election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the pro-

visions of this chapter governing the election of the officers: Provided, that no informality in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds Yes" and "Bonds No," or words equivalent thereto. If a majority of the votes cast are cast "Bonds Yes," the board of directors shall thereupon have authority to cause bonds in said amount and maturities to be issued. If the majority of the votes cast at any bond election are "Bonds No," the result of such election shall be so declared and entered of record; but if contract is made or is to be made with the United States as in section 7429 provided, and bonds are not to be deposited with the United States in connection with such contract, the question submitted at such special election shall be whether contract shall be entered into with the United States. The notice of election shall state under the terms of what act or acts of congress contract is proposed to be made, and the maximum amount of money payable to the United States for construction purposes exclusive of penalties and interest. The ballots for such election shall contain the words "Contract with the United States Yes" and "Contract with the United States No," or words equivalent thereto. And whenever thereafter said board, in its judgment, deems it for the best interest of the district that the question of issuance of bonds for said amount, or any amount, or the question of entering into a contract with the United States, shall be submitted to said electors, it shall so declare, by resolution recorded in its minutes, and may thereupon submit such question to said electors in the same manner and with like effect as at such previous election. All bonds issued under this act shall bear interest at such rate not exceeding six per cent per annum as the board of directors may determine, payable semi-annually on the first day of January and July of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the office of the board of directors is situated, or if the board of directors shall so determine at the fiscal agency of the state of Washington in New York City, said place of payment to be designated in the bond. Said bonds shall be each of the denomination of not less than one hundred nor more than one thousand dollars; shall be negotiable in form, signed by the president and secretary, and the seal of the district shall be affixed thereto: Provided, that if an issue of bonds having been authorized at an election, shall remain, in whole or in part, unsold, and a subsequent issue shall be authorized pursuant to the provisions of this act, said subsequent authorization shall operate to cancel and nullify the previous authorization, except as to such bonds as may have been issued and sold under said previous authorization and the board of directors shall be authorized to exchange bonds issued under said new authorization for bonds issued and sold under said previous authorization at the fair market value of said new issue, and in that event the bonds previously issued and sold shall be surrendered to the board and canceled. Provided further, that where bonds have been authorized and unsold, the board of directors may submit to the qualified voters of the district the question of canceling said previous authorization, which question shall be

submitted upon the same notice and under the same regulations as govern the submission of the original question of authorizing a bond issue. At such election the ballots shall contain the words "Cancellation Yes," and "Cancellation No," or words equivalent thereto. If at such election a majority of the votes shall be "Cancellation Yes," the said issue shall be thereby canceled and no bonds may be issued thereunder. If the majority of said ballots shall be "Cancellation No," said original authorization shall continue in force with like effect as though said cancellation election had not been held: Provided, that bonds deposited with the United States in payment or in pledge may call for the payment of such interest not exceeding six per cent per annum, may be of such denominations, and call for the repayment of the principal at such times as may be agreed upon between the board and the secretary of the interior.

Each issue shall be numbered consecutively as issued, and the bonds of each issue shall be numbered consecutively and bear date at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the president of the board and the secretary. The signatures of the president and secretary may, however, appear by lithographic facsimile. Said bonds shall express upon their face that they were issued by authority of this act, stating its title and date of approval, and shall also state the number of issue of which such bonds are a part. The secretary shall keep a record of bonds sold, their number, the date of sale, the price received and the name of the purchaser. In case the money received by the sale of all bonds issued be insufficient for the completion of plans of the canals and works adopted, and additional bonds be not voted, or a contract calling for additional payment to the United States be not authorized and made, as the case may be, it shall be the duty of the board of directors to provide for the completion of said plans by levy of assessments therefor. It shall be lawful for any irrigation districts which have heretofore issued and sold bonds under the law then in force, to issue in place thereof an amount of bonds not in excess of such previous issue, and to sell the same, or any part thereof, as hereinafter provided, or exchange the same, or any part thereof, with the holders of such previously issued bonds which may be outstanding, upon such terms as may be agreed upon between the board of directors of the district and the holders of such outstanding bonds: Provided, that the question of such reissue of bonds shall have been previously voted upon favorably by the legally qualified electors of such district, in the same manner as required for the issue of original bonds, and the said board shall not exchange any such bonds for a less amount in par value of the bonds received; all of such old issue in place of which new bonds are issued shall be destroyed whenever lawfully in possession of said board. Bonds issued under the provisions of this section may, when so authorized by the electors, include a sum sufficient to pay the interest thereon for a period not exceeding the first four years. [L. '21 p. 439, § 8; L. '17, p. 726, § 3-A; L. '15, p. 615, § 7. Cf. L. '90, p. 679, § 15; 1 H. C., § 1798; L. '95, p. 436, § 5.]

Cited in 75 Wash. 309; 113 Wash. 328, 332.

Bonds and Other Securities: See Remington's Digest, Waters, § 91; Abbott v. Gaches, 20 Wash. 517, 56 Pac. 28; Kinkade v. Witherop, 29 Wash. 10, 69 Pac. 399; Hanson v. Kittitas Reclamation District, 75 Wash. 297, 134 Pac. 1083.

Bonds are not invalid for failure to estimate the amount of money to be raised, except from surveys and reports before them; nor because the bonds were antedated; nor because they designated more than one place for payment: Board of Directors Horse Heaven Irrig. Dist. v. Mineah, 112 Wash. 325, 192 Pac. 997.

§ 7433. [6431.*] Sale or Pledge of Bonds.

The board may sell the bonds of the district or pledge the same to the United States from time to time in such quantities as may be necessary and most advantageous to raise money for the construction, reconstruction, betterment or extension of such canals and works, the acquisition of said property and property rights, the assumption of indebtedness to the United States for the district lands, and otherwise to fully carry out the objects and purposes of the district organization, and may sell such bonds, or any of them, at private sale whenever the board deems it for the best interest of the district so to do. The board of directors shall also have power to sell said bonds, or any portion thereof, at private sale, and accept in payment therefor, property or property rights, labor and material necessary for the construction of its proposed canals or irrigation works, power plants, power sites and lines in connection therewith, whenever the board deems it for the best interests of the district so to do. If the board shall determine to sell the bonds of the district, or any portion thereof, at public sale, the secretary shall publish a notice of such sale for at least three (3) weeks in such newspaper or newspapers as the board may order. The notice shall state that sealed proposals will be received by the board, at its office, for the purchase of the bonds to be sold, until the day and hour named in the notice. At the time named in the notice, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids: Provided, that such bonds shall not be sold for less than ninety per cent of their face value: And provided further, that the proceeds of all bonds sold for cash must be paid by the purchaser to the county treasurer of the county in which the office of the board is located, and credited to the bond fund. [L. '21, p. 443, § 9; L. '15, p. 618, § 8. Cf. L. '90, p. 681, § 16; 1 H. C., § 1799; L. '95, p. 438, § 6; L. '13, p. 567, § 7.]

§ 7434. [6432.*] Bonds and Interest, How Paid.

Said bonds and interest thereon and all payments due or to become due to the United States or the state of Washington under any contract between the district and the United States or the state of Washington accompanying which bonds of the district have not been deposited with the United States or the state of Washington, as in section 7429 provided, shall be paid by revenue derived from an annual assessment upon the real property of the district, and all the real property in the district shall be and remain liable to be assessed for such payments until fully paid as hereinafter provided. And in addition to this provision and the other provisions herein made for the payment of

said bonds and interest thereon as the same may become due, said bonds, or the contract with the United States or the state of Washington accompanying which bonds have not been deposited with the United States or the state of Washington, shall become a lien upon all the water rights and other property acquired by any irrigation district formed under the provisions of this chapter, and upon any canal or canals, ditch or ditches, flumes, feeders, storage reservoirs, machinery and other works and improvements acquired, owned or constructed by said irrigation district, and if default shall be made in the payment of the principal of said bonds or interest thereon, or any payment required by the contract with the United States, or the state of Washington, according to the terms thereof, the holder of said bonds, or any part thereof or the United States or the state of Washington as the case may be, shall have the right to enter upon and take possession of all the water rights, canals, ditches, flumes, feeders, storage reservoirs, machinery, property and improvements of said irrigation district, and to hold and control the same, and enjoy the rents, issues and profits thereof, until the lien hereby created can be enforced in a civil action in the same manner and under the same proceedings as given in the foreclosure of a mortgage on real estate. This section shall apply to all bonds heretofore issued or any contract heretofore made with the United States, or which may hereafter be issued or made by any district. [L. '21, p. 444, § 10. Cf. L. '15, p. 619, § 9. Cf. L. '90, p. 681, § 17; 1 H. C., § 1800; L. '95, p. 439, § 7; L. '13, p. 568, § 8.]

§ 7435. [6432-6.] Guaranty by United States.

If the United States under any act of congress or under rules and regulations adopted by the secretary of the interior, shall be willing to guarantee the interest upon bonds of any irrigation district, or shall be willing to receive bonds of any such district in payment of, or as security for payment upon, any contract of the United States, then the United States shall have all the remedies given by law to a bondholder, and, in cases of payment under any guaranty, the United States shall be subrogated to all the rights and remedies of the bondholder to the extent of any such payment; and the United States, or its proper department officers, may make such rules and regulations as may be necessary for the purpose of insuring the carrying out of any plan or project which may have been approved by them as the basis of any guaranty. [L. '15, p. 291, § 6.]

§ 7436. [6433.*] Assessments, How and When Made.

Assessments made in order to carry out the purposes of this act shall be made in proportion to the benefits accruing to the lands assessed and equitable credit shall be given to the lands having a partial or full water right: Provided, that nothing herein shall be construed to affect or impair the obligation of any existing contract providing for a water supply to lands so assessed, unless the right under such contract shall first have been acquired by said district, and in acquiring such rights, the district may exercise the right of eminent domain. The secretary must, between the first Monday in March and the first

Tuesday in September in each year, to and including the year 1923, and between the first Monday in March and the first Tuesday in November beginning with the year 1924 and each year thereafter, prepare an assessment-roll with appropriate headings in which must be listed all the lands within the district. In such book must be specified, in separate columns, under the appropriate headings:

First, the name of the person to whom the property is assessed. If the name is not known to the secretary, the property shall be assessed to "unknown owners."

Second, land by township, range, section or fractional section, and when such land is not a legal subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, city and town lots, naming the city or town, and the number and block according to the system of numbering in such city or town.

Third, in further columns with appropriate headings shall be specified the ratio of benefits, or, when deemed by the secretary more practicable, the per acre value, or the amount of benefits, for general and special district and local improvement district purposes, and the total amount assessed against each tract of land.

Any property which may have escaped assessment for any year or years, shall in addition to the assessment for the then current year, be assessed such year or years with the same effect and with the same penalties as are provided for such current year and any property delinquent in any year may be directly assessed during the current year for any expenses caused the district on account of such delinquency.

Where the district embraces lands lying in more than one county the assessment-roll shall be so arranged that the lands lying in each county shall be segregated and grouped according to the county in which the same are situated. [L. '21, p. 445, § 11; L. '17, p. 729, § 4; L. '19, p. 540, § 7; L. '15, p. 620, § 10. Cf. L. '90, p. 681, § 18; 1 H. C., § 1801; L. '95, p. 440, § 8; L. '13, p. 569, § 9.]

§ 7437. [6434.*] Deputy Assessors.

The board of directors must allow the secretary as many deputies, to be appointed by them, as will, in the judgment of the board, enable him to complete the assessment within the time herein prescribed. The board must fix the compensation of such deputies for the time actually engaged. [L. '19, p. 541, § 8. Cf. L. '90, p. 682, § 19; 1 H. C., § 1802; L. '95, p. 440, § 9.]

§ 7438. [6435.*] Equalization of Assessments—Notice.

On or before the first Tuesday in September in each year to and including the year 1923, and on or before the first Tuesday in November beginning with the year 1924 and each year thereafter, the secretary must complete his assessment-roll and deliver it to the board, who must immediately give a notice thereof, and of the time the board of directors, acting as a board of equalization will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be

less than twenty nor more than thirty days from the first publication of the notice, and in the meantime the assessment-roll must remain in the office of the secretary for the inspection of all persons interested. [L. '21, p. 447, § 12; L. '19, p. 541, § 9. Cf. L. '90, p. 682, § 20; 1 H. C., § 1803; L. '95, p. 441, § 10.]

§ 7439. [6436.*] Equalization of Assessment, Meetings for.

Upon the day specified in the notice required by the preceding section for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the said assessment-roll as may come before them; and the board may change the same as may be just. The secretary of the board shall be present during its session, and note all changes made at said hearing; and on or before the thirtieth day of October in each year to and including the year 1923, and on or before the fifteenth day of January beginning with the year 1925 and each year thereafter he shall have the assessment-roll completed as finally equalized by the board. [L. '21, p. 447, § 13; L. '19, p. 542, § 10; L. '15, p. 621, § 11. Cf. L. '90, p. 682, § 21; 1 H. C., § 1804.]

§ 7440. [6437.*] Amount of Levy—Failure to Make.

The board of directors shall in each year before said roll is delivered by the secretary to the respective county treasurers, levy an assessment sufficient to raise the ensuing annual interest on the outstanding bonds, and all payments due or to become due in the ensuing year to the United States or the state of Washington under any contract between the district and the United States or the state of Washington accompanying which bonds of the district have not been deposited with the United States or the state of Washington as in this act provided. Beginning in the year preceding the maturity of the first series of the bonds of any issue, the board must from year to year increase said assessment for the ensuing years in an amount sufficient to pay and discharge the outstanding bonds as they mature. Similar levy and assessment shall be made for the expense fund which shall include operation and maintenance costs for the ensuing year. The board shall also at the time of making the annual levy, estimate the amount of all probable delinquencies on said levy and shall thereupon levy a sufficient amount to cover the same and a further amount sufficient to cover any deficit that may have resulted from delinquent assessments for any preceding year.

It shall also be the duty of the board when making the levy in the years 1921, 1922 and 1923 to take into account the change of dates in the year 1924 and thereafter, and the board shall add a sufficient amount to the assessments levied in those years to take care of all obligations maturing before the due date of the assessment levied in 1924. The assessments, when collected by the county treasurer, shall constitute a special fund, or funds, as the case may be, to be called respectively, the "Bond Fund of — Irrigation District," the "Con-

tract Fund of — Irrigation District," the "Expense Fund of — Irrigation District," and "Coupon Warrant Fund of — Irrigation District": Provided, that in districts acting as fiscal agent for the United States or the state of Washington such assessments may also be paid to the secretary of such districts when so authorized by the board of directors and under such rules and regulations as the board may adopt. The secretary shall issue a receipt for such payments and shall be accountable on his official bond for the safekeeping of such funds and shall remit the same at least once each month to the treasurer of the county wherein the land is located on which payment was made. Upon receipt of such funds the county treasurer shall issue his official receipt therefor in like manner as though payment had been made direct to him by the land owner.

In case of neglect or refusal of the board of directors to cause such assessment or levy to be made as herein provided, then the assessment shall be made, equalized and levied by the board of county commissioners of the county in which the office of the board of directors is situated, and said board of county commissioners shall cause an assessment-roll for the said district to be prepared and make the levy required by this chapter in the same manner and with like effect as if the same had been made by the said board of directors, and all expenses incident thereto shall be borne by the district. In case of neglect or refusal of the secretary of the district to perform the duties imposed by law, then the treasurer of the county in which the office of the board of directors is situated must perform such duties, and shall be accountable therefor, on his official bond, as in other cases.

At the time of making the annual levy in the year preceding the final maturity of any issue of district bonds, the board of directors shall levy a sufficient amount to pay and redeem all bonds of said issue then remaining unpaid. [L. '21, p. 448, § 14; L. '19, p. 542, § 11; L. '15, p. 621, § 12. Cf. L. '90, p. 683, § 22; 1 H. C., § 1805; L. '95, p. 411, § 11. Cf. L. '13, p. 570, § 10.]

Cited in 32 Wash. 308.

§ 7441. [6438*] Lien of Assessment.

The assessment upon real property shall be a lien against the property assessed, from and after the first Monday in March in the year in which it is levied, but as between grantor and grantee such lien shall not attach until the first day in November of such year, until and including the year 1923 and the first Monday in February of the year 1925 and each year thereafter, which lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except for a lien for prior assessments and for general taxes, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. And the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue. Also the lien for all payments due or to become due under any contract with the United States, or the state of Washington accompanying which bonds of the district have not been deposited with the United States or the state of Wash-

ington, as in section 7429 provided, shall be a preferred lien to any issue of bonds subsequent to the date of such contract. [L. '21, p. 450, § 15. Cf. L. '15, p. 622, § 13. Cf. L. '90, p. 684, § 23; 1 H. C., § 1806; L. '19, p. 571, § 11.]

§ 7442. [6439.*] Collection of Assessments—Notice—Roll.

On or before the first day of November in each year to and including the year 1923, and on or before the fifteenth day of January in the year 1925, and each year thereafter the secretary must deliver the assessment-roll or the respective segregation thereof to the county treasurer of each respective county in which the lands therein described are located, and said assessments shall on that date become due and payable. Within twenty days thereafter the respective county treasurers shall each publish a notice in a newspaper published in their respective counties in which any portion of the district may lie, that said assessments are due and payable at the office of the county treasurer of the county in which said land is located and will become delinquent at 5 o'clock in the afternoon of the thirty-first day of December next thereafter in each year to and including the year 1923 unless sixty per cent thereof shall then have been paid, and that if this [is] allowed to become delinquent, a penalty of five per cent thereof will be added to the amount thereof, and if sixty per cent thereof be paid on or before the said thirty-first day of December, the remainder thereof will not become delinquent until April 30th next following: Provided, that beginning with the year 1925 and each year thereafter, said notice shall state that said assessments will become delinquent at 5 o'clock in the afternoon of the thirty-first day of May next thereafter unless fifty per cent thereof shall then have been paid, and that if thus allowed to become delinquent, a penalty of five per cent thereof will be added to the amount thereof, and if fifty per cent thereof be paid on or before the said thirty-first day of May, the remainder thereof will not become delinquent until November 30th next following. The notice shall be published once a week for four successive weeks and shall be posted within said period of twenty days in some public place in said district.

Upon receiving the assessment-roll, the county treasurer shall prepare therefrom an assessment-book in which shall be written the description of the land as it appears in the assessment-roll, the name of the owner or owners where known, and if assessed to the unknown owners, then the word "unknown," and the total assessment levied against each tract of land. Proper space shall be left in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessment.

Upon the payment of any assessment the county treasurer must enter the date of said payment in said assessment-book opposite the description of the land and the name of the person paying and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed. On the thirty-first day of December of each year to and including the year 1923 unless sixty per cent shall have been paid as aforesaid, and on

the thirty-first day of May in the year 1925 and each year thereafter unless fifty per cent shall have been paid as aforesaid, all unpaid assessments are delinquent, and thereafter the treasurer of the county in which the land is located must collect thereon for the use of the district the aforesaid penalty of five per cent and interest at the rate of twelve per cent per annum from the date of delinquency.

It shall be the duty of the county treasurer of the county in which any land in the district is located to furnish upon request of the owner, or any person interested, a statement showing any and all assessments levied as shown by the assessment-roll in his office upon land described in such request, and all statements of general taxes covering any land in the district shall be accompanied by a statement showing the condition of irrigation district assessments against such lands: Provided, that the failure of the county treasurer to render any statement herein required of him shall not render invalid any assessments made by any irrigation district or proceedings had for the enforcement and collection of irrigation district assessments pursuant to this act.

It shall be the duty of the county treasurer of any county, other than the county in which the office of the board of directors is located, to make monthly remittances to the county treasurer of the county in which the office of the board of directors is located covering all amounts collected by him for the irrigation district during the preceding month. [L. '21, p. 451, § 16; L. '17, p. 731, § 5; L. '19, p. 543, § 12; L. '15, p. 623, § 14. Cf. L. '90, p. 684, § 24; 1 H. C., § 1807; L. '95, p. 442, § 12; L. '13, p. 571, § 12.]

§ 7443. [6440.*] Publication of Delinquency List, How Made.

On or before the first day of February in each year to and including the year 1924, the county treasurer of the county in which the land is located shall cause to be posted the delinquency list, which must contain the names of the persons and a description of the property delinquent, and the amount of the assessments and costs due, opposite each name and description, in all cases where payment of sixty per cent (60%) of the assessment has not been made on or before the thirty-first day of December, next preceding; likewise on or before May 15th in each year to and including the year 1924, he must cause to be posted the delinquency list of all persons delinquent in the payment of the installment of forty per cent (40%) as in this act provided. Also, on or before the thirtieth day of June, beginning with the year 1925 and each year thereafter, he must post the delinquency list, made up as aforesaid, in all cases where payment of fifty per cent (50%) of the assessment has not been made on or before the thirty-first day of May next preceding; likewise, on or before the fifteenth day of December beginning with the year 1925 and each year thereafter, he must post the delinquency list of all persons delinquent in the payment of the final installment of fifty per cent (50%) as in this act provided. He must append to and post with the delinquency list a notice that unless the assessment delinquent, together with costs and percentages, are paid the real property upon which such assessments are a lien will be sold at public auction. The said notice and delinquent list shall

be posted at least twenty days prior to the time of sale. One copy thereof shall be posted in the office of the county treasurer making the collection, one copy in the office of the board of directors and three copies in public places in each of the established voting precincts within the portion of said district lying in said county. Concurrent as nearly as possible with the date of the posting aforesaid, the said county treasurer shall publish a list of the places where said notices are posted, and in connection therewith a notice that unless delinquent assessments, together with costs and percentages, are paid, the real property upon which such assessments are a lien will be sold at public auction. Such notices must be published once a week for three successive weeks in a newspaper of general circulation published in the county within which the land is located. But said notice of publication need not comprise the delinquent list where the same is posted as herein provided. Both notices must designate the time and place of sale. The time of sale must not be less than twenty-one nor more than twenty-eight days from date of posting and from the date of the first publication of the notice thereof, and the place must be at some point designated by the treasurer. [L. '21, p. 453, § 17; L. '17, p. 732, § 6; L. '19, p. 544, § 13; L. '15, p. 624, § 15. Cf. L. '90, p. 684, § 25; 1 H. C., § 1808; L. '13, p. 572, § 13.]

Cited in 112 Wash. 108.

§ 7444. [6441.*] Sales, When and How Made.

The treasurer of the county in which the land is situated shall conduct the sale of all lands situated therein and must collect in addition to the assessments due as shown on the delinquent list, five per cent of the amount thereof. On the day fixed for the sale, or some subsequent day to which he may have postponed it, of which postponement he must give notice at the time of making such postponement and between the hours of 10 o'clock A. M. and 3 o'clock P. M. the county treasurer making the sale must commence the same beginning at the head of the list, and continuing alphabetically or in the numerical order of the parcels, lots or blocks, until completed. He may postpone the day of commencing the sale, or the sale from day to day, by giving oral notice thereof at the time of postponement, but the sale must be completed within three weeks from the first day fixed. [L. '21, p. 455, § 18; L. '13, p. 572, § 14. Cf. L. '90, p. 685, § 26; 1 H. C., § 1809; L. '95, p. 443, § 13.]

§ 7445. [6442.*] Sales, How Conducted—Certificate.

The owner or person in possession of any real estate offered for sale for assessments due thereon may designate in writing to the county treasurer by whom the sale is to be made, and prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the treasurer may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the assessment and costs due, including one dollar to the treasurer for duplicate of the certificate of sale, is the purchaser. The

treasurer shall account to the district for said one dollar. If the purchaser does not pay the assessment and costs before 10 o'clock A. M. the following day, the property must be re-sold on the next sale day for the assessments and costs. In case there is no purchaser in good faith for the same on the first day that the property is offered for sale, and if there is no purchaser in good faith when the property is offered thereafter for sale, the whole amount of the property assessed shall be struck off to the irrigation district as the purchaser, and the duplicate certificate shall be delivered to the secretary of the district, and filed by him in the office of the district. No charge shall be made for the duplicate certificate where the district is the purchaser, and in such case the treasurer shall make an entry, "Sold to the district," and he will be credited with the amount thereof in settlement. An irrigation district, as a purchaser at said sale, shall be entitled to the same rights as a private purchaser, and may assign or transfer the certificate of sale upon the payment of the amount which would be due if redemption were being made by the owner. If no redemption is made of land for which an irrigation district holds a certificate of purchase, the district will be entitled to receive the treasurer's deed therefor in the same manner as a private person would be entitled thereto and may convey the title so acquired, by deed, executed and acknowledged by the president and secretary of the board: Provided, that authority to so convey must be conferred by resolution of the board, entered on its minutes, fixing the price at which such sale may be made, and such conveyance shall not be made for a less sum than the reasonable market value of such property:

Provided further, that when lands shall have been deeded by the county treasurer to the district and if title shall remain vested in the district, and in the judgment of the board of directors, said sale shall have resulted from unavoidable accident, inadvertency, or misfortune and without intent on the part of the owner or person entitled to make redemption, to permit said assessments to become delinquent and the land to be sold, the board of directors may, pursuant to an order entered upon the minutes of the board, cause said land to be reconveyed to the owner or person entitled to redemption within the period of one year after deed is issued, upon the payment by the owner or person who would have been entitled to make redemption before deed, of the total amount of the assessments, penalty, costs of sale and interest at the rate of twelve per cent per annum, current assessments, and an additional penalty of twenty-five per cent of the amount for which the land was sold: Provided further, that this act shall apply to all sales made to an irrigation district prior to the date when this act becomes effective and the owner or other person rightfully seeking redemption thereof, shall be entitled to the benefit of this provision until one year subsequent to the date when this act becomes effective.

After receiving the amount of assessments and costs, the county treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold

for assessments, giving the amount and the year of assessment, and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the treasurer making the sale and one copy delivered to the purchaser, and the other filed in the office of the county treasurer of the county in which the land is situated: Provided, that upon the sale of any lot, parcel, or tract of land not larger than an acre, the fee for a duplicate certificate shall be twenty-five cents (25c) and in case of a sale to a person or a district, of more than one parcel or tract of land, the several parcels or tracts may be included in one certificate. [L. '21, p. 455, § 19; L. '13, p. 573, § 15. Cf. L. '90, p. 685, § 27; 1 H. C., § 1810; L. '95, p. 443, § 14.]

Cited in 32 Wash. 112.

This section does not require the officers making the sale to designate in writing any particular portion which he proposes to sell, but it is sufficient if

the record recites that he designated the portions at the time of sale: Rothchild Bros. v. Rollinger, 32 Wash. 307, 73 Pac. 367.

§ 7446. [6443.*] Sales, Record to be Kept.

The county treasurer, before delivering any certificate must file the same and enter in the assessment-book opposite the description of the land sold, the date of sale, the purchaser's name and the amount paid therefor, and must regularly number the description on the margin of the assessment-book and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours, when not in actual use.

On filing the certificate of sale as provided in the preceding paragraph the lien of the assessment vests in the purchaser and is only divested by the payment to the county treasurer making the sale of the purchase money and one per cent per month from the day of sale until redemption for the use of the purchaser. [L. '21, p. 458, § 20. Cf. L. '13, p. 574, § 16. Cf. L. '90, p. 686, § 28; 1 H. C., § 1811; L. '95, p. 444, § 15.]

§ 7447. [6444.*] Redemption, When Made—Deed—Fee.

A redemption of the property sold may be made by the owner or any person on behalf and in the name of the owner or by any party in interest within two years from the date of purchase, by paying the amount of the purchase price and interest, and the amount of any assessments which such purchaser may have paid thereon after purchase by him and during the period of redemption in this section provided, together with like interest on such amount, and if the irrigation district is the purchaser, the redemptioner shall pay in addition to the purchase price and interest, the amount of any assessments levied against said land during the period of redemption. Redemption must be made in gold or silver coin, as provided for the collection of state and county taxes, and the county treasurer must credit the amount paid to the person named in the certificate and pay it on demand to such person or his assignee. No redemption shall be made except to the county treasurer of the county in which the land is situated.

Upon completion of redemption the county treasurer to whom redemption has been made shall enter the word "redeemed," the date

of redemption and by whom redeemed on the certificate and on the margin of the assessment-book where the entry of the certificate is made. If the property is not redeemed within two years from the sale the county treasurer of the county in which the land sold is situated must make to the purchaser, or his assignees a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption. The treasurer shall receive from the purchaser, for the use of the district, one dollar (\$1) for making such deed: Provided, if redemption is not made of any lot, parcel or tract of land not larger than one acre, the fee for a deed shall be twenty-five cents (25c) and when any person or district holds a duplicate certificate covering more than one tract of land, the several parcels, or tracts of land, mentioned in the certificate may be included in one deed. [L. '21, p. 458, § 21. Cf. L. '17, p. 733, § 7; L. '15, p. 624, § 16. Cf. L. '90, p. 687, § 29; 1 H. C., § 1812; L. '95, p. 445, § 16; L. '13, p. 574, § 17.]

§ 7448. [6445.] Deed, and Its Effect as Evidence.

The matter recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is prima facie evidence that—

First: The property was assessed as required by law;

Second: The property was equalized as required by law;

Third: That the assessments were levied in accordance with law;

Fourth: The assessments were not paid;

Fifth: At a proper time and place the property was sold as prescribed by law and by the proper officers;

Sixth: The property was not redeemed;

Seventh: The person who executed the deed was the proper officer. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessments by the secretary, inclusive, up to the execution of the deed. The deed conveys to the grantee the absolute title to the lands described therein, free from all encumbrances, except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession. [L. '90, p. 687, § 30; 1 H. C., § 1813; L. '95, p. 445, § 17.]

§ 7449. [6446.] Evidence of Assessment, What is.

The assessment-book or delinquent list, or a copy thereof, certified by the secretary, showing unpaid assessments against any person or property, is prima facie evidence of the assessment of the property assessed, the delinquency, the amount of assessments due and unpaid, and that all the forms of law in relation to the assessment and levy of such assessment have been complied with. [L. '90, p. 688, § 31; 1 H. C., § 1814; L. '95, p. 446, § 18.]

§ 7450. [6447.] Misnomer, etc., not to Affect Sale.

When land is sold for assessments correctly imposed, as the property of a particular person, no misnomer of the owner or supposed owner, or

other mistake relating to the ownership thereof, affects the sale or renders it void or voidable. [L. '90, p. 688, § 32; 1 H. C., § 1815.]

§ 7451. [6449.*] Coupons and Bonds—Payment.

Upon the presentation of the coupons due to the treasurer of said county, he shall pay the same from the bond fund belonging to such district and deposited with such treasurer. Whenever, after ten years from the issuance of said bonds, said fund shall amount to the sum of ten thousand dollars, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising in some daily newspaper for such period of time not less than four weeks as the board shall order for sealed proposals for the redemption of said bonds. Said proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for said bonds must be accepted: Provided, that no bond shall be redeemed under the foregoing provision at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed, as herein provided for, said money shall be invested by the treasurer of said county, under the direction of the board, in United States gold-bearing bonds, or the bonds of the state, which shall be kept in said bond fund, and may be used to redeem said district bonds whenever the holders thereof may desire. [L. '21, p. 460, § 22; L. '90, p. 688, § 34.; 1 H. C., § 1817; L. '95, p. 446, § 20.]

§ 7452. [6450.] Bids for Construction—Contracts.

Any person to whom a contract may have been awarded for the construction of a canal or any of the works of the district, or any portion thereof, or for the furnishing of labor or material, shall enter into a bond with good and sufficient sureties, to be approved by the board of directors, payable to said district for its use, for at least twenty-five per cent of the amount of the contract price, conditioned for the faithful performance of said contract, and with such further conditions as may be required by law in the case of contracts for public work, and as may be required by resolution of the board. All works shall be done under the direction and to the satisfaction of the engineer of the district, and be approved by the board. Whenever in the construction of the district canal or canals, or other works, or the furnishing of materials therefor, the board of directors shall determine to let a contract or contracts for the doing of said work or the furnishing of said materials, a notice calling for sealed proposals shall be published in a newspaper in the county in which the office of the board is situated, and in any other newspaper which may be designated by the board, and for such length of time, not less than two weeks, as may be fixed by the board. At the time and place appointed in the notice for the opening of bids, the sealed proposals shall be opened in public, and as soon as convenient thereafter, the board shall let said work or the contract for the purchase of materials, either in portions or as a whole, to the lowest responsible bidder, or the board may reject any or all bids and readvertise, or may proceed to con-

struct the work under its own superintendence: Provided, that the provisions of this section in regard to public bidding shall not apply in cases where the board is authorized to exchange bonds of the district in payment for labor and material: Provided further, that the provisions of this section shall not apply in the case of any contract between the district and the United States. [L. '15, p. 625, § 17. Cf. L. '90, p. 689, § 35; 1 H. C., § 1818; L. '95, p. 448, § 21; L. '13, p. 575, § 18.]

§ 7453. [6451.*] Claims, How Paid.

The county treasurer of the county in which is located the office of any irrigation district shall be and is hereby constituted ex-officio district treasurer of said district, and any county treasurer collecting or handling funds of the district shall be liable upon his official bond and to criminal prosecution for malfeasance and misfeasance, or failure to perform any duty herein prescribed as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. It shall be the duty of the county treasurer of each county, in which lands of the district are located, to collect and receipt for all assessments and taxes levied as in this chapter provided. There shall be deposited with the county treasurer of the county in which the office of the board of directors is located, all sums collected for the defraying of the expenses of the district, whether said sums are collected by tolls, assessments or special assessments, and they shall be placed by the said county treasurer in the expense fund of the district. The said county treasurer shall also keep such other funds as may be required by law governing irrigation districts, or provided for by this chapter, and shall place therein moneys collected for such funds. The county treasurer shall pay out the moneys received or deposited with him or any portion thereof, upon warrants drawn on the several funds, signed by the president and countersigned by the secretary of the district, except the sums to be paid out of the bond fund upon the coupons or bonds presented to the treasurer. The said treasurer shall report, in writing, on the first Monday in each month to the board of directors of the district, the amount of money held by him, the amount in each fund, the amount of receipts for the month preceding in each fund, and the amount or amounts paid out of each fund, and said report shall be filed with the secretary of the board. The secretary shall also report to the board, in writing on the first Monday in each month, the amount deposited with the county treasurer belonging to the district during the preceding month, the amount of receipts for the month preceding and the amount and items of expenditures during the preceding month, and said report shall be filed in the office of the board. [L. '21, p. 460, § 23; L. '13, p. 576, § 18. Cf. L. '90, p. 690, § 36; 1 H. C., § 1819; L. '95, p. 448, § 22.]

Cited in 56 Wash. 494.

Under this section, the district treasurer, as disbursing officer, is not a necessary party to proceedings in mandamus

to compel the district to sell bonds to satisfy a judgment against the district: State ex rel. Dyer v. Middle Kittitas Irr. Dist., 56 Wash. 488, 106 Pac. 203.

§ 7454. [6452.] Construction and Operating Fund—Tolls.

The cost and expense of purchasing and acquiring property, and construction, reconstruction, extension, and betterment of the works and

improvements herein provided for, and the expenses incidental thereto, and indebtedness to the United States for district lands assumed by the district, and for the carrying out of the purposes of this chapter, may be paid by the board of directors out of the funds received from bond sales. For the purpose of defraying the expenses of the organization of the district, and of the care, operation, management, repair and improvement of such portions of said canal and works as are completed and in use, the board may either fix rates or tolls and charges, and collect the same from all persons using said canal for irrigation and other purposes, or they may provide for the payment of said expense by a levy of assessment therefor, or by both said tolls and assessment; if by the latter method, such levy shall be made on the completion and equalization of the assessment-roll each year, and the board shall have the same powers and functions for the purpose of said levy as possessed by it in case of levy to pay bonds of the district. The procedure for the collection of assessments by such levy shall in all respects conform to the provisions of this chapter, relating to the payment of principal and interest of bonds herein provided for, and shall be made at the same time. [L. '15, p. 626, § 18. Cf. L. '90, p. 690, § 37; 1 H. C., § 1820; L. '13, p. 577, § 20.]

Power of court to fix or regulate rates of irrigation company. 16 Ann. Cas. 799; 8 L. R. A. (N. S.) 529.

State regulation of rates of irrigation company. 12 L. R. A. (N. S.) 711; L. R. A. 1915D, 1205.

Power of state to change private contract rates of irrigation company. 9 A. L. R. 1435.

Business of supplying water for irrigation as affected with a public interest authorizing regulation and control as to rates and prices. 6 L. R. A. (N. S.) 834.

Construction of provisions as to water rentals and other charges in irrigation contract. L. R. A. 1916F, 269.

§ 7455. [6453.] Crossing Railroads, Watercourses, Streets, etc.—Rights.

The board of directors shall have power to construct the said works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume, which the route of said canal or canals may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersections and crossings and grant the privileges aforesaid; and if such railroad company and said board or the owners and controllers of the said property, thing, or franchise to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as is herein provided in respect to the taking of land. The right of way is hereby given, dedicated, and set apart, to locate, construct, and maintain said works over and through any of the lands which are now or may be the property of this state; and also there is given, dedicated, and set apart, for the uses and purposes aforesaid, all waters and water rights belonging to this state within the district. [L. '90, p. 691, § 38; 1 H. C., § 1821.]

§ 7456. [6454.*] Compensation of Officers—Submission of Compensation to Electors.

The board of directors shall each receive not to exceed five dollars (\$5) per day in attending the meetings, to be determined by said board, and such compensation, not exceeding five dollars (\$5) per day, for other services rendered the district as shall be fixed by resolution adopted by vote of the directors and entered in the minutes of their proceedings, and in addition thereto, directors shall receive necessary expenses in attending meetings or when otherwise engaged on district business. A director using his own automobile, on district business or attending meetings shall be entitled to compensation therefor, not to exceed twelve (12) cents per mile for the actual and necessary number of miles traveled. Such compensation to be based on a resolution of the directors entered in the minutes of their proceedings which resolution shall fix the rate per mile which will be allowed for each different make or type, of automobile so used. The board shall fix the compensation to be paid to the secretary and all other agents and employees of the district: Provided, that said board shall, upon the petition of at least fifty, or a majority of those having title, or evidence of title to land within such district therefor, submit to the electors, at any general district election, a schedule of salaries and fees to be paid thereunder. Such petition must be presented to the board twenty days prior to a general election, and the result of such election shall be determined and declared in all respects as other elections are declared under this chapter. [L. '19, p. 546, § 14; L. '17, p. 734, § 8; L. '90, p. 692, § 39; 1 H. C., § 1822; L. '95, p. 449, § 23.]

§ 7457. [6455.] Officers not to be Interested in Contract, etc.—Penalty.

No director or any other officer named in this chapter shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment. [L. '90, p. 692, § 40; 1 H. C., § 1823.]

§ 7458. [6456.*] Special Assessments, How Levied.

The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this chapter including any purpose for which the bonds of the district or the proceeds thereof might be lawfully used. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of section 7432. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used and the number of installments in

which it is to be paid. At such election the ballot shall contain the words "Assessment Yes" and "Assessment No." If the majority of the votes cast are "Assessment Yes" the board may immediately or at intervals thereafter incur indebtedness to the amount of said special assessment for any of the purposes for which the proceeds of said assessment may be used, and may provide for the payment of said indebtedness by the issue and sale of coupon notes of the district to an amount equal to said authorized indebtedness, which coupon notes shall be payable in such equal installments not exceeding three in number as the board shall direct. Said coupon notes shall be payable by assessments levied at the time of the regular annual levy each year thereafter until fully paid. The amount of the assessments to be levied shall be ascertained by adding fifteen per cent for [the] anticipated delinquencies to the whole amount of the indebtedness incurred and interest. Each assessment so levied shall be computed and entered on the assessment-roll by the secretary of the board, and collected at the same time and in the same manner as other assessments provided for herein, and when collected shall be paid to the county treasurer of the county to the credit of said district, for the purposes specified in the notice of such special election: Provided, however, that the board of directors may at their discretion issue said coupon notes in payment for labor or material, or both, used in connection with the purposes for which such indebtedness was authorized. Coupon notes issued under this section shall bear interest at a rate not to exceed eight per cent per annum, payable semi-annually. [L. '21, p. 462, § 24. Cf. L. '15, p. 627, § 19. Cf. L. '90, p. 692, § 41; 1 H. C., § 1824; L. '95, p. 449, § 24.]

§ 7459. [6457.*] Excess Liability Void—Exceptions—Warrants for Indebtedness—Capital Fund.

The board of directors or other officers of the district shall have no power to incur any debt or liability whatsoever either by issuing bonds or otherwise in excess of the express provisions of this chapter: Provided, that the board may without an election and levy therefor pay the necessary costs and expenses of organizing and may make surveys, do engineering work, and conduct a general investigation to determine the feasibility of the proposed irrigation project, and may incur an indebtedness therefor prior to levy, which indebtedness on account of surveys, engineering and investigations shall not exceed fifty cents (50c) an acre, and shall be assessable against the lands within the district; and any such indebtedness heretofore incurred by any irrigation district and any such assessments levied or collected for surveys, engineering and investigation purposes are hereby ratified and validated. In cases of emergency making it necessary to incur indebtedness in order to continue the operation of the irrigation system or any part thereof, the board of directors may incur such indebtedness not exceeding such amount as shall be actually necessary to meet the requirements of said emergency, the same to be declared in a resolution of the board adopted prior to the incurring of said indebtedness: Provided further, that the board may incur such indebtedness as shall be necessary to enable them to carry on the ordinary administrative affairs of the district and if the district shall acquire an

irrigation system prior to the making of its first regular annual levy, the board shall have power to incur such indebtedness as shall be necessary to pay the ordinary expenses of operation and maintenance until the regular annual levy shall be made.

The board may cause warrants of the district to be issued for the payment of any indebtedness incurred under this section, which warrants shall bear interest at a rate not to exceed eight per cent per annum, and it shall be the duty of the board to include in their next annual levy for the payment of the expenses of operation and maintenance, the amount of all warrants issued by virtue of this section.

Notwithstanding anything in this act contained the board of directors of every irrigation district shall have the power to issue as a general obligation of such district, coupon warrants in denominations not in excess of \$500, bearing interest evidenced by coupons payable semi-annually not to exceed eight per cent (8%) per annum. Such warrants shall mature in not more than five (5) years and may be used, or the proceeds thereof, in the purchase of grounds and buildings, machinery, vehicles, tools or other equipment for use in operation, maintenance, betterment, reconstruction or local improvement work, and for creating a revolving fund for carrying on such work as in this act provided. The proceeds of such warrants shall be turned over to the treasurer of the district who shall place the same in an appropriate fund and pay out the same upon warrants of the irrigation district properly drawn thereon. The maximum indebtedness hereby authorized shall not exceed one dollar (\$1) per acre of the total irrigable area within such irrigation district. No warrant shall be sold for less than par. Such warrants shall state on their face that they are a general obligation of the irrigation district, the purposes for which they may be used, and that they are payable on or before maturity. They shall be retired by assessments levied in accordance with the provisions of this act at the time other assessments are levied.

The board of directors of every irrigation district shall also be authorized in its discretion to accumulate by assessment a fund to be designated and known as the "Capital Fund" to be used for the purposes for which the aforesaid warrants may be used. The total of such fund shall not exceed one dollar (\$1) per acre of the total irrigable area within such irrigation district and shall be accumulated in not less than five (5) annual installments. Such fund shall not be permanently depleted or reduced but shall be replaced from year to year by assessments on any lands of the district benefited by the use thereof. The reasonable value of all grounds, buildings, machinery, vehicles, tools or other equipment on hand, purchased with such fund, and the revolving fund, if any, derived from such fund, shall be construed and deemed a part of such capital fund. [L. '21, p. 463, § 25; L. '17, p. 735, § 9; L. '15, p. 628, § 20. Cf. L. '90, p. 693, § 42; 1 H. C., § 1825; L. '95, p. 449, § 25.]

§ 7460. **Petition for Betterments—Investigation of Feasibility.**

Any desired special construction, reconstruction, betterment or improvements in an irrigation system, including drainage, or purchase or acquisition of improvements already constructed, which are for the special

benefit of the lands tributary thereto and lying within an irrigation district, may be constructed, purchased or acquired and provision made to meet the cost thereof as follows: The holders of title or evidence of title of one-quarter of the acreage proposed to be assessed, may file with the board of directors of the irrigation district their petition reciting the nature and general plan of the desired improvement and specifying the lands proposed to be specially assessed therefor. Such petition shall be accompanied by a bond in the sum of one hundred dollars (\$100) with surety to be approved by the said board of directors conditioned that the petitioners will pay the cost of an investigation of the project and of the hearing thereon if the same be not established. The said board may at any time require a bond in an additional sum as may be deemed advisable. Upon the filing of such petition the board of directors with the assistance of a competent engineer, shall make an investigation of the feasibility, cost and need of the proposed local improvement together with the ability of the land to pay such cost, and if the same appears feasible they shall have plans and estimate of the cost thereof prepared. If the cost shall appear to the board to exceed the benefits to accrue therefrom, or if the lands proposed to be embraced within the local improvement district shall be found to be insufficient security for the return of the cost, or if a protest against the establishment of the proposed improvement signed by a majority of the holders of title in the proposed local improvement district be presented at or prior to the hearing herein provided for, or if in other respects the proposed local improvement district should be found infeasible, they shall hold such petition for organization for naught and dismiss the same at the expense of the petitioners. [L. '19, p. 547, § 15; L. '17, p. 736, § 10.]

§ 7461. Petition for Local Improvement—Notice and Hearing.

In the event that the said board shall approve said petition, the board shall fix a time and place for the hearing thereof and shall publish a notice once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven (7) days before such date. Such notice must be published in a newspaper of general circulation in each county in which any portion of the land proposed to be included in such local improvement district lies. Such notice shall state that the lands within said described boundaries are proposed to be organized as a local improvement district, stating generally the nature of the proposed improvement; that bonds for such local improvement district are proposed to be issued as the bonds of the irrigation district, that the lands within said local improvement district are to be assessed for such improvement and stating a time and place of hearing thereon. At the time and place of hearing named in said notice, all persons interested may appear before the board and show cause for or against the formation of the proposed improvement district and the issuance of bonds as aforesaid. Upon the hearing the board shall determine as to the establishment of the proposed local improvement district. Any land owner whose lands can be served or will be benefited by the proposed improvement, may make application to the board at the time of hearing to include such land and the board of directors in such cases

shall, at its discretion, include such lands within such district. The board of directors may exclude any land specified in said notice from said district provided, that in the judgment of the board, the inclusion thereof will not be practicable.

As an alternative plan and subject to all of the provisions of this chapter, the board of directors may initiate the organization of a local improvement district as herein provided. To so organize a local improvement district the board shall adopt and record in its minutes a resolution specifying the lands proposed to be included in such local improvement district or by describing the exterior boundaries of such proposed district or by both. Said resolution shall state generally the plan, character and extent of the proposed improvements, that the land proposed to be included in such improvement district will be assessed for such improvements; that coupon bonds of the irrigation district will be issued to meet the cost thereof and that such bonds will be a primary obligation of such local improvement district and a general obligation of the irrigation district. Said resolution shall fix a time and place of hearing thereon and shall state that unless a majority of the holders of title or of evidence of title to lands within the proposed local improvement district file their written protest at or before said hearing, consent to the improvement will be implied.

A notice containing a copy of said resolution must be published once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven (7) days before such date and the hearing thereon shall not be held in less than twenty (20) days from the adoption of such resolution. Such notice must be published in one newspaper, of general circulation, in each county in which any portion of the land proposed to be included in such local improvement district lies. Said hearing shall be held and all subsequent proceedings conducted in accordance with the provisions of this act relating to the organization of local improvement districts initiated upon petition. [L. '21, p. 466, § 26; L. '17, p. 737, § 11.]

§ 7462. Adoption of Plans—Bond Issue—Extension of Boundaries.

If decision shall be rendered in favor of the improvement, the board shall enter an order establishing the boundaries of the said improvement district and shall adopt plans for the proposed improvement and determine the number of annual installments not exceeding fifteen (15) in which the cost of said improvement shall be paid. The cost of said improvement shall be provided for by the issuance of local improvement district coupon bonds of the district from time to time, therefor, either directly for the payment of the labor and material or for the securing of funds for such purpose. Said bonds shall bear interest at a rate not to exceed eight per cent (8%) per annum, payable semi-annually, evidenced by coupons, and shall state upon their face that they are issued as bonds of the irrigation district; that all lands within said local improvement district shall be primarily liable to assessment for the principal and interest of said bonds and that said bonds are also a general obligation of the said district. No bond shall be issued in denomination exceeding one thousand dollars (\$1,000) and no bond shall be sold for less than par.

No election shall be necessary to authorize the issuance of such local improvement bonds. Such bonds, when issued, shall be signed by the president and secretary of the irrigation district with the seal of said district affixed and shall be registered by the treasurer of the irrigation district with his seal affixed.

The proceeds from the sale of such bonds shall be deposited with the treasurer of the district, who shall place them in a special fund designated "Construction fund of local improvement district number ____."

Whenever such improvement district has been organized, the boundaries thereof may be enlarged to include other lands which can be served or will be benefited by the proposed improvement upon petition of the owners thereof: Provided, that at such time the lands so included shall pay their equitable proportion upon the basis of benefits of the improvement theretofore made by the said local improvement district and shall be liable for the indebtedness of the said local improvement district in the same proportion and same manner and subject to assessment as if said lands had been incorporated in said improvement district at the beginning of its organization. [L. '21, p. 468, § 27; L. '19, p. 548, § 16; L. '17, p. 738, § 12.]

§ 7463. Special Assessments—Payment.

The cost of said improvement shall be especially assessed against the lands within such local improvement district in proportion to the benefits accruing thereto, and shall be levied and collected in the manner in this act provided for the assessments of construction costs.

All provisions in this chapter contained for the assessment, equalization, levy and collection of assessments for irrigation district purposes shall be applicable to assessments for local improvements except that no election shall be required to authorize said improvement or the expenditures therefor or the bonds issued to meet the cost thereof. Assessments when collected by the county treasurer for the payment for the improvement of any local improvement district shall constitute a special fund to be called "bond redemption fund of local improvement district No. ____."

The cost of any unpaid portion thereof, of any such improvement, charged or to be charged or assessed against any tract of land may be paid in one payment by the owner or any one acting for him, under and pursuant to such rules as the board of directors may adopt, and all such amount shall be paid over to the county treasurer who shall place the same in the appropriate fund. No such payment shall thereby release such tract from liability to assessment for deficiencies or delinquencies of the levies in such improvement district until all of the bonds, both principal and interest, issued for such local improvement district have been paid in full. The receipt given for any such payment shall have the foregoing provision printed thereon. The amount so paid shall be included on the annual assessment-roll for the current year, provided, such roll has not then been delivered to the treasurer, with an appropriate notation by the secretary that the amount has been paid. If the roll for that year has been delivered to the treasurer then the payment so made shall be

added to the next annual assessment-roll with appropriate notation that the amount has been paid. [L. '21, p. 469, § 28; L. '17, p. 738, § 13.]

§ 7464. Payment of Bonds.

In the event of the failure of the lands within the local improvement district to furnish money sufficient for the payment of principal or interest of the bonds for such local improvement work and there shall be a default in the payment of principal or interest as aforesaid, the amount delinquent shall be paid by the general warrants of the irrigation district at large, but the lands of the local improvement district shall not thereby become released from liability for special assessment therefor. Such warrants, if issued, shall be redeemed as soon as there shall be available money in the bond redemption fund of the local improvement district. [L. '21, p. 470, § 29; L. '17, p. 739, § 14.]

§ 7465. Refunding Bonds.

It shall be lawful for any irrigation district which has issued local improvement district bonds for said improvements, as in this chapter provided, to issue in place thereof an amount of general bonds of the irrigation district not in excess of such issue of local improvement district bonds, and to sell the same, or any part thereof, or exchange the same, or any part thereof, with the holders of such previously issued local improvement district bonds for the purpose of redeeming said bonds: Provided, however, that all the provisions of this chapter regarding the authorization and issuing of bonds shall apply, and: Providing, further, that the issuance of said bonds shall not release the lands of the local improvement district or districts from liability for special assessments for the payment thereof: And provided further, that the lien of any issue of bonds of the district prior in point of time to the issue of bonds or local improvement district bonds herein provided for, shall be deemed a prior lien. [L. '21, p. 471, § 30; L. '17, p. 740, § 15.]

§ 7466. Contracts With United States or State for Improvement.

Any irrigation district may contract with the United States, or the state of Washington, for local improvement work, and for such purpose may form local improvement districts as herein provided.

Authorization of local improvement district bonds or of contract with the United States, or the state of Washington, for local improvement work may be confirmed in the same manner as provided in sections 7500 to 7504, inclusive. [L. '21, p. 471, § 31; L. '17, p. 740, § 16.]

§ 7467. Increase of Assessment Installments.

Any local improvement district heretofore duly organized may avail itself of and be subject to any of the provisions of this chapter increasing the number of annual installments, not to exceed fifteen, after the directors of the irrigation district duly adopt a resolution to that effect, and it shall be the duty of the board of directors to adopt such resolution whenever in the judgment of the board the best interests of the local im-

provement district will be served thereby, and the interests of the irrigation district will not be jeopardized. [L. '19, p. 549, § 17.]

§ 7468. Consolidation of Districts.

Two or more irrigation districts may be consolidated into one district and may include in such district other lands susceptible of irrigation in the manner provided in this act, and upon the organization of such consolidated district it shall be an organized irrigation district subject to all the provisions of this chapter. [L. '19, p. 549, § 18.]

§ 7469. Proceedings for Consolidation—Election.

For the purpose of organizing a consolidated irrigation district a petition signed by fifty or a majority of the holders of title to, or evidence of title to land susceptible of irrigation within the proposed district shall be presented to the board of county commissioners of the county in which the lands or the greater portion thereof are situated, which petition shall set forth and particularly describe the proposed boundaries of such district, and the name of each existing irrigation district proposed to be included therein, and shall pray that the territory embraced within the boundaries of such proposed district may be organized as a consolidated irrigation district. Such petition shall be accompanied by bond as provided in section 7418 and thereupon the same proceedings shall be had for the organization of such consolidated district as is provided in sections 7418 and 7420, and the organization of such consolidated district shall be perfected in the same manner as provided in this chapter for the organization of new districts, except as otherwise provided in this section. The board of directors of each irrigation district proposed to be included in such consolidated district shall be served with a copy of the petition for the organization of such consolidated district together with notice at the time and place of hearing of such petition, at least twenty days prior to such hearing, and the board of county commissioners upon the hearing of such petition shall not grant the same or call an election if it shall appear that the board of directors of any existing irrigation district proposed to be included in such consolidated district have by resolution, regularly passed and entered upon the minutes of the directors' meetings of such district, voted against the inclusion of such district into such proposed consolidated district. The board of county commissioners upon the hearing of such petition, shall not modify the boundaries of the proposed district to exclude any of the lands which are contained in any of the existing districts proposed to be included in such consolidated districts, and the order calling an election shall provide an election by the electors of each existing district proposed to be included in such consolidated district, and for an election by the electors of that part of the proposed district not included in any existing district, but no elector may cast more than one vote at such election. Such proposed district shall not be declared organized unless two-thirds of all votes cast in each existing district shall be Irrigation District—Yes," and unless two-thirds of all the votes cast in that part of the proposed district not included in any existing district shall be Irrigation District—Yes. If the organization of such consolidated district

is not effected the organization of the district proposed to be included in such consolidated district shall not be affected. [L. '19, p. 550, § 19.]

§ 7470. Organization of Consolidated Districts—Prior Indebtedness.

The board of directors of each included district shall hold office until the board of directors of the consolidated district shall have been elected and shall have qualified, and thereupon the term of office of the directors of such included district shall terminate, and the board of directors of such consolidated district shall have and exercise all the powers and duties in regard to such included district as were vested in the board of directors of such district. Each organized district included in a consolidated district shall either retain its corporate existence so far as necessary for the purpose of carrying out all contracts of such district, and until its indebtedness has been paid in full, or the board of directors of the consolidated district may constitute each such included district a local improvement district for the purpose of carrying out the obligations of, such included district and shall have all the power possessed by the board of directors of such included district to carry out all contracts of such included district to levy, assess and cause to be collected any and all assessments or charges against all of the land within such local improvement district that may be necessary or required to provide for the payment of all the bonds, warrants, and other indebtedness thereof, and to provide for the construction, reconstruction, betterment, improvement, maintenance and operation of all such work as are for the special benefit of the land in such local improvement district. Until such assessments shall have been collected and all indebtedness of the respective included districts paid, separate funds shall be maintained for each such district as were maintained in such included districts prior to the consolidation. A petition shall not be required for the establishment of the lands of such included districts as local improvement districts. [L. '19, p. 551, § 20.]

§ 7471. Bonds of Districts Consolidating not Impaired—Exchange—Cancellation of Prior Contracts.

The inclusion of an organized district into a consolidated district shall not affect or impair any bonds or obligations of such included district and the holders of the bonds of any such included district shall be entitled to all remedies for the enforcement of the same as if such district had not been consolidated, and all obligations that shall have been incurred by any district prior to its being included in a consolidated district shall be a prior lien to any obligation that may be incurred against such land under such consolidated district: Provided, however, that the board of directors of the consolidated district may when authorized thereto, exchange any bonds of the consolidated district for the bonds of such included districts upon obtaining the consent of such bondholders. If any included district shall prior to the time of its inclusion into a consolidated district have entered into any contract with the United States pursuant to the provisions of this chapter, and the board of directors of such consolidated district propose to enter into a contract with the United States by the consolidated district, said board of

directors, when authorized thereto, shall enter into such contract with the United States, and may in such event, with the consent of the United States, cancel any contract previously entered into between any included district and the United States. [L. '19, p. 552, § 21.]

§ 7472. Property Vested in Consolidated District.

The board of directors of an included district shall before the expiration of their term of office cause to be prepared and filed with the board of directors of the consolidated district a statement of all property of such included district, and upon the organization of such consolidated district, the property, of such included district shall, subject to the rights of the holders of the bonds or other obligations of such district, become the property of such consolidated district, and the board of directors of such consolidated district shall in making assessments for such consolidated district cause equitable credit to be given to the lands of such included district for such property received as is of value and benefit to the consolidated district. [L. '19, p. 553, § 22.]

§ 7473. Boundary Changes not Superseded.

The procedure herein provided for the consolidation of districts shall not supersede or repeal any provisions of this act providing for changing the boundaries of any irrigation district, but shall be additional and supplemental thereto. [L. '19, p. 554, § 23.]

§ 7474. [6462.*] Change of Boundary.

The boundaries of any irrigation district now or hereafter organized under the provisions of this chapter may be changed in the manner herein prescribed, but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made, except as hereinafter expressly in section 7486 prescribed: Provided, that in case contract has been made between the district and the United States, or the state of Washington, as in section 7429 provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior, or the state reclamation board, or the director of conservation and development shall assent thereto in writing and such assent be filed with the board of directors. [L. '21, p. 472, § 32; L. '15, p. 628, § 21. Cf. L. '90, p. 694, § 47; 1 H. C., § 1830.]

§ 7475. [6463.] Adjacent Lands, How Admitted—Petition.

The holder or holders of title, or evidence of title, representing one-half or more of any body of lands adjacent to the boundary of an irrigation district, which are contiguous and which, taken together, constitute one tract of land, may file with the board of directors of said district a petition in writing, praying that the boundaries of said district may be

so changed as to include therein said lands. The petition shall describe the boundaries of said parcel or tract of land, and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners respectively of distinct parcels, but such descriptions need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment-book. Such petition must contain the assent of the petitioners to the inclusion within said district of the parcels or tracts of land described in the petition, and of which said petition alleges they are respectively the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged. [L. '90, p. 694, § 48; 1 H. C., § 1831.]

§ 7476. [6464.*] Notice of Petition—How Published—What to Contain.

The secretary of the board of directors shall cause a notice of the filing of such petition to be posted and published in the same manner and for the same time that notice of special elections for the issue of bonds are required by this chapter to be given. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition, and it shall notify all persons interested in or that may be affected by such change of the boundaries of the district to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why the change in the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this chapter. [L. '21, p. 472, § 33; L. '90, p. 695, § 49; 1 H. C., § 1832.]

§ 7477. [6465.] Hearing of Petition—Objections.

The board of directors, at the time and place mentioned in said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all the objections thereto presented in writing by any person showing cause, as aforesaid, why said proposed change of the boundaries of the district should not be made. The failure by any person interested in said district, or in the matter of the proposed change of its boundaries, to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of said boundaries that they may include the whole or any portion of the lands described in said petition. [L. '90, p. 695, § 50; 1 H. C., § 1833.]

§ 7478. [6466.] Payment of Past Assessments Required.

The board of directors to whom such petition to include other lands in the district is presented, shall require, as a condition precedent to the

granting of the petition, that the petitioners shall severally pay, or give approved security upon such terms as may be prescribed by the board to pay, to such district such respective sums as shall be determined by the board at the hearing above provided for, which sums shall be such equitable amount as such land shall pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [L. '15, p. 629, § 22. L. '90, p. 696, § 51; 1 H. C., § 1834; L. '13, p. 578, § 21.]

§ 7479. [6467.] Action upon Petition—What Order shall Contain.

The board of directors, if they deem it not for the best interests of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interests of the district that the boundaries of said district be changed, and if no person interested in said district, or the proposed change of its boundaries, shows cause in writing why the proposed change should not be made, or if, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in said petition, or some part thereof. The order shall describe the boundaries as changed, and shall also describe the entire boundaries of the district as they will be after the change thereof, as aforesaid, is made; and for that purpose the board may cause a survey to be made of such portions of such boundary as is deemed necessary. [L. '90, p. 696, § 52; 1 H. C., § 1835.]

§ 7480. [6468.] Board to Adopt Resolution.

If any person interested in said district, or the proposed change of its boundaries, shall show cause, as aforesaid, why such boundaries should not be changed, and shall not withdraw the same, and if the board of directors deem it for the best interests of the district that the boundaries thereof be so changed as to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the lands which the board are of the opinion should be included within the boundaries of the district when changed. [L. '90, p. 696, § 53; 1 H. C., § 1836.]

§ 7481. [6469.] Election to Change Boundaries—Notice of—Ballots.

Upon the adoption of the resolution mentioned in the last preceding section, the board shall order that an election be held within said district, to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held, and shall cause notice thereof to be given and published. Such notice shall be given and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted, in the manner prescribed by this chapter in case of a special election to determine whether bonds of an irrigation

district shall be issued. The ballots cast at said election shall contain the words "For change of boundary," or "Against change of boundary," or words equivalent thereto. The notice of election shall describe the proposed change of the boundaries in such manner and terms that it can readily be traced. [L. '90, p. 697, § 54; 1 H. C., § 1837.]

§ 7482. [6470.] Action of Board on Result.

If at such election a majority of all the votes cast at said election shall be against such change of the boundaries of the district, the board shall order that said petition be denied, and shall proceed no further in the matter. But if a majority of the votes be in favor of such change of the boundaries of the district, the board shall thereupon order that the boundaries of the district be changed in accordance with said resolution adopted by the board. The said order shall describe the entire boundaries of said district, and for that purpose the board may cause a survey of such portions thereof to be made as the board may deem necessary. [L. '90, p. 697, § 55; 1 H. C., § 1838.]

§ 7483. [6471.*] Record of Change of Boundary.

Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the offices of county auditor and county assessor of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district, as fully and to every intent and purpose as if the lands which are included in the district by the change of the boundaries as aforesaid had been included therein at the original organization of the district. [L. '21, p. 473, § 34. Cf. L. '90, p. 697, § 56; 1 H. C., § 1839.]

§ 7484. [6472.] Petition to be Recorded—Evidence.

Upon the filing of the copies of the order, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence, with the same effect as the petition. [L. '90, p. 698, § 57; 1 H. C., § 1840.]

§ 7485. [6473.] Representative Authorized to Act.

A guardian, an executor, or administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor, or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this chapter mentioned, and may show cause, as in this chapter mentioned, why the boundaries of the district should not be changed. [L. '90, p. 698, § 58; 1 H. C., § 1841.]

§ 7486. [6475.*] Exclusion of Lands from District—Effect of.

The boundaries of any irrigation district or consolidated irrigation district, now or hereafter organized under the provisions of this chapter, may be changed, and tracts of land which were included within the boundaries of such district, or former irrigation districts which were included within the boundaries of such consolidated district, at or after its organization under the provisions of this chapter, may be excluded therefrom in the manner herein prescribed; but neither such change of the boundaries of the district or consolidated district, nor such exclusion of lands from the district, nor such exclusion of a former district from a consolidated district, shall impair or affect its organization or the rights of the district in or to property, except that all property of a consolidated district, the title to which was derived from a former district by, and at the time of, the consolidation shall revert to and become the property of such former district when re-established as herein provided; nor shall it affect, impair or discharge any contract, obligation, lien, or charge for or upon which such district or such consolidated district was or might become liable or chargeable had such change of its boundaries not been made, or had not any such land been excluded from such district, or any such former district been excluded from such consolidated district, unless the holders of such lien, obligation, charge or contract right chargeable against the district, or consolidated district consent to such exclusion in the manner hereinafter provided in section 7491 for the consent of the bondholders. [L. '21, p. 473, § 35; L. '15, p. 629, § 23. Cf. L. '90, p. 698, § 60; 1 H. C., § 1843.]

§ 7487. [6476.*] Petition for Exclusion.

The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district, or fifty or a majority of the holders of title to lands constituting any portion of an irrigation district, or consolidated district as the case may be, for which lands similar grounds for exclusion may exist, or fifty or a majority of the holders of title to lands which constituted a former irrigation district included with a consolidated district, may file with the board of directors of such district, or of such consolidated district, as the case may be, a petition praying that such tracts, and any other tracts contiguous thereto, or such land which constituted such former district, may be excluded and taken from said district, or consolidated district, as the case may be, and in the latter case that such former district may be re-established. The petition for the exclusion of tracts of land from a district shall describe the boundaries of the land which the petitioners desire to have excluded from the district, and also describe the lands of such of said petitioners which are included within such boundaries; but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment-book by the county assessor. The petition for the exclusion of a former district from a consolidated district shall give the corporate name and number of such former district and shall describe the lands of each of said petitioners by legal subdivision or lot and block numbers and name of city, town or addition of platted lands. Every such

petition must be acknowledged in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance. [L. '21, p. 474, § 36; L. '90, p. 699, § 61; 1 H. C., § 1844.]

§ 7488. [6477.*] Notice of Petition for Exclusion—Publication.

The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least two weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of such territory to be excluded lies within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or if no newspaper be published therein, then by posting such notice for the same time in at least three public places in said district, and in case of the posting of said notices, one of said notices must be so posted on the lands, or within the boundaries of the former district, proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, a description of the lands, or the name and number of the former district, mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in or that may be affected by such change of the boundaries of the district to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why the change of the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. [L. '21, p. 475, § 37; L. '90, p. 699, § 62; 1 H. C., § 1845.]

§ 7489. [6478.*] Hearing Petition—Objections.

The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition, and all objections thereto presented in writing, by any person showing cause, as aforesaid, why the prayer of said petition should not be granted. The failure of any person interested in said district or consolidated district to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, or the former district mentioned should not be excluded from the consolidated district, as the case may be, shall be deemed and taken as an assent by him to such exclusion, and the filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to such exclusion. [L. '21, p. 476, § 38; L. '90, p. 700, § 63; 1 H. C., § 1846.]

§ 7490. [6479.*] Board to Exclude Lands in What Cases.

The board of directors, if they deem it not for the best interest of the district, or consolidated district, as the case may be, that the lands, or the former district, mentioned in the petition, or some portion thereof, should be excluded from said district, or consolidated district, shall order

that said petition be denied; but if they deem it for the best interests of the district, or consolidated district, as the case may be, that the lands, or the former district, as the case may be, be excluded from the district, or consolidated district, and if no person interested in the district shows cause, in writing, why the prayer of the petition should not be granted, or if having shown cause withdraws the same, and also, if there be no outstanding bonds of the district, and no contract between the district and the United States, or the state of Washington, then the board may order that the lands mentioned in the petition, or some defined portion thereof, or the former district mentioned in the petition, be excluded from the district, or consolidated district, as the case may be, and the former district be re-established. [L. '21, p. 477, § 39. Cf. L. '15, p. 630, § 24. Cf. L. '90, p. 700, § 64; 1 H. C., § 1847.]

§ 7491. [6480.*] Assent of Bondholders, When Required—How Given.

If there be outstanding bonds of the district, or consolidated district, as the case may be, or if such district shall have entered into a contract with the United States, or the state of Washington, then the board may adopt a resolution to the effect that the board deems it to the best interest of the district that the lands mentioned in the petition, or some portion thereof, or the former district mentioned in the petition, as the case may be, should be excluded from the district, or consolidated district, and the former district re-established. The resolution shall describe such lands so that the boundaries can readily be traced, or shall give the corporate name and number of the former district. The holders of such outstanding bonds may give their assent, in writing, to the effect that they severally consent that the board may make an order by which the lands, or the former district, mentioned in the resolution may be excluded from the district, and in case contract has been made with the United States, or the state of Washington, the secretary of the interior, or the state reclamation board, or the director of conservation and development may assent to such change. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect, as evidence, as the acknowledgment of such conveyance. The assent of the secretary of the interior need not be acknowledged. The assent shall be filed with the board, and in the office of the county clerk in each county comprised within the district and must be recorded in the minutes of the board; and said minutes, or certified copy thereof, shall be admissible in evidence with the same effect as the said assent; but if such assent of the bondholders, and in case of contract with the United States, or the state of Washington, such assent of the secretary of the interior, or the state reclamation board or the director of conservation and development, be not filed, the board shall deny and dismiss said petition. [L. '21, p. 477, § 40; L. '15, p. 631, § 25. Cf. L. '90, p. 701, § 65; 1 H. C., § 1848.]

§ 7492. [6481.*] Election to Exclude Land—When Ordered.

If the assent aforesaid of the holders of said bonds be filed and entered of record as aforesaid, and if there be objections presented by any

person showing cause as aforesaid, which have not been withdrawn, then the board may order an election to be held in each district to determine whether an order shall be made excluding said land from said district, or excluding said former district from said consolidated district, as the case may be, and such former district be re-established, as mentioned in said resolution. The notice of such election shall describe the boundary of all lands, or shall give the corporate name and number of the former district, which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election, in a newspaper published within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of such counties. Such notice shall require the electors to cast ballots, which shall contain the words "For exclusion" and "Against exclusion," or words equivalent thereto. Such election shall be conducted in the manner prescribed in this chapter for the holding of special elections on the issuance of bonds. In every case where the petition is for the exclusion of a former district from a consolidated district the resolution of the board ordering an election shall provide for the holding of such election separately in the territory comprising such former district and in the territory comprising that portion of the consolidated district not included in such former district, and for canvassing and counting of the votes cast at such election separately. [L. '21, p. 478, § 41. Cf. L. '15, p. 631, § 26; L. '90, p. 701, § 66; 1 H. C., § 1849.]

§ 7493. [6482.*] Order of Exclusion, When Granted—Surveys.

If at any such election a majority of all the votes cast shall be against exclusion the board shall deny and dismiss said petition and proceed no further in said matter; but if in the case of a petition for the exclusion of lands from a district a majority of such votes be in favor of the exclusion of said lands from the district, the board shall thereupon order that the said lands mentioned in said resolution be excluded from the district; if in the case of a petition for the exclusion of a former district from a consolidated district, a majority of the votes cast in such former district shall be against exclusion, or a majority of the votes cast in the remaining portion of the consolidated district shall be against exclusion, the board shall deny and dismiss the petition and proceed no further in the matter; but if in the case of a petition for such exclusion of a former district a majority of the votes cast in such former district and a majority of the votes cast in the remaining portion of the consolidated district shall be in favor of the exclusion of such former district, the board shall thereupon order that the lands comprising such former district be excluded from the consolidated district and that such former district shall be and is re-established as an irrigation district created and established under the provision of this chapter and that the title to all property formerly belonging to, and all property within the boundaries of said former district, shall be and is vested in such re-established district, and shall call an election to be held in such re-established district for the election of a board of directors thereof, and direct the publication of notices of such election in the manner provided in this chapter for the publication

of notice of special elections. The board entering such order shall continue to administer the affairs of such re-established district until the directors elected at such election shall have qualified.

The said order excluding land from a district shall describe the boundaries of the district, should the exclusion change the boundaries of the district, and in case of the exclusion of a former district from a consolidated district, shall describe the boundaries of the re-established district and the boundaries of the district remaining; and for that purpose the board may cause a survey to be made of such portions of the boundaries as the board may deem necessary. [L. '21, p. 479, § 42; L. '90, p. 702, § 67; 1 H. C., § 1850.]

§ 7494. [6483.*] Orders to be Recorded—Effect of.

Upon the entry in the minutes of the board of any of the orders hereinbefore mentioned, a copy thereof, certified by the president and the secretary of the board, shall be filed for record in the offices of the county auditor and the county assessor of each county within which are situated any of the lands of the district, and thereupon said district, and said consolidated district and said re-established district, if any, shall each be and remain an irrigation district as fully, as to every intent and purpose, as it would be had no change been made in the boundaries thereof, or had the lands excluded therefrom never constituted a portion thereof. [L. '21, p. 481, § 43; L. '90, p. 702, § 68; 1 H. C., § 1851.]

§ 7495. [6486.] Map of Districts.

Said board of directors shall cause a map to be made of the irrigation districts showing each forty acres, subdivision or fraction thereof, and place the same on file in their office. [L. '95, p. 451, § 28.]

This section does not appear to be embraced in the title of the act.

§ 7496. [6487.] Representative may Petition, When.

A guardian and executor or an administrator of an estate who is appointed as such under the laws of this state, and who, as such guardian, executor, or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereto properly authorized by the proper court, sign and acknowledge the petition in this chapter mentioned, and may show cause, as in this chapter provided, why the boundaries of the district should not be changed. [L. '90, p. 703, § 71; 1 H. C., § 1854.]

§ 7497. [6488.*] Assessments to be Refunded.

In case of the exclusion of any lands under the provisions of this act, the board of directors shall determine what refund, if any, shall be made to any person or persons who have paid any assessments to such district on any lands so excluded, but such refund, if any, shall be on a basis equitable alike to lands remaining in the district and lands excluded therefrom. Such payment shall be made in the manner as other claims against the district, and from such fund or funds as the board of directors may designate, and which may be legally applied to such payments. The

board may, in its discretion, determine what portion, if any, of the assessments remaining unpaid shall be canceled. Said cancellation, if any, shall be accomplished by an order entered upon the minutes of the board and certified to the office of the county treasurer. Upon the filing of such certified order, said assessments, or any portion thereof, canceled by said order shall be marked "Canceled" upon the treasurer's records. The lien of such portion of said assessments, if any, as the board shall refuse to cancel, shall continue against the lands excluded, and the district shall retain all of its rights as to such assessments or portions thereof as if said lands had not been excluded. [L. '21, p. 481, § 44; L. '13, p. 578, § 22. Cf. L. '90, p. 703, § 72; 1 H. C., § 1855.]

§ 7498. [6488-1.] Effect on Pending Proceedings.

All irrigation districts in the state of Washington, and all proceedings had for the organization of any irrigation district, and all proceedings now pending in or relating to any irrigation district, shall be governed and controlled by the terms of this act, and this act shall not be construed as abridging or abrogating any of the rights or privileges of any irrigation district now organized, or being organized, and any contract, obligation, lien or charge, or bonds of any district, which may have been made, incurred, authorized or issued, prior to the taking effect of this act shall not be abridged or impaired by the terms of this act, but this act shall be construed as being a continuation of, and in aid of the previously existing laws relating to irrigation districts, except as to the sections specially repealed; and if in any instance relating to an existing district or any of its proceedings, the term of this amendatory act shall not be legally applicable, the district may proceed, and any contract, obligation, lien or charge against it may be enforced, under the terms and provisions of the law relating to irrigation districts in force and in effect prior to the taking effect of this act. [L. '13, p. 579, § 23.]

§ 7499. [6489.*] Special Proceedings to Confirm Bonds or Contracts.

The board of directors of an irrigation district, now or hereafter organized under the provisions of this chapter, may commence a special proceeding in and by which the proceedings for organizing such district or the proceedings of said board and of said district, providing for and authorizing the issue and sale of the bonds of said district whether said bonds or any of them have or have not then been sold, may be judicially examined, approved and confirmed, or in case a contract shall have been made by an irrigation district for the payments of moneys to the United States, or the state of Washington, and bonds be not deposited with the United States or the state of Washington, as in section 7429: Provided, the board may commence a special proceeding whereby the proceedings of said district providing for and authorizing the said contract, whether or not the same shall already have been executed, may be judicially examined, approved and confirmed.

There may be combined with the proceeding for the confirmation of the organization and formation of said district, either of the other confirmation proceedings above mentioned. [L. '21, p. 482, § 45; L. '17, p. 741, § 17; L. '15, p. 632, § 27. Cf. L. '90, p. 703, § 73; 1 H. C., § 1856.]

Cited in 29 Wash. 13; 75 Wash. 302; 79 Wash. 436; 91 Wash. 64.

A petition for the organization of an irrigation district, under this section is not fatally defective in failing to set forth the boundaries of the district, where it contained a direct reference to the order of the county commissioners fixing the boundaries: Board of Directors of Quincy Valley Irr. Dist. v. Scott, 79 Wash. 434, 140 Pac. 391.

An allegation in a petition to organize an irrigation district that notices of the election were posted in three public

places in each election precinct in the district, a convenient number of which had been established, is sufficiently definite and certain: Board of Directors of Quincy Valley Irr. Dist. v. Scott, 79 Wash. 434, 140 Pac. 391.

In a proceeding to "judicially examine, approve, and confirm" the establishment of an irrigation district, the findings of the county commissioners cannot be reviewed unless the evidence is preserved and brought before the court, Wenatchee Reclamation District, In re, 97 Wash. 60, 157 Pac. 38.

§ 7500. [6490.*] Petition—Contents.

The board of directors of the irrigation district shall file in the superior court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying, in effect, that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petitions shall state the facts, showing the proceedings had for the organization of said district or the proceedings had for the issue and sale of said bonds, or for the authorization of contract with the United States; and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected; but the petition need not state the facts showing such organization of the district, or the election of said first board of directors. [L. '17, p. 741, § 18; L. '15, p. 633, § 28. Cf. L. '90, p. 703, § 74; 1 H. C., § 1857.]

§ 7501. [6491.*] Procedure upon Filing Petition.

The court shall fix the time for the hearing of said petition, and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published in the same manner and for the same length of time that a notice of a special election provided for by this chapter to determine whether the bonds of said district shall be issued is required to be given and published. The notice shall state the time and place fixed for the hearing of the petition, and the prayer of the petition, and that any person interested in the organization of said district or in the proceedings for the issue of sale of said bonds or for the authorization of contract with the United States, or the state of Washington, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of — irrigation district (giving its name) praying that the proceedings for the organization of said district or the proceedings for the issue and sale of the bonds of said district or for the authorization of contract with the United States, or the state of Washington, may be examined, approved, and confirmed by said court. [L. '21, p. 483, § 46; L. '17, p. 742, § 19; L. '15, p. 633, § 29. Cf. L. '90, p. 704, § 75; 1 H. C., § 1858.]

§ 7502. [6492.] Pleadings and Practice upon Filing of Petition.

Any person interested in said district, or in the issue or sale of said bonds or in the making of contract with the United States, may demur

to or answer said petition. The statutes of this state respecting the demurrer, and the answer to a verified complaint, shall be applicable to a demurrer and answer to said petition. The person so demurring to or answering said petition shall be the defendant to said special proceeding, and the board of directors shall be the plaintiff. Every material statement to the petition not specifically controverted by the answer must, for the purposes of said special proceeding, be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the statutes of this state, which are not inconsistent with the provisions of this chapter, are applicable to the special proceeding herein provided for. A motion for a new trial must be made upon the minutes of the court. The order granting a new trial must specify the issue to be re-examined on such new trial, and the findings of the court upon the other issues shall not be affected by such order granting a new trial. [L. '15, p. 634, § 30. Cf. L. '90, p. 704, § 76; 1 H. C., § 1859.]

§ 7503. [6493.*] Power and Duty of Court.

Upon the hearing of such special proceedings, the court shall have full power and jurisdiction to examine and determine the legality and validity of and approve and confirm each and all of the proceedings for the organization of said district under the provisions of this chapter from and including the petition for the organization of the district, and all other proceedings which may affect the legality of the formation of said district or the legality or validity of said bonds, and the order for the sale, and the sale thereof, and all proceedings which may affect the authorization or validity of the contract with the United States, or the state of Washington. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings, and it may approve and confirm such proceedings, in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of said petition has been duly given and published for the time and in the manner in this chapter prescribed. The costs of the special proceedings may be allowed and apportioned between all of the parties, in the discretion of the court. [L. '21, p. 483, § 47; L. '17, p. 742, § 20; L. '15, p. 634, § 31. Cf. L. '90, p. 705, § 77; 1 H. C., § 1860.]

Cited in 79 Wash. 437.

§ 7504. [6494.] Time Within Which Appeal must be Taken.

An appeal from an order granting or refusing a new trial, or from the judgment, must be taken by the party aggrieved within thirty days after the entry of said order or said judgment. [L. '15, p. 635, § 32. Cf. L. '90, p. 705, § 78; 1 H. C., § 1861.]

Cited in 70 Wash. 529; 75 Wash. 302; 79 Wash. 435, 436.

§ 7505. Partial Validity.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the

act as a whole, or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [L. '21, p. 484, § 49.]

CHAPTER V.

DISTRIBUTION OF WATER FOR IRRIGATION PURPOSES.

§ 7506. Distribution Districts.

For the purpose of securing economy, fairness, promptness and accuracy in the distribution of water for the irrigation of agricultural lands the board of county commissioners of any county may create a water distribution district or districts within such county and may enlarge, reduce, consolidate or divide any district already created or create new districts from time to time in the manner hereinafter set forth. [L. '21, p. 313, § 1.]

§ 7507. Petition of Owners of Certificates.

Whenever two or more owners of certificates of the right to divert waters issued by the state hydraulic engineer, resident upon the land to which said rights are appurtenant, shall petition the board of county commissioners asking that their lands be included either separately or with other lands designated in the petition in a district to be formed for the purposes set forth in section 7506, the board shall fix a time for the hearing of such petition and shall give notice of such hearing as hereinafter provided. [L. '21, p. 314, § 2.]

See *infra*, § 10830, duties of hydraulic engineer devolve upon director of conservation and development.

See *infra*, § 10893, hydraulic engineer abolished.

§ 7508. Sufficiency of Petition.

Said petition shall describe all the land to be included in the district by ownerships, shall give the name and last known address of the owners thereof, the nature, extent and priority of the water right appurtenant to each ownership and the location of the diversion points on the stream from which water for said lands is derived and shall be signed by the petitioners. Attached to such petition shall be a map outlining the present location of the ditches making up the distribution system on the lands to be included in the district, and the written approval of the state hydraulic engineer. Any petition for the modification of any existing district shall follow the same general form in this section outlined. [L. '21, p. 314, § 3.]

See notes to § 7507.

§ 7509. Notice of Hearing.

At least thirty days before the day of hearing on said petition to form a district, the board of county commissioners shall give a notice of such hearing by mailing a copy of the same by registered mail to the land owners named in the petition, by posting copies of the notice in three conspicuous places within the proposed district and one at the courthouse, and by publishing a copy of same in a newspaper of general

circulation published in said county for three successive weeks, the date of the first publication to be at least thirty days before the day of hearing. Said notice shall contain a copy of the petition, omitting the map and written approval of the state hydraulic engineer, shall state the time and place of the hearing, and shall require any person interested to appear at such hearing and show cause in writing, if any he has, why said district should not be formed. [L. '21, p. 314, § 4.]

§ 7510. Determination on Hearing.

At the hearing on such petition the board of county commissioners shall determine whether such district shall be created and shall fix the boundaries thereof according to the prayer of the petition or otherwise: Provided, that said board shall not include any land which is a part of an established irrigation district; nor shall the board add any lands not described in the petition, unless the record owners thereof have previously been notified, as in this act provided, and given an opportunity to be heard; nor shall any petition be considered unless the written approval of the state hydraulic engineer be attached thereto. Said hearing may be continued from time to time for the purpose of considering additional land, or giving further notice or for any purpose which in the judgment of the board of commissioners may render a continuance of the hearing necessary. If a district is created the board of county commissioners shall pass a resolution and spread the same upon the minutes of the board declaring such fact, and designating the territory included in such district as "Water Distribution District No. —, — county." [L. '21, p. 315, § 5.]

See notes to § 7507.

§ 7511. Board of Trustees—Powers and Duties.

Such district shall be administered by three resident freeholders acting as a board of trustees. Said trustees shall be appointed by the state hydraulic engineer and shall hold office during his pleasure without pay except for actual expenses. Said board of trustees shall have the following duties and powers:

(1) They shall hire for a reasonable wage and for such time as they may determine, a person, or persons if more than one are necessary, to act as ditch-master whose duty it shall be to apportion the water to the several lands in the district according to their respective rights.

(2) They shall, when authorized by a vote of the record land owners as hereinafter provided, under the general supervision and control of the state hydraulic engineer, improve the system of the distribution of water for irrigation, and to that end may acquire rights of way for ditches by purchase or by condemnation, and may construct new ditches or repair existing ones, either by contract or by day labor or both, and employ engineering and legal advice.

(3) They shall on or before the second Monday in September make out and file with the board of county commissioners a detailed estimate of the expense of the district for the ensuing year, including any delinquencies in previous taxes as a basis for the annual tax levy against the property in said district.

(4) They shall prosecute or defend such actions as may be necessary to carry out the purposes of this act, and for that purpose may employ counsel. [L. '21, p. 315, § 6.]

§ 7512. Tax Levy.

For the purposes herein specified the board of county commissioners shall annually levy on all the taxable property within any district a tax for such district not to exceed ten mills on the dollar unless previously authorized by a vote of the land owners of such district in which case such tax shall not exceed twenty-five mills to be levied and collected as in this act provided. [L. '21, p. 316, § 7.]

§ 7513. Collection of Tax Levies.

The tax levies herein provided for shall be included in the regular tax-rolls of the county and shall be extended on said rolls against the property liable therefor the same as other taxes are extended, and shall become a part of the general tax against such property and shall be collected with the same terms and penalties attached, at the same times, by the same officials, and accounted for the same as other taxes are. [L. '21, p. 316, § 8.]

§ 7514. Disbursement of Taxes.

The taxes collected by the county treasurer shall be held and disbursed as a special fund for such district, and shall be paid out only on warrants issued by the county auditor upon vouchers approved by the board of trustees of said district except that vouchers for the expenses of said trustees shall be approved by the state hydraulic engineer. [L. '21, p. 317, § 9.]

§ 7515. Limitation on Obligations.

No district shall have authority to contract obligations in any year in excess of the estimated revenues for that year, except in case of an unforeseen catastrophe rendering the distribution system or any part of the same useless or dangerous to life and property. [L. '21, p. 317, § 10.]

§ 7516. District, a Body Corporate.

Such district, when organized, shall be and constitute a body corporate with power to contract, sue and be sued in its corporate name, and said district shall have the power of eminent domain to be exercised under the provisions of the law giving private corporations such right. [L. '21, p. 317, § 11.]

§ 7517. Plans for Improvement of District.

The board of trustees of any district may, when in its judgment the best interests of the district will be subserved thereby, submit to the land owners a plan for the improvement of the water distribution system in operation in such district. Such plan shall be outlined under the supervision of the state hydraulic engineer and shall include a

general statement of the improvements contemplated together with an estimate of the total cost thereof. [L. '21, p. 317, § 12.]

See notes to § 7507.

§ 7518. Vote on Plans.

Such plan shall be voted upon by the land owners of the district at a special election called for that purpose. The board of trustees shall by resolution, outline the plan of improvement, fix the time and place of election, establish one or more voting precincts, appoint the usual election officials and cause a twenty day notice of same to be given as herein provided. [L. '21, p. 317, § 13.]

§ 7519. Notice of Election.

Such notice shall be posted in at least five public and conspicuous places in each precinct in the district, one of which shall be at the polling place, and no other form of notice shall be required. Said notice shall be typewritten or printed and shall contain a general statement of the plan of improvement, including the nature, extent and estimated cost of same, shall state the day and polling place of election and the hours during which the polls shall be open, which shall be from the hour of 9 A. M. to 4 P. M., and shall state that the election shall be by ballot, and shall be signed by a member of the board of trustees. [L. '21, p. 318, § 14.]

§ 7520. Conduct of Election—Qualifications of Electors.

Such election shall be conducted in the usual manner. The election officials shall have power to fill vacancies and administer oaths to each other. The ballots shall be of uniform size, shall be typewritten or printed and shall contain the following: "Improvement Yes — and Improvement No. —"; and across the top of the ballot: "Instructions to voters—To vote for the improvement as outlined in the notice of election, place a cross (X) on the line opposite the word 'yes.' To vote against the same, place a cross (X) on the line opposite the word 'no'."

Any person of the age of twenty-one (21) years, being a citizen of the United States and a resident of the state of Washington, and who holds title to land or evidence of title to land embraced within the boundaries of said distribution district, shall be entitled to vote at said election. Additional qualifications for voting required by the general election laws of the state shall not apply: Provided, that where the title or evidence of title to community land is held by the husband or the wife, both members of such community shall be entitled to vote: Provided, further, that at any election held under the provisions of this act, an officer or agent of any corporation owning land in the district, duly authorized thereto in writing, may cast a vote on behalf of said corporation; when so voting he shall file with the election officers such written instrument of his authority, and such officer or agent shall be deemed an elector within the meaning of this act. An elector shall vote in the precinct in which the greater portion of his land, or of the land which he represents, lies. At the close of said election, the officials shall publicly count the votes and make a return of the results forth-

with to the board of trustees, which return shall include the used ballots, the original poll-list, tally-sheets and the appointment and oaths of election officials. [L. '21, p. 318, § 15.]

§ 7521. Canvass of Election Returns.

On the first Monday after said election the board of trustees shall meet as a canvassing board to canvass the results of said election. Said board shall examine the proof of the posting of the notice of election, the appointments and oaths of election officials, the returns of election and shall determine their sufficiency and regularity. Said canvassing board shall then tabulate the votes and determine the result of the election. At the conclusion of the canvass said board shall pass a resolution declaring its findings and conclusions and such resolution shall be final and conclusive upon the world except for fraud or other illegal acts on the part of the canvassing board materially affecting the rights of any owner of land included in the district. [L. '21, p. 319, § 16.]

§ 7522. Improvement to be Made—State Engineer—Duties.

If the majority of the votes cast at said special election are in favor of the improvement, the board of trustees shall proceed with said improvement in such manner as they may determine, under the provisions of this act: Provided, that said improvement shall at all times be under the general supervision and control of the state hydraulic engineer and all disputes regarding the character, sufficiency and practicability of the improvement shall be settled by that officer and his decision in such matters shall be final and conclusive upon the courts. The expenses of the state hydraulic engineer incurred in the exercise of his duties under this section shall be paid by the district. [L. '21, p. 319, § 17.]

§ 7523. Expense of Improvement Added to Levy.

After said improvements have been completed, the board of trustees shall include in their annual estimate such sums, if any, that may be necessary to maintain said improvements and keep the same in reasonable repair, and the board of county commissioners shall have the power to include the same in the annual levy without a vote of the land owners of the district within the limits prescribed in section 7512. [L. '21, p. 320, § 18.]

§ 7524. Scope of Act.

All acts or parts of acts in conflict with the provisions of this act are hereby repealed: Provided, that nothing herein contained shall be construed as affecting, superseding, or repealing any of the provisions of law relating to irrigation districts. [L. '21, p. 320, § 19.]

§ 7525. Partial Validity.

If any section, subdivision, sentence or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. [L. '21, p. 320, § 20.]

CHAPTER VI.

DISORGANIZATION OF DISTRICTS BY DIRECTORS.

§ 7526. [6495.] When may be Disorganized.

Any irrigation district, organized and existing by virtue of the laws of this state, which has no bonded indebtedness outstanding, may be disorganized and its business and affairs liquidated and wound up in the manner hereinafter provided. [L. '97, p. 207, § 1.]

§ 7527. [6496.] Petition for.

A petition signed by one-third or more holders of title or evidence of title to lands within said district who shall be qualified electors thereof, reciting the fact that said district has no bonded indebtedness and praying that said district be disorganized under the provisions of this chapter, shall be delivered to the secretary of the board of directors of said district or to one of the directors thereof. [L. '97, p. 207, § 2.]

§ 7528. [6497.] Election Ordered—Ballots.

Upon the delivery of said petition the board of directors of said irrigation district shall, at their next succeeding regular monthly meeting, order an election, the date of which election shall be within twenty days from the date of said meeting of the board of directors and which election shall be conducted as other elections of irrigation districts are conducted. At said election the qualified electors of said irrigation district shall cast ballots which shall contain the words "Disorganize, Yes," or "Disorganize, No." No person shall be entitled to vote at any election held under the provisions of this act unless he is a qualified voter under the election laws of the state, and holds title or evidence of title to land in said district. [L. '97, p. 207, § 3.]

§ 7529. [6498.] Three-fifths Vote Necessary—Notice.

If three-fifths of the votes cast at any election under the provisions of this act shall contain the words "Disorganize, Yes," then the board of directors shall present to the superior judge of the county in which said irrigation district is located an application for an order of said superior court that such irrigation district be declared disorganized and dissolved, and that its affairs be liquidated and wound up, as provided for in this act, and reciting that at an election of such irrigation district, held as provided in this act, three-fifths of the votes cast contained the words "Disorganize, Yes," and such petition shall be certified to by the directors of said district. They shall also file with said superior court a statement, sworn to by the directors of said irrigation district, showing all outstanding indebtedness of said irrigation district, or if there be no such indebtedness, then the director shall make oath to that effect. Notice of said application shall be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published

in a newspaper of the county printed and published nearest to said irrigation district, once each week for four weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time and place appointed in the notice, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the provisions of this act have been complied with he shall enter an order declaring said irrigation district dissolved and disorganized. [L. '97, p. 208, § 4.]

"This act" refers to this chapter.

§ 7530. [6499.] Directors Trustees of Creditors—Tax Levy.

Upon the disorganization of any irrigation district under the provisions of this chapter, the board of directors at the time of the disorganization shall be trustees of the creditors and of the property holders of said district for the purpose of collecting and paying all indebtedness of said district, in which actual construction work has been done, and shall have the power to sue and be sued. It shall be the duty of said board of directors, and they shall have the power and authority, to levy and collect a tax sufficient to pay all such indebtedness, which tax shall be levied and collected in the manner prescribed by law for the levying and collection of taxes of irrigation districts. Any balance of moneys of said district remaining over after all outstanding indebtedness and the cost of the proceedings under this act have been paid shall be divided and refunded to the assessment payers in said irrigation district, to each in proportion to the amount contributed by him to the total amount of assessments collected by said district. Said board of directors shall report to the court from time to time as the court may direct, and upon a showing to the court that all indebtedness has been paid, an order shall be entered discharging said board of directors. Upon the entry of such order said board of directors and all the officers of said district shall deliver over to the clerk of said court all books, papers, records and documents belonging to said district, or under their control as officers thereof: Provided, that nothing herein contained shall be construed to validate or authorize the payment of any indebtedness of said district exceeding the legal limitation of indebtedness specified by law for irrigation districts; or any indebtedness contracted by such irrigation district or its officers without lawful authority. [L. '97, p. 208, § 5.]

CHAPTER VII.

DISSOLUTION OF DISTRICTS BY COUNTY COMMISSIONERS.

§ 7531. [6500.] Any District may Disorganize.

Any irrigation district organized and existing under the laws of the state of Washington may be dissolved and its indebtedness liquidated in the manner in this chapter provided. [L. '99, p. 164, § 1.]

This chapter appears to be concurrent with the preceding chapter.

§ 7532. [6501.] Bonds Outstanding—Consent of Holders.

If there are bonds of such district outstanding, the written consent of at least two-thirds in amount of the holders of all such bonds must be filed with the county auditor of the county in which such district is situated, consenting to such dissolution, which consent shall be acknowledged before some officer authorized by the laws of this state to take the acknowledgment of deeds, and recorded in the records of deeds of said county. [L. '99, p. 164, § 2.]

§ 7533. [6502.] Petition for Dissolution.

Whenever the consent of two-thirds in amount of such bondholders has been filed, as in this chapter provided, a petition signed by at least one-third of the freeholders in said district, who shall be qualified electors thereof, reciting the fact that said consent has been filed, and praying that said district be dissolved under the provisions of this chapter, shall be delivered to the county auditor of such county. [L. '99, p. 164, § 3.]

§ 7534. [6503.] Call for Election by Commissioners—Ballots—Qualifications of Voters.

Upon the filing of the written consent of the bondholders and the petition signed by the qualified electors, as provided in the last two sections, it shall be the duty of the board of county commissioners of such county at their next regular session, or at that time, if then in session, to call an election for the purpose of submitting to the voters of said district the question whether the district shall be dissolved under the provisions of this chapter. Such election shall be held upon like notice and conducted in like manner, as other elections under the irrigation district laws of this state, and the form of the ballot shall be "For dissolution—Yes," "For dissolution—No," and no person not a qualified elector under the general election laws of this state and a freeholder residing within said district shall be deemed a qualified elector under the provisions of this act. [L. '99, p. 164, § 4.]

§ 7535. [6504.] Election Officers—Notice of Election.

Said board of county commissioners, at the time of calling such election, shall designate and appoint the proper officers to conduct the same, and shall direct the county auditor to sign and post notices of such election for the time and in the manner in said election district laws provided. [L. '99, p. 165, § 5.]

§ 7536. [6505.] Canvass of Returns—Surrender of Records.

The officers conducting such election shall make returns thereof to the county auditor of the county in which such district is situated within ten days after such election, and the board of county commissioners of said county shall at the first meeting to be held thereafter canvass the vote of such election, and if a majority of the voters voting thereat shall vote in favor of dissolution it shall be the duty of all officers and persons having in their possession any of the books, records, docu-

ments, or proceedings appertaining to such district, to deliver the same, on demand, to the county auditor of the county in which such district is situated. [L. '99, p. 165, § 6.]

§ 7537. [6506.] Transcript of Proceedings and Statement of Indebtedness Certified to County Clerk.

As soon as such books and other records and proceedings shall come into the possession of such county auditor it shall be his duty forthwith to certify under his hand and seal, and deliver to the county clerk of his county, a transcript of the proceedings before the board of county commissioners, and shall accompany the same with a statement of all indebtedness against said district so far as the same appears on the books and records of the same. [L. '99, p. 165, § 7.]

§ 7538. [6507.] Proceedings Docketed—Notice to Present Claims.

Upon the filing of such statement and certificate the clerk shall docket the proceedings entitled "In the matter of the dissolution of — irrigation district," and the superior court shall thereupon make an order directing the clerk to give notice that such statement has been filed in his office, which notice shall continue [contain] a general statement of the nature of the proceedings, and shall notify all persons having claims against said district to present the same for allowance and approval on or before a day in such notice to be specified. And all claims not presented and filed in said court on or before such date shall be forever barred. Such notice shall be published in some newspaper published in said county once a week for at least six weeks immediately preceding the date fixed for such hearing. [L. '99, p. 165, § 8.]

§ 7539. [6508.] Hearing—Determination of Claims by Court—Appeals.

At the time fixed for such hearing, or at any other time to which such hearing may be adjourned, if satisfied that the provisions of this chapter have been complied with, the court shall proceed to determine the validity of all claims and demands against said district, together with the amount thereof. No claim or debt which is barred by the statutes of limitations shall be approved or allowed. Such irrigation district, or any other person deeming himself aggrieved by the final judgment allowing or rejecting any claim, may appeal to the supreme court within ten days from the entry of such final judgment, but not thereafter. [L. '99, p. 166, § 9.]

§ 7540. [6509.] Sale by Master Under Order of Court.

If no appeal be taken from such judgment or if the judgment appealed from be affirmed, the court shall thereupon appoint a master who shall forthwith give notice that the property of the district, its rights and franchises, will be sold pursuant to an order of the court directing such sale: Provided, however, that such sale shall not include any property within said district which has been sold for taxes or other assessments in said district. A certified copy of such order shall be

delivered to such master as his authority in the premises. Such notice of sale shall be given in like manner and for the same time as a notice of sale of real property on execution, except that it shall not be deemed necessary to post any copy of such notice. Said sale shall be made at public auction at the front door of the courthouse in such county, and may be adjourned from time to time, not exceeding three weeks in all, by public proclamation made at the time and place of sale, or the time from which the same may have been previously adjourned. Such master is authorized to receive in payment of the purchase price any securities or obligations of such district, the validity of which has been established by the previous judgment of the court, as herein provided; such securities or obligations to be accepted at their face value and no bids shall be accepted, and no sale of said property shall be made for a less sum than the amount of bonded indebtedness of such district, including all accrued interest. [L. '99, p. 166, § 10.]

§ 7541. [6510.] Return of Master—Confirmation and Conveyance.

Said master shall thereupon make return of his proceedings and file the same with the clerk of the court, and if the court is satisfied that such sale was fairly conducted, it shall make an order confirming and approving the same, and upon such confirmation such master shall execute and forthwith deliver to the purchaser or purchasers at said sale a good and sufficient deed of conveyance, and such deed, when so executed, shall be operative, and shall convey to the purchaser at said sale the property, rights, franchises and privileges of such district, as hereinbefore described, clear and free from any claim or lien in favor of such district or its creditors, and shall entitle the purchaser to the immediate possession of the property so purchased. [L. '99, p. 167. § 11.]

§ 7542. [6511.] Assessment to Liquidate Indebtedness—Levy and Collection.

As soon as such sale is made and confirmed, it shall become the duty of the board of county commissioners of the county in which the district is situated, to levy an assessment for the purpose of liquidating all outstanding indebtedness of such district, exclusive of the bonded indebtedness herein provided, on all the property within the district, subject to assessment under the general irrigation district laws of the state, which indebtedness shall be ascertained by reference to the judgment of the court as herein provided. In levying such assessments the board of county commissioners shall be governed as near as may be by the general irrigation district laws, except as herein otherwise provided. The county assessor shall, under the direction of the board of county commissioners, prepare an assessment-roll of the lands in said district from the last assessment-roll of the county, for state and county taxes. The board of county commissioners shall equalize the same, after giving like notice and in like manner as the board of directors of irrigation districts are required to do. The county auditor shall perform the same duties as are now devolved by law on the secretary of irrigation districts, and the county treasurer shall be ex-officio

treasurer and collector thereof. In all other respects such tax shall be collected as under the general irrigation district laws of the state. [L. '99, p. 167, § 12.]

§ 7543. [6512.] Order of Dissolution.

As soon as the sale is confirmed as herein provided, the court shall make an order dissolving the irrigation district, a certified copy of which shall be recorded in the office of the county auditor of the county in which such district is situated; and from and after the filing of such order said district shall cease to exist, except for the purpose of the collection of its indebtedness; and all papers, records and proceedings appertaining to the same shall be turned over to the county auditor of the proper county, and all bonds and other obligations of the district shall be canceled as soon as paid. [L. '99, p. 168, § 13.]

Issues, Trial, and Judgment. See §§ 309—509.

Jails. See "Prisons and Reformatories," § 10186.

Judges. See "State Officers," § 11035.

Judgments. See §§ 404—509.

Enforcement of, see §§ 510—646.

In civil actions in justice's court, see §§ 1857—1863.

In criminal actions, see §§ 2181—2224.

Jurors. See §§ 89—111.

Justices' Courts. See §§ 43—49; "Justices of the Peace and Constables," § 7544.

Proceedings in justices' courts, see § 1755.